

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

EMMY MCELROY, individually and on behalf of all others similarly
situated, and HASSAN HAMEDI, individually,
Plaintiffs,

v.

STEVEN BASTA, DENNIS CONDON, MARTIN SUTTER, TIMOTHY
LYNCH, KEVIN SIDOW, N.C. JOSEPH LAI, CHRISTOPHER DENNIS,
JEFFREY NUGENT and BIOFORM MEDICAL, INC.
Defendants.

)
) Case No. CIV 491204
)

) **NOTICE OF SETTLEMENT OF**
) **CLASS ACTION**
)

TO: ALL FORMER SHAREHOLDERS OF BIOFORM MEDICAL, INC. WHO (A) TENDERED THEIR SHARES OF BIOFORM MEDICAL INC. COMMON STOCK TO MERZ GMBH & CO. KGAA PURSUANT TO THE CASH TENDER OFFER DATED JANUARY 15, 2010, OR (B) DID NOT TENDER THEIR SHARES OF BIOFORM MEDICAL INC. COMMON STOCK TO MERZ GMBH & CO. KGAA BUT WHOSE BIOFORM SHARES WERE NONETHELESS CONVERTED INTO A RIGHT TO RECEIVE THE SAME CASH TENDER OFFER PRICE, BY OPERATION OF DELAWARE'S SHORT-FORM MERGER STATUTE.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION.

BASIC INFORMATION

1. Why did I get this notice?

This Notice has been sent to you pursuant to an Order of the San Mateo County Superior Court (the "Court"). The purpose of this Notice is to inform you of the proposed settlement (the "Settlement") of this class action litigation (the "Class Action") and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement (the "Final Approval Hearing"). This Notice describes the rights you may have in connection with the Settlement and what steps you may take in relation to the Settlement and this Class Action.

This Notice is not an expression of any opinion by the Court about the merits of any of the claims or defenses asserted by any party in the Class Action or the fairness or adequacy of the proposed Settlement.

2. What is this lawsuit about?

On January 4, 2010, BioForm Medical, Inc. ("BioForm") and Merz GmbH & Co. KGaA ("Merz") announced that they had entered into a merger agreement pursuant to which BioForm would become a wholly-owned subsidiary of Merz via a tender offer of \$5.45 per share (the "Transaction"). On January 13, 2010, the Class Action was filed as Civil Case No. 491204 in the Superior Court of California for San Mateo County (the "Court") on behalf of holders of BioForm common stock, and naming as defendants BioForm, Steven Basta, Dennis Condon, Martin Sutter, Timothy Lynch, Kevin Sidow, N.C. Joseph Lai, Christopher Dennis, and Jeffrey Nugent.

The Class Action alleges that the Transaction constituted a breach of the fiduciary duties owed to BioForm's former shareholders by the Defendants. The Defendants denied the allegations asserted in the Class Action and denied that they engaged in any wrongful conduct of any sort in connection with the Transaction. Class Counsel has conducted extensive discovery regarding the claims alleged in the Class Action.

3. Why did the parties agree to the proposed settlement?

The Parties have negotiated the terms of a Stipulation and Agreement of Compromise, Settlement, and Release (the "Settlement Agreement") in the Class Action, which is on file with the Court. The Settlement Agreement was only reached after arm's-length negotiations between the Parties, who were all represented by counsel with extensive experience and expertise in shareholder class action litigation. During the negotiations, all parties had a clear view of the strengths and weaknesses of their respective claims and defenses.

While Defendants have vigorously denied, and continue to deny, any wrongdoing or liability with respect to the claims, events and transactions complained of in the Class Action, Defendants have agreed to settle and compromise the Class Action on the terms hereinafter set forth in order to avoid the expense, risk, and inconvenience of a trial on the merits against Defendants and any subsequent appeals, and in order to put to rest and finally terminate the Class Action and all Settled Claims, as defined in the Settlement Agreement.

Based on a thorough analysis of applicable law and facts, and after taking into account the material benefits afforded to the Class through the instant settlement of this Class Action, and the risk, delay and expense of a trial on the merits against Defendants and any subsequent appeals, the Class Representative and Class Counsel have concluded that a settlement of the Class Action on the terms and conditions described herein is fair, reasonable, adequate, and in the best interests of all of the members of the Class.

TERMS OF THE PROPOSED SETTLEMENT

4. What are the basic terms of the proposed settlement?

The proposed Settlement consists of a contingent potential payment based on fiscal year 2013 revenue for Merz Aesthetics, as follows:

- “Eligible Revenue Target” is \$171.325 million (USD) of Eligible Revenue during the fiscal year ending June 30, 2013.
- “Eligible Revenue” is actual net revenue from sales of the Designated Products by Merz Aesthetics during the fiscal year ending June 30, 2013. For purposes of calculating Eligible Revenue, the applicable U.S. dollar exchange rate shall be the average exchange rate for the fiscal year ending June 30, 2013 as applied by Merz and disclosed in the notes of its annual report.
- “Designated Products” shall consist solely of the following:
 - 1) Radiesse (U.S. Aesthetics)
 - 2) Radiesse (U.S. Hand Augmentation)
 - 3) Radiesse (International)
 - 4) Modified HA Product
 - 5) Coaptite (U.S.)
 - 6) Aethoxysklerol (U.S.)
 - 7) Other revenue specifically consisting of Voice ENT, Freight, Relaxed Expressions, Coaptite Needles, OEM, Coupons, and Deferred Revenue/Rebates, consistent in all respects with the calculation of J.P. Morgan’s revenue projections as set forth in its December 30, 2009 fairness opinion presentation to the BioForm Board of Directors.
- “Aggregate Settlement Payment” shall be 15% of the amount by which Eligible Revenue exceeds the Eligible Revenue Target during the fiscal year ending June 30, 2013. By way of illustration only, if Eligible Revenue is \$200 million (USD), the Aggregate Settlement Payment would be $15\% \times [\$200 - \$171.325] \text{ million} = \$4,301,250$. The Aggregate Settlement Payment shall be payable by Merz Aesthetics in immediately available cash funds.
- No later than September 30, 2013, Merz Aesthetics shall certify in good faith the revenue number for the fiscal year ending June 30, 2013 and shall provide to Class Counsel a sworn affidavit by a knowledgeable employee of Merz Aesthetics stating the amount of the Eligible Revenue. Class Counsel may conduct one (1) telephonic deposition of the above-mentioned affiant, pertaining only to the matters stated in the affidavit, not to exceed two (2) hours. Except as stated above, neither the Plaintiffs, Class Counsel, nor any Class Member or counsel thereof, shall be entitled to audit or otherwise inspect the books and records of Merz Aesthetics or any of its direct or indirect parents, subsidiaries or affiliates at any time, or to serve any subpoena, discovery request, or other process concerning the Merz Aesthetics’ financial results in connection with this settlement. Merz Aesthetics agrees to cooperate in good faith to facilitate Class Counsel’s verification of Eligible Revenue.
- In the event that Eligible Revenue exceeds the Eligible Revenue Target, then all Class Members shall be eligible to receive payment of their proportionate share of the Aggregate Settlement Payment (“Proportionate Payment”). Proportionate Payment shall mean payment of a portion of the Aggregate Settlement Payment to an individual Class Member proportionate to that Class Member’s common stock ownership of the Company as of January 15, 2010, where the Proportionate Payment to Class Member A shall be calculated as follows:
$$\begin{array}{l} \text{Proportionate Payment} \\ \text{(Class Member A)} \end{array} = \begin{array}{l} \text{Aggregate Settlement Payment} \\ \text{(All Class Members)} \end{array} \times \frac{\text{Class Member A's Common Shares}}{\text{All Class Members' Common Shares}}$$
- In the event that Eligible Revenue exceeds the Eligible Revenue Target, Merz Aesthetics shall deposit the Aggregate Settlement Payment into an account with a settlement administrator (the “Settlement Administrator”).
- In the event that Eligible Revenue exceeds the Eligible Revenue Target, the Aggregate Settlement Payment shall be non-reversionary and shall be distributed pro rata to Class Members by the Settlement Administrator, who shall disseminate Class Members’ Proportionate Payments by mailing checks by first-class mail to the former holders of shares of BioForm Medical, Inc. common stock (“BioForm Shares”).
- No Aggregate Settlement Payment shall be made, and no Class Member shall be entitled to any Aggregate Settlement Payment, unless Eligible Revenue exceeds the Eligible Revenue Target during fiscal year 2013.
- As a material inducement to the Defendants to enter into the Settlement Agreement, upon the Effective Time (as defined below), the Class Representative, individually and on behalf of all members of the Class, and Plaintiff Hamedi, individually, and all Class Members (collectively herein the “Releasing Persons”), shall be deemed thereupon to have irrevocably released the Defendants and each of their respective representatives, attorneys, owners, stockholders, members, managers, predecessors, successors, directors, officers, employees, parents, subsidiaries and affiliates (and agents, members, managers, directors, officers, employees, representatives and attorneys of such parents, subsidiaries and affiliates), including without limitation Merz GmbH & Co. KGaA (collectively all of the foregoing are herein the “Released Persons”), from any and all charges, claims, liabilities, agreements, damages, causes of action, suits, costs, losses, debts and expenses (including attorneys’ fees and costs actually incurred) (herein, “Claims”) of any nature whatsoever, whether known or unknown, now existing or hereafter arising, which the Releasing Persons now have, or which the Releasing Persons at any time hereafter may have or claim to have, against each or any of the Released Persons that were or have been alleged, asserted, claimed, raised or set forth in the Class Action or that could have been alleged, asserted, claimed, raised or set forth in the Class Action or in any other court, tribunal, forum or proceeding by the Releasing Persons or any Class Members, including without limitation any and all Claims based upon, arising out of anything any of the Released Persons have done or failed to do up to and including the date of final Court approval of this settlement, (i) while in the Released Person’s capacity at BioForm Medical, Inc. or at any predecessor, successor, or affiliate thereof, or as a director, officer, employee or agent of BioForm Medical, Inc. or any predecessor, successor, or affiliate thereof, whether or not the basis of the Claim is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent of BioForm Medical, Inc. or any predecessor, successor, or affiliate thereof, (ii) related in any way to the acquisition of BioForm Medical, Inc. by Merz GmbH & Co. KGaA, or any element, term, condition or circumstance of the acquisition of BioForm Medical, Inc. by Merz GmbH & Co., KGaA; (iii) related to any disclosures made by BioForm Medical, Inc. in any SEC filing or press release, including without limitation any disclosures made by BioForm

Medical, Inc. in any SEC filing or press release relating to the acquisition of BioForm Medical, Inc. by Merz GmbH & Co., KGaA; (iv) related to any actions, deliberations, negotiations, discussions, offers, inquiries, solicitations of interest, indications of interest, bids, due diligence or any act or omission in connection with the review of strategic alternatives available with regard to the acquisition of BioForm Medical, Inc. by Merz GmbH & Co., KGaA; (v) related to the consideration received by any Releasing Party in connection with the acquisition of BioForm Medical, Inc. by Merz GmbH & Co., KGaA; (vi) related in any way to any employment, retention package or arrangement, compensation, or equity ownership or award of options or equity of, by or from BioForm Medical, Inc. or Merz Aesthetics, or any predecessor, successor, or affiliate thereof; or (vii) the fees, expenses or costs incurred in prosecuting, defending, or settling the Class Action, except to the extent of the attorneys' fees award, the incentive awards to Plaintiffs, and the notice and administration costs Defendants have agreed to pay as provided in the Settlement Agreement (collectively all of the foregoing are herein the "Settled Claims"); *provided, however*, that this settlement does not include a release of, and Settled Claims do not include, Claims arising out of conduct occurring prior to August 20, 2007.

- The releases for Settled Claims as defined above extend to claims that the Plaintiffs or Class Members do not know or suspect to exist at the time of the releases, which if known, might have affected the decision to enter into the releases. If the Settlement Agreement is approved, each of the Plaintiffs waives, individually, and the Class Representative on behalf of each Class Member waives, and each Class Member shall be deemed to waive, any and all provisions, rights, and benefits conferred by any law of the United States, or principle of common law, which governs or limits a person's release of unknown claims. If the Settlement Agreement is approved, each of the Plaintiffs relinquishes, individually, and the Class Representative on behalf of each Class Member relinquishes, and each Class Member shall be deemed to relinquish, to the full extent permitted by law, the provisions, rights and benefits of California Civil Code section 1542, which provides that:

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 approval by the Court of the Settlement Agreement shall be considered final and the Settlement Agreement shall become effective (herein the "Effective Time") upon the later of (i) entry by the Court of the Final Order and Judgment approving the settlement; (ii) the expiration of the time for the filing or noticing of any appeal of the Final Order and Judgment; (iii) the exhaustion of all rights of appeal; or (iv) the upholding of the Final Order and Judgment in substantially the form approved by the Court on any appeal.
- Upon the Effective Time, Class Counsel shall be entitled to an award of reasonable attorneys' fees and expenses, payable by Merz Aesthetics, in the amount of \$580,000 to compensate Class Counsel for their time spent and expenses in this Class Action and the settlement of this Class Action, and for the material benefit that Defendants have acknowledged is conferred upon the Class by this settlement.
- Upon the Effective Time, the Class Representative shall be entitled to an award of no more than \$6,500 and Plaintiff Hassan Hamedi shall be entitled to an award of no more than \$3,500, which amounts Merz Aesthetics has agreed to pay and shall pay within ten (10) days of the Effective Time.

APPROVAL HEARING REGARDING PROPOSED SETTLEMENT

5. How and when will the Court decide whether to approve the settlement?

A settlement approval hearing (the "Final Approval Hearing") will be held before the Honorable Marie Weiner, Judge of the Superior Court of the State of California, County of San Mateo, 400 County Center, Courtroom 7A, Redwood City, California, Department 2, on January 18, 2013, at 9:00 a.m. Pacific Standard Time, to determine (j) whether the proposed settlement of the Class Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Class pursuant to California Rules of Court, Rule 3.769, and Section 3(a)(10) of the Securities Act of 1933 and should be approved by the Court; (ii) whether a Final Order and Judgment as provided should be entered; (iii) whether to award Class Counsel the amount that Merz Aesthetics has agreed to pay Class Counsel as part of the proposed settlement in attorneys' fees and reimbursement of expenses, i.e., \$580,000; and (iv) whether to award the Class Representative and Plaintiff Hamedi the incentive awards that Merz Aesthetics has agreed to pay, i.e., respectively, \$6,500 and \$3,500, as part of the proposed settlement. The Court may continue or adjourn the Approval Hearing without further notice.

6. What are my rights and obligations to participate in the approval hearing?

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

Any Member of the Class who seeks to comment on any aspect of the Settlement Agreement or Class Counsel's application for fees and expenses may appear and be heard at the Final Approval Hearing. Any Class Member who wishes to make a written objection to the settlement set forth in the Settlement Agreement or to any aspect thereof must mail or hand deliver such objection so that it is received by Class Counsel and counsel for the Defendants on or before January 2, 2013, and so that said objection is filed with the Clerk of the Court, San Mateo County Superior Court, on or before January 2, 2013, at the addresses set forth below:

Address for Filing Objections:

Civil Clerk of the Court
San Mateo Superior Court
Hall of Justice, First Floor, Room A,
400 County Center,
Redwood City, CA 94063

The case is entitled *McElroy, et al. v. Basta, et al.*, Civ. No. 491204.

Addresses for Serving Objections:

Attorneys for Plaintiffs and the Class:

LEVI & KORSINSKY, LLP

Michael H. Rosner

30 Broad Street, 24th Floor

New York, NY 10004

Tel: 212-363-7500

Fax: 212-363-7171

BRAMSON, PLUTZIK, MAHLER & BIRKHAUSER LLP

Alan R. Plutzik (CSB # 077785)

2125 Oak Grove, Suite 120

Walnut Creek, CA 94598

Tel: 925-945-0200

Fax: 925-945-8792

Attorneys for Defendants:

ROPES & GRAY LLP

PETER L. WELSH

Prudential Tower, 800 Boylston Street

Boston, MA 02199-3600

Tel: 617-951-7000

Fax: 617-951-7050

ROCKY C. TSAI (CSB # 221452)

Three Embarcadero Center, Suite 300

San Francisco, CA 94111-4006

Tel: 415-315-6300

Fax: 415-315-6350

Any Member of the Class who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the proposed settlement set forth in the Settlement Agreement or any aspect thereof, unless otherwise ordered by the Court.

7. What if I receive this notice as a nominee?

If you held any BioForm common stock as nominee for a beneficial owner, then, within ten (10) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice by first-class mail to all such persons; or (2) provide a list of the names and addresses of such Persons to:

BioForm Settlement Administrator
c/o RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479

If you choose to mail the Notice yourself, you may obtain from the Settlement Administrator as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for, or advancement of, reasonable copy and mailing costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Settlement Administrator.

8. Additional Information

This Notice is a summary and does not describe all of the details of the Settlement Agreement. For full details of the matters discussed in this Notice, you may desire to review the Settlement Agreement filed with the Court, which may be inspected during business hours, at the office of the Civil Clerk of the Court, San Mateo Superior Court, Hall of Justice, First Floor, Room A, 400 County Center, Redwood City, CA 94063. The case is entitled *McElroy, et al. v. Basta, et al.*, Civ. No. 491204. A copy of the Settlement Agreement is also available on the website maintained by the Settlement Administrator:

<http://www.rg2claims.com/bioform.html>

For further information regarding the Settlement you may also contact Class Counsel at:

BRAMSON, PLUTZIK, MAHLER
& BIRKHAUSER, LLP

Alan R. Plutzik

Michael S. Strimling

2125 Oak Grove Road, Suite 120

Walnut Creek, CA 94598

Tel: 925-945-0200

www.bramsonplutzik.com

LEVI & KORSINSKY LLP

Michael H. Rosner

30 Broad Street, 24th Floor

New York, NY 10004

Tel: 212-363-7500

www.zlk.com

PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.

DATED: October 26, 2012

BY ORDER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN MATEO