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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 MICHAEL BEMIS, et al., Individually and on) Lead Case No. 37-2013-00060593-CU-BT-CTL
11 Behalf of All Others Similarly Situated,)
12 Plaintiffs,) (Consolidated with Case Nos. 37-2013-
13 vs.) 00061332-CU-SL-CTL, 37-2013-00061612-
CU-SL-CTL, 37-2013-00061751-CU-BT-CTL,
14 TRIUS THERAPEUTICS, INC., et al.,) 37-2013-00062038-CU-BT-CTL, 37-2013-
00062069-CU-SL-CTL and 37-2013-00062130-
15 Defendants.) CU-SL-CTL)
16) CLASS ACTION

JUDGE: Honorable Judith F. Hayes
DEPT: C-68
DATE ACTION FILED: 08/01/13

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19 STIPULATION OF SETTLEMENT
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1 This Stipulation of Settlement (the “Stipulation”), dated November 30, 2015, is entered into by
2 and among the following: (i) plaintiffs Michael Bemis and David Beidler, individually and on behalf of
3 the Class Members (“Plaintiffs”); and (ii) defendants Jeffrey Stein, David S. Kabakoff, Brian G.
4 Atwood, Nina Kjellson, Brendan O’Leary, Karin Eastham, Paul Truex, Theodore R. Schroeder, and
5 Seth H. Z. Fischer (collectively, “Defendants” and together with Plaintiffs on behalf of the Class, the
6 “Parties”).

7 This Stipulation states all of the terms of the settlement and resolution of the above-captioned
8 consolidated action (the “Action”) and is intended by the Parties to fully and finally release, resolve,
9 remise, compromise, settle and discharge the Released Plaintiffs’ Claims (as defined herein) against the
10 Released Defendant Parties (as defined herein) and the Released Defendant Parties’ Claims (as defined
11 herein) against the Released Plaintiff Parties (as defined herein), subject to the approval of the Superior
12 Court of California, County of San Diego (the “Court”).¹

13 **I. THE LITIGATION**

14 On July 30, 2013, Trius Therapeutics, Inc. (“Trius” or the “Company”) announced that it had
15 entered into a definitive merger agreement (the “Merger Agreement”) with Cubist Pharmaceuticals, Inc.
16 (“Cubist Pharmaceuticals”) and BRGO Corporation, a wholly-owned subsidiary of Cubist
17 Pharmaceuticals (“BRGO” and together with Cubist Pharmaceuticals, “Cubist”) under which Cubist
18 would commence a tender offer (the “Tender Offer”) to acquire all of the outstanding shares of Trius
19 for \$13.50 per share in cash and one Contingent Value Right (“CVR”), entitling the holder to receive an
20 additional cash payment of up to \$2.00 for each share they own if certain commercial sales milestones
21 are achieved (the “Acquisition” or the “Merger”).

22 Between August 1, 2013 and August 12, 2013, several putative class action complaints on
23 behalf of Trius common stockholders were filed in this Court alleging, among other things, that the
24 members of Trius’ Board of Directors breached their fiduciary duties in connection with the Merger,
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27 ¹ All capitalized terms shall have the meanings ascribed to them in Section II.1 of this Stipulation,
28 unless defined elsewhere in the Stipulation.

1 and that Cubist and Trius aided and abetted those breaches (the “Related Actions”).² In addition,
2 several actions alleging substantially the same claims on behalf of the same putative class of Trius
3 common stockholders were filed in the Delaware Court of Chancery (the “Delaware Actions”).³

4 On August 13, 2013, Cubist commenced the Tender Offer. On the same date, Trius filed a
5 Schedule 14D-9 Solicitation/Recommendation Statement (the “14D-9”) with the United States
6 Securities and Exchange Commission (“SEC”) in connection with the Tender Offer.

7 On August 21, 2013, Plaintiffs filed a motion seeking consolidation of the Related Actions and
8 the appointment of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as lead counsel.

9 On August 28, 2013, plaintiff Bemis filed an amended complaint (the “Amended Complaint”)
10 which, among other things, included the allegations in the initial complaints in the Related Actions and
11 added allegations that the Defendants violated their fiduciary duties by filing the 14D-9, which
12 allegedly omitted or misrepresented material information.

13 On September 4, 2013, the Delaware Chancery Court consolidated the Delaware Actions
14 (collectively, the “Consolidated Delaware Action”).

15 On September 11, 2013, Cubist consummated the Tender Offer and consummated the
16 Acquisition.

17 On September 24, 2013, Defendants, Trius and Cubist filed a motion for an order to stay
18 proceedings (“Motion to Stay”), seeking a stay of the Related Actions in favor of the Consolidated
19 Delaware Action.

20 On October 24, 2013, the Delaware plaintiffs filed a notice and proposed order of voluntary
21 dismissal of the Consolidated Delaware Action without prejudice, which the Delaware Court of

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23 ² The “Related Actions” are *Bemis v. Trius Therapeutics, Inc., et al.*, Case No. 37-2013-00060593-
24 CU-BT-CTL, filed August 1, 2013; *Hurst v. Trius Therapeutics, Inc., et al.*, Case No. 37-2013-
25 00061332-CU-SL-CTL, filed August 6, 2013; *Collins v. Trius Therapeutics, Inc., et al.*, Case No. 37-
26 2013-00061612-CU-SL-CTL, filed August 7, 2013; *Frazzano v. Trius Therapeutics, Inc., et al.*, Case
27 No. 37-2013-00061751-CU-BT-CTL, filed August 7, 2013; *Cast v. Trius Therapeutics, Inc., et al.*,
28 Case No. 37-2013-00062038-CU-BT-CTL, filed August 9, 2013; *Greenwald v. Trius
Therapeutics, Inc., et al.*, Case No. 37-2013-00062069-CU-SL-CTL, filed August 9, 2013; and
McPherson v. Stein, et al., Case No. 37-2013-00062130-CU-SL-CTL, filed August 12, 2013.

³ The “Delaware Actions” are *Beidler v. Stein, et al.*, C.A. No. 8794-VCG; *Weeks v. Trius
Therapeutics, Inc., et al.*, C.A. No. 8799-VCG; and *Shifrin v. Stein, et al.*, C.A. No. 8806-VCG.

1 Chancery granted the same day. As a result, defendants took their Motion to Stay off the Court's
2 calendar.

3 On February 28, 2014, Plaintiffs served their Consolidated Amended Class Action Complaint
4 for Breaches of Fiduciary Duty and Violations of State Law ("Consolidated Complaint") on Defendants
5 and attempted to file and lodge it with the Court. The Court accepted the Consolidated Complaint on or
6 around September 29, 2014.

7 On March 12, 2014, the Court consolidated the Related Actions into this Action.

8 On March 28, 2014, the Parties filed a stipulation and order for voluntary dismissal of Cubist
9 without prejudice. The Court dismissed Cubist without prejudice on April 11, 2014.

10 On April 24, 2014, Defendants and Trius filed their motion to strike Plaintiffs' jury demand
11 ("Motion to Strike").

12 On April 29, 2014, Defendants filed their demurrer to Plaintiffs' Consolidated Complaint
13 ("Demurrer").

14 On May 16, 2014, Plaintiffs filed their opposition to Defendants' Demurrer.

15 On May 16, 2014, Plaintiffs filed their opposition to Defendants' Motion to Strike.

16 On May 21, 2014, the Parties filed a stipulation and proposed order for voluntary dismissal of
17 Trius with prejudice. The Court dismissed Trius with prejudice on July 22, 2014.

18 On May 22, 2014, Defendants filed their reply briefs in support of their Motion to Strike and
19 their Demurrer.

20 On September 5, 2014, the Court held a hearing regarding Defendants' Demurrer and Motion to
21 Strike. After hearing the Parties' arguments, on September 19, 2014, the Court granted Defendants'
22 Motion to Strike and overruled Defendants' Demurrer.

23 On September 29, 2014, Defendants filed their Answer to Plaintiffs' Consolidated Complaint.

24 From December 16, 2014 to January 13, 2015, several plaintiffs from the Related Actions
25 requested voluntary dismissals from the Action, which the Court granted.⁴

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27 ⁴ Specifically: plaintiff Frank Frazzano requested voluntary dismissal on December 16, 2014, which
28 the Court granted on December 19, 2014; plaintiff Shawn McPherson requested voluntary dismissal on
December 29, 2014, which the Court granted on January 5, 2015; plaintiffs John K. Weeks, Jr. and
Lynn Weeks requested voluntary dismissal on December 30, 2014, which the Court granted on January

1 On January 9, 2015, Plaintiffs filed their motion for class certification.

2 On June 23, 2015, Defendants filed their statement of non-opposition to Plaintiffs' motion for
3 class certification.

4 Also during this period, from approximately September 2014 to June 2015, the Parties engaged
5 in extensive fact discovery concerning the claims alleged in the Consolidated Complaint. The Parties
6 and various non-parties produced approximately 244,550 pages of documents. The Parties completed
7 13 depositions, including depositions of: Benjamin Carpenter (San Francisco, May 27, 2015); Bradley
8 Prosek (Boston, June 25, 2015); Brendan O'Leary (Boston, April 14, 2015); Brian Atwood (San
9 Francisco, April 22, 2015); Craig Thompson (San Diego, May 5, 2015); David Beidler (Roanoke,
10 February 11, 2015); David Kabakoff (San Diego, April 30, 2015); Ercument Tokat (New York, May 19,
11 2015); John Schmid (San Diego, May 7, 2015); Michael Bemis (Philadelphia, March 26, 2015); Nina
12 Kjellson (San Diego, April 29, 2015); Paul Truex (Palo Alto, April 23, 2015); and Robert Perez
13 (Boston, May 29, 2015). Plaintiffs pursued discovery from and served subpoenas on various third
14 parties, including: (i) Centerview Partners LLC; (ii) Citigroup Global Markets, Inc.; (iii) Merck & Co.,
15 Inc.; (iv) InterWest Partners LLC; (v) Prism Venture Management, LLC; and (vi) Versant Venture
16 Management, LLC. The Parties also served and responded to special interrogatories. The Parties also
17 began preparing to engage in expert discovery, including the designation of experts and exchange of
18 initial expert witness lists.

19 On June 8, 2015, after preparing and submitting materials to Jill R. Sperber, Esq. (the
20 "Mediator"), counsel for Plaintiffs and Defendants participated in a mediation session regarding a
21 possible global resolution of the Action before the Mediator.

22 Subsequently, the Mediator issued her recommendation outlining recommended terms for the
23 settlement of the Action, and the Mediator's recommendation was accepted by the Parties.

24 Defendants each have denied, and continue to deny, that they have committed or aided and
25 abetted in the commission of any violation of law or engaged in any of the wrongful acts alleged in the
26 Action or any Related Action, and expressly maintain that they complied with any fiduciary and other

27 5, 2015; and plaintiff William Cast requested voluntary dismissal on January 13, 2015, which the Court
28 granted on January 14, 2015.

1 legal duties and are entering into this Stipulation solely to eliminate the burden and expense of further
2 litigation.

3 Plaintiffs state that they brought their claims in good faith and continue to believe that their
4 claims have legal merit, but nevertheless recognize and acknowledge the risk, uncertainty, expense, and
5 length of proceedings necessary to prosecute this Action against Defendants through summary
6 judgment, trial, and appeals. Plaintiffs have also taken into account the inherent difficulties of proof
7 under the possible defenses to the claims asserted in the Action and the uncertainty of collecting any
8 damages that might be awarded at trial. Plaintiffs believe that the terms contained in this Stipulation
9 confer substantial benefits upon the Class and that it is in the Class' best interests to pursue a settlement
10 of the Action based upon the terms outlined herein.

11 **II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

12 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED by
13 the Parties that, subject to the approval of the Court and pursuant to Section 382 of the California Code
14 of Civil Procedure and Rule 3.769 of the California Rules of Court and the other conditions set forth
15 below, for the good and valuable consideration set forth herein and conferred on Plaintiffs and the
16 Class, the Action against Defendants shall be finally and fully settled and compromised, with entry of
17 the Judgment as defined below in ¶1.11, and that the Released Plaintiffs' Claims shall be finally and
18 fully compromised, settled, released, and discharged as against the Released Defendant Parties, and that
19 the Released Defendant Parties' Claims shall be finally and fully compromised, settled, released, and
20 discharged as against the Released Plaintiff Parties, in the manner set forth herein.

21 **1. Definitions**

22 In addition to the terms defined elsewhere in the Stipulation, the following capitalized terms,
23 used in the Stipulation, shall have the meanings specified below:

24 1.1 "Account" means the interest bearing escrow account which is to be maintained by the
25 Escrow Agent and into which the Settlement Amount shall be deposited. The funds in the Account
26 shall be invested in instruments backed by the Full Faith and Credit of the United States or an agency
27 thereof (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest
28 accrued thereon, except that any residual cash balances of less than \$250,000 may be invested in an

1 account that is fully insured by the United States Government or any agency thereof, including the
2 FDIC.

3 1.2 “Administrative Costs” means all costs and expenses associated with providing notice of
4 the Settlement to the Class, soliciting claims, administering and distributing the Net Settlement Amount
5 to Settlement Payment Recipients, paying escrow costs and fees, if any, or otherwise administering or
6 carrying out the terms of the Settlement, and any taxes or related tax preparation expenses.

7 1.3 “Claims Administrator” means the firm of Gilardi & Co. LLC.

8 1.4 “Class” means all holders of Trius common stock who received consideration for their
9 shares in the Acquisition at the price of \$13.50 per share in cash and one Contingent Value Right
10 (“CVR”) per share, first announced on July 30, 2013. Excluded from the Class are Defendants and any
11 person, firm, trust, corporation or other entity related to or affiliated with any Defendant. Also excluded
12 from the Class are those persons or entities who timely and properly request exclusion from the Class
13 pursuant to the instructions set forth in the Notice approved through the Preliminary Approval Order.
14 However, until such time as those persons or entities are excluded, they shall be treated as members of
15 the Class.

16 1.5 “Class Member” means a person who falls within the definition of the Class as set forth
17 above in ¶1.4.

18 1.6 “Closing” means the consummation of the Acquisition.

19 1.7 “Effective Date” means the first date by which all of the events and conditions specified
20 in ¶6.1 of the Stipulation have been met and have occurred.

21 1.8 “Escrow Agent” means Robbins Geller Rudman & Dowd LLP or its successor(s).

22 1.9 “Fee and Expense Award” means an award to Plaintiffs’ Counsel of fees and expenses
23 and any awarded interest thereon to be paid from the Account, approved by the Court, and in full
24 satisfaction of any and all claims for attorneys’ fees and expenses that have been, could be, or could
25 have been asserted by Plaintiffs’ Counsel or any other counsel or any member of the Class.

26 1.10 “Final” means (i) the date on which the applicable period to file all appeals from the
27 Judgment has expired without the filing of any appeals, or motion to alter or amend the Judgment or
28 (ii) in the event of any appeal or motion to alter or amend, the appeal or motion to alter or amend has

1 been disposed of by voluntary dismissal or withdrawal of the appeal or motion, or by entry to an order
2 dismissing the appeal or motion or affirming the appealed Judgment, and any time for further appeal
3 has expired; provided, however, that the Judgment shall not be delayed for any disputes or appeals
4 relating solely to the amount, payment or allocation of attorneys' fees and expenses.

5 1.11 "Judgment" means the Order and Final Judgment pursuant to California Rule of Court
6 3.769(h) to be entered in the Action in all material respects in the form attached as Exhibit B hereto.

7 1.12 "Lead Counsel" means Robbins Geller Rudman & Dowd LLP.

8 1.13 "Net Settlement Amount" means the Settlement Amount as defined herein less any Fee
9 and Expense Award and Administrative Costs.

10 1.14 "Notice" has the meaning ascribed to it in ¶5.1.

11 1.15 "Person" means an individual, corporation, partnership, limited partnership, limited
12 liability partnership, association, joint stock company, joint venture, limited liability company,
13 professional corporation, estate, legal representative, trust, unincorporated association, government or
14 any political subdivision or agency thereof, and any business, legal or other entity, and their spouses,
15 heirs, predecessors, successors, representatives, or assignees.

16 1.16 "Plaintiffs' Counsel" means counsel who have appeared for any plaintiff in the Related
17 Actions or the Delaware Actions.

18 1.17 "Preliminary Approval Order" has the meaning ascribed to it in ¶5.1.

19 1.18 "Proof of Claim" means the form, substantially in the form attached hereto as Exhibit A-
20 2, that must be completed in order to seek a share in the distribution of the Net Settlement Amount.

21 1.19 "Released Defendant Parties" means Defendants, Trius, Cubist, and/or any of their
22 families, parent entities, controlling or managing persons or entities, associates, investors, affiliates or
23 subsidiaries and each and all of their past, present, or future officers, directors, stockholders, employees,
24 attorneys, financial or investment advisors, insurers, excess insurers and reinsurers, consultants,
25 accountants, investment bankers, commercial bankers, engineers, advisors or agents, heirs, executors,
26 trustees, general or limited partners or partnerships, personal representatives, estates, administrators,
27 and each of their respective heirs, predecessors, successors, and assigns, and investment funds that any
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1 of the Defendants managed or advised and such funds' respective affiliates, agents, employees,
2 directors, predecessors, and successors.

3 1.20 "Released Defendant Parties' Claims" means all claims (including Unknown Claims),
4 demands, losses, rights, and causes of action of any nature whatsoever that have been or could have
5 been asserted in the Action, or in any court, tribunal, forum or proceeding, by any Released Defendant
6 Party against any of the Released Plaintiff Parties, which arise out of or relate in any way to the
7 institution, prosecution or settlement of the Action; provided, however, that the Released Defendant
8 Parties' Claims shall not include claims to enforce this Stipulation.

9 1.21 "Released Plaintiff Parties" means Plaintiffs, all Class Members, Lead Counsel and/or
10 Plaintiffs' Counsel.

11 1.22 "Released Plaintiffs' Claims" means any and all manner of claims, demands, losses,
12 rights, causes of action (including Unknown Claims), liabilities, damages, obligations, judgments, suits,
13 disputes, fees, expenses, costs, matters and issues of any kind or nature whatsoever, whether known or
14 unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or
15 unmatured, that have been or could have been asserted in the Action, Related Actions, Delaware
16 Actions, or in any court, tribunal, forum or proceeding (including, but not limited to, any claims arising
17 under federal, state or foreign law, common law, statute, rule, or regulation relating to alleged fraud,
18 breach of any duty, negligence, violations of the federal securities laws, or otherwise, and including all
19 claims within the exclusive jurisdiction of the federal courts), by any Class Member in his, her, or its
20 capacity as a stockholder of Trius, against the Released Defendant Parties, and that arise out of, relate
21 to, concern, or are based upon the allegations, conduct, facts, events, transactions, acts, occurrences,
22 statements, representations, misrepresentations, omissions, or any other matter, thing or cause
23 whatsoever, or any series thereof embraced, involved, or set forth or otherwise related, directly or
24 indirectly, to: (i) the Action; (ii) the Merger Agreement (including, but not limited to, any deliberations
25 or negotiations in connection with the Merger Agreement); (iii) the Acquisition (including, but not
26 limited to, the consideration received by Class Members in connection with the Acquisition); (iv) any
27 fiduciary obligations of any of the Defendants or Released Defendant Parties in connection with the
28 Acquisition; (v) the negotiations in connection with the Acquisition, including any deal-protection

1 devices; (vi) the disclosures or disclosure obligations of any of the Defendants or Released Defendant
2 Parties in connection with the Acquisition; and (vii) any alleged improper personal benefit or conflict of
3 interest in connection with the Acquisition; provided, however, that the Released Plaintiffs' Claims
4 shall not include a claim to enforce this Stipulation.

5 1.23 "Settlement" means the settlement and the terms thereof contemplated by this
6 Stipulation.

7 1.24 "Settlement Amount" means a total of Nine Million Four Hundred Thousand Dollars
8 (\$9,400,000.00) in cash, to be paid pursuant to ¶3 below.

9 1.25 "Settlement Fund" means the Settlement Amount plus all interest earned thereon.

10 1.26 "Settlement Hearing" means the hearing described more fully in ¶5.1 to be held by the
11 Court to determine whether the proposed Settlement should be approved as fair, reasonable and
12 adequate; whether to enter the Judgment, in the form attached as Exhibit B hereto; and whether to
13 approve the plan of distribution and the Fee and Expense Application (as defined below).

14 1.27 "Settlement Payment Recipients" means all Class Members who were stockholders of
15 record of Trius common stock at the Closing, who received consideration in the Merger, and who
16 submit a valid Proof of Claim to the Claims Administrator.

17 1.28 "Summary Notice" has the meaning ascribed to it in ¶5.1.

18 1.29 "Unknown Claims" means:

19 (a) any and all Released Plaintiffs' Claims which Plaintiffs or any other Class
20 Member does not know or suspect to exist in his, her, or its favor at the time of the release of the
21 Released Plaintiffs' Claims against the Released Defendant Parties, including (without limitation)
22 claims which if known by him, her, or it, might have affected his, her, or its decision(s) with respect to
23 the Settlement; and

24 (b) any and all Released Defendant Parties' Claims which any Defendant or any
25 other Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of
26 the release of the Released Defendant Parties' Claims against the Released Plaintiff Parties, including
27 (without limitation) claims which if known by him, her, or it might have affected his, her, or its
28 decision(s) with respect to the Settlement.

1 **2. Stipulation of Class Certification**

2 2.1 The Parties stipulate to: (i) certification, for settlement purposes only, of the Class (as
3 defined above), pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.764 of the
4 California Rules of Court; (ii) appointment of Plaintiffs as the Class representatives; and (iii)
5 appointment of Lead Counsel as counsel for the Class.

6 **3. The Settlement**

7 **a. The Settlement Fund**

8 3.1 Defendants shall cause the Settlement Amount to be deposited into the Account within
9 fifteen (15) business days following the later of: (i) entry of the Preliminary Approval Order, and
10 (ii) Plaintiffs furnishing to Defendants adequate payment instructions consisting of wire transfer
11 instructions, a mailing address, contact person and phone number for delivery of payment checks, and a
12 tax ID number set forth in a completed Form W-9. If payment is made by check, the check shall be
13 made payable to “Trius Therapeutics Settlement Fund” with an address of “Robbins Geller Rudman &
14 Dowd LLP, Attention: Danelle McNertney, Settlement Administrator, 655 W. Broadway, Suite 1900,
15 San Diego, CA 92101.”

16 3.2 Except for Defendants’ obligation to pay or cause payment of the Settlement Amount
17 and to produce information from Trius’ transfer agent for purposes of providing notice as provided
18 herein, the Defendants and the Released Defendant Parties shall have no responsibility for, interest in,
19 or liability whatsoever with respect to the investment or distribution of the Net Settlement Amount, the
20 determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax
21 Expenses (as defined below), or any losses incurred in connection therewith.

22 **b. The Escrow Agent**

23 3.3 The Escrow Agent shall invest the Settlement Amount pursuant to ¶1.1. The Settlement
24 Fund shall bear all risks related to investment of the Settlement Fund.

25 3.4 The Escrow Agent shall not disburse the Settlement Fund except as provided in the
26 Stipulation, by an order of the Court, or with the written agreement of counsel for Defendants and Lead
27 Counsel.

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1 3.5 Subject to further order(s) and/or directions as may be made by the Court, or as provided
2 in the Stipulation, the Escrow Agent is authorized to execute such transactions as are consistent with the
3 terms of the Stipulation.

4 3.6 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*
5 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds
6 shall be distributed pursuant to further order(s) of the Court.

7 3.7 All Administrative Costs shall be paid from the Settlement Fund.

8 **c. Taxes**

9 3.8 The Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times
10 a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow
11 Agent shall timely make such elections as necessary or advisable to carry out the provisions of this
12 Section, including, if necessary, the “relation-back election” (as defined in Treas. Reg. §1.468B-1(j)(2))
13 back to the earliest permitted date. Such elections shall be made in compliance with the procedures and
14 requirements contained in such Treasury regulations promulgated under §1.468B of the Internal
15 Revenue Code of 1986, as amended (the “Code”). It shall be the responsibility of the Escrow Agent to
16 timely and properly prepare and deliver the necessary documentation for signature by all necessary
17 parties, and thereafter to cause the appropriate filing to occur.

18 3.9 For the purpose of §1.468B of the Code and the Treasury regulations thereunder, the
19 Escrow Agent shall be designated as the “administrator” of the Settlement Fund. The Escrow Agent
20 shall timely and properly file all information and tax returns necessary or advisable with respect to the
21 Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)).
22 Such returns (as well as the election described in ¶3.8 hereof) shall be consistent with this Section and
23 in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the
24 income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶3.10
25 hereof.

26 3.10 All: (a) Taxes (including any estimated Taxes, interest or penalties) arising with respect
27 to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be
28 imposed upon Defendants or the Released Defendant Parties with respect to any income earned by the

1 Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified
2 settlement fund” for federal or state income tax purposes (“Taxes”); and (b) expenses and costs incurred
3 in connection with the operation and implementation of this Section (including, without limitation,
4 expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to
5 filing (or failing to file) the returns described in this Section) (“Tax Expenses”), shall be paid out of the
6 Settlement Fund. In no event shall Defendants or the Released Defendant Parties have any
7 responsibility for or liability with respect to the Taxes or the Tax Expenses. The Settlement Fund shall
8 indemnify and hold each of the Defendants and the Released Defendant Parties harmless for Taxes and
9 Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification).
10 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of
11 the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without
12 further consent of Defendants, or prior order from the Court, and the Escrow Agent shall be obligated
13 (notwithstanding anything herein to the contrary) to withhold from distribution to Settlement Payment
14 Recipients any funds necessary to pay such amount, including the establishment of adequate reserves
15 for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under
16 Treas. Reg. §1.468B-2(1)(2)); neither Defendants nor the Released Defendant Parties are responsible
17 nor shall they have any liability with respect thereto. The Parties hereto agree to cooperate with the
18 Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to
19 carry out the provisions of this Section.

20 **d. Distribution of the Settlement Fund**

21 3.11 Following the Effective Date, the Net Settlement Amount will be disbursed by the
22 Claims Administrator to the Settlement Payment Recipients and will be allocated on a per-share basis
23 amongst the Settlement Payment Recipients who have submitted to the Claims Administrator a valid
24 Proof of Claim by the deadline provided in the Notice based on the number of shares of Trius common
25 stock held by the applicable Settlement Payment Recipient upon the Closing.

26 3.12 Notwithstanding the foregoing, Lead Counsel may, in their discretion, accept late filed
27 claims for processing so long as the distribution of the Net Settlement Amount to Settlement Payment
28 Recipients is not materially delayed. Lead Counsel shall have no liability for not accepting late claims.

1 3.13 Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator,
2 who shall determine in accordance with this Stipulation the extent, if any, to which each claim shall be
3 allowed, subject to review by the Court pursuant to ¶3.15 below.

4 3.14 A submitted Proof of Claim that does not meet the submission requirements may be
5 rejected. Prior to rejection of a submitted Proof of Claim, the Claims Administrator shall communicate
6 with the claimant in order to remedy the curable deficiencies in the submitted Proof of Claim. The
7 Claims Administrator shall notify, in a timely fashion and in writing, all claimants whose Proof of
8 Claim it proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in
9 such notice that the claimant whose claim is to be rejected has the right to a review by the Court if the
10 claimant so desires and complies with the requirements of ¶3.15 below.

11 3.15 If any claimant whose claim has been rejected in whole or in part desires to contest such
12 rejection, the claimant must, within twenty (20) calendar days after the date of mailing of the notice
13 required in ¶3.14 above, serve upon the Claims Administrator a notice and statement of reasons
14 indicating the claimant's grounds for contesting the rejection, along with any supporting documentation,
15 and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise
16 resolved, Lead Counsel shall thereafter present the request for review to the Court.

17 3.16 All Persons who fall within the definition of Class Members shall be subject to and
18 bound by the provisions of this Stipulation, the releases contained herein, and the Judgment with respect
19 to all Released Plaintiffs' Claims, regardless of whether such Persons seek or obtain by any means,
20 including, without limitation, by submitting a Proof of Claim or any similar document, any distribution
21 from the Settlement Fund or Net Settlement Amount.

22 3.17 The Settlement will be non-recapture, *i.e.*, it is not a claims-made settlement. Following
23 the Effective Date of the Settlement, none of the Settlement Fund shall be returned to Defendants and/or
24 such other persons or entities funding the Settlement.

25 3.18 The Claims Administrator shall make distributions to Settlement Payment Recipients in
26 the following manner and subject to the following conditions: Each Settlement Payment Recipient shall
27 receive a distribution from the Net Settlement Amount equal to the product of the Net Settlement
28 Amount and a fraction, (a) the numerator of which is the number of shares of Trius common stock held

1 by such Settlement Payment Recipient upon the Closing (“Authorized Shares”), and (b) the
2 denominator of which is a number representing the total number of Authorized Shares held by all
3 Settlement Payment Recipients. Any distribution will require a \$10.00 minimum.

4 3.19 Payment from the Settlement Fund made pursuant to and in the manner set forth above
5 shall be deemed conclusive of compliance with this Stipulation.

6 3.20 If there is any balance remaining in the Net Settlement Amount after six (6) months from
7 the date of distribution of the Net Settlement Amount (whether by reason of tax refunds, uncashed
8 checks, or otherwise), Lead Counsel shall, if feasible, reallocate such balance among Settlement
9 Payment Recipients in an equitable and economic fashion. Any distribution will require a \$10.00
10 minimum. These redistributions shall be repeated until the balance remaining in the Net Settlement
11 Amount is no longer feasible to distribute to Settlement Payment Recipients. Thereafter, any balance
12 which still remains in the Net Settlement Amount shall be donated to an appropriate non-profit
13 organization designated by Lead Counsel.

14 3.21 Defendants shall have no role, input, responsibility or liability with respect to any Class
15 Member’s claims for payment under this Settlement, or any act or omission or determination by the
16 Claims Administrator or the Escrow Agent, or their respective designees or agents in connection with
17 administering the Settlement, including, but not limited to, the management, investment, or distribution
18 of the Net Settlement Amount, the review, determination, administration, calculation, or payment of
19 claims asserted against the Net Settlement Amount, or the payment or withholding of any taxes,
20 expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of
21 any returns.

22 3.22 No Person shall have any claim against Plaintiffs, Plaintiffs’ Counsel, the Claims
23 Administrator, any other Person designated by Plaintiffs’ Counsel, or Defendants and the Released
24 Defendant Parties based on the distributions made substantially in accordance with this Stipulation and
25 the Settlement contained herein.

26 3.23 It is understood and agreed by the Parties that the distribution of the Net Settlement
27 Amount, including, but not limited to, any adjustments to a claim set forth therein, is not a part of the
28 Stipulation and is to be considered by the Court separately from the Court’s consideration of the

1 fairness, reasonableness, and adequacy of the Settlement set forth in the Stipulation, and any order or
2 proceeding relating to distribution of the Net Settlement Amount shall not operate to terminate or cancel
3 the Stipulation or affect the finality of the Court's Judgment approving the Stipulation and the
4 Settlement set forth therein, or any other orders entered pursuant to the Stipulation. The time to appeal
5 from approval of the Settlement shall commence upon the Court's entry of the Judgment regardless of
6 whether a distribution plan has been approved.

7 **4. Scope of the Settlement**

8 4.1 Upon the Effective Date, Plaintiffs and each and every Class Member, for themselves
9 and for any Person claiming now or in the future through or on behalf of them, shall be deemed to have,
10 and by operation of the Judgment shall have, fully, finally, and forever waived, released, relinquished,
11 and discharged each and every one of the Released Plaintiffs' Claims against each and every one of the
12 Released Defendant Parties, whether or not such Class Member executes and delivers the Proof of
13 Claim form, and whether or not such Class Member shares or seeks to share in the Net Settlement
14 Amount.

15 4.2 Upon the Effective Date, Plaintiffs and each and every Class Member, for themselves
16 and for any Person claiming now or in the future through or on behalf of them, shall covenant or be
17 deemed to have covenanted not to sue the Released Defendant Parties with respect to all such Released
18 Plaintiffs' Claims, except to enforce the terms and conditions contained in this Stipulation or the
19 Judgment entered pursuant thereto.

20 4.3 Upon the Effective Date, each of the Released Defendant Parties for themselves and any
21 Person claiming by or through them shall be deemed to have, and by operation of the Judgment shall
22 have, to the maximum extent permitted by law, fully, finally, and forever released, relinquished, and
23 discharged Released Plaintiff Parties from the Released Defendant Parties' Claims.

24 4.4 With respect to any and all Released Plaintiffs' Claims and Released Defendant Parties'
25 Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and Defendants shall
26 expressly waive, and each of the Class Members shall be deemed to have, and by operation of the
27 Judgment shall have expressly, waived, relinquished and released any and all provisions, rights and
28 benefits conferred by any law of any state or territory of the United States or other jurisdiction, or

1 principle of common law or foreign law, which is similar, comparable, or equivalent to Cal. Civ. Code
2 §1542, which provides:

3 **A general release does not extend to claims which the creditor does not**
4 **know or suspect to exist in his or her favor at the time of executing the release,**
5 **which if known by him or her must have materially affected his or her settlement**
6 **with the debtor.**

7 Plaintiffs and Defendants acknowledge, and the other Class Members and the Released Defendant
8 Parties by operation of law shall be deemed to have acknowledged, that they may discover facts in
9 addition to or different from those now known or believed to be true with respect to the Released
10 Plaintiffs' Claims and the Released Defendant Parties' Claims, but that it is the intention of Plaintiffs
11 and Defendants, and by operation of law the other Class Members and the Released Defendant Parties,
12 to completely, fully, finally and forever extinguish any and all Released Plaintiffs' Claims and Released
13 Defendant Parties' Claims, known or unknown, suspected or unsuspected, which now exist, or
14 heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional
15 or different facts. Plaintiffs and Defendants acknowledge, and the other Class Members and the
16 Released Defendant Parties by operation of law shall be deemed to have acknowledged, that the
17 inclusion of "Unknown Claims" in the definition of Released Plaintiffs' Claims and Released
18 Defendant Parties' Claims was separately bargained for and was a key element of the Settlement.

19 **5. Submission of the Settlement to the Court for Approval**

20 5.1 As soon as practicable after this Stipulation has been executed, Plaintiffs and Defendants
21 shall: (i) take all steps necessary to stay the Action pending further order of the Court; and (ii) jointly
22 apply to the Court for entry of an Order in the form attached hereto as Exhibit A (the "Preliminary
23 Approval Order"), providing for, among other things: (a) preliminary approval of the Settlement of the
24 Action embodied in the Stipulation; (b) the dissemination of the Notice of Proposed Settlement of Class
25 Action (the "Notice"), substantially in the form attached hereto as Exhibit A-1, together with a Proof of
26 Claim form, substantially in the form attached hereto as Exhibit A-2; (c) the publication of the
27 Summary Notice of Proposed Settlement of Class Action (the "Summary Notice"), substantially in the
28 form attached hereto as Exhibit A-3; and (d) the scheduling of the Settlement Hearing to consider: (i)
whether the proposed Settlement is fair, reasonable and adequate, and directing consummation pursuant

1 to its terms, (ii) whether to issue an order releasing the Released Defendant Parties' Claims and the
2 Released Plaintiffs' Claims, (iii) the joint request of the Parties that the Judgment be entered in all
3 material respects, substantially in the form attached hereto as Exhibit B, (iv) Lead Counsel's application
4 for an award of attorneys' fees and expenses, and plaintiff service awards, and (v) any objections to any
5 of the foregoing. The Parties shall jointly request at the Settlement Hearing that the Judgment be
6 entered, and shall take all reasonable and appropriate steps to obtain final entry of the Judgment in all
7 material respects, substantially in the form attached hereto as Exhibit B.

8 5.2 Defendants' counsel shall provide to Lead Counsel, or arrange for Lead Counsel to
9 receive, the stockholder list and other information, in an electronically-readable format, that was used
10 as the basis for distributing the merger consideration from the Acquisition to Trius' stockholders.

11 **6. Conditions of Settlement**

12 6.1 This Effective Date of the Settlement shall be subject to the following conditions, which
13 the Parties shall use their best efforts to achieve:

14 (a) the contributions to the Settlement Fund as required by the Stipulation have been
15 made;

16 (b) the Court enters the Preliminary Approval Order in all material respects in the
17 form attached hereto as Exhibit A;

18 (c) the Court approves the Settlement described herein, following notice to the Class
19 and a hearing, as prescribed herein;

20 (d) the Court enters the Judgment in all material respects in the form attached hereto
21 as Exhibit B, or a judgment in a form other than that provided in Exhibit B that is acceptable to all of
22 the Parties;

23 (e) the Judgment becomes Final as defined in ¶1.10; and

24 (f) the Parties comply with their obligations set forth herein in all material respects.

25 6.2 Upon the occurrence of all events referred to in ¶6.1, any and all remaining interest or
26 right of any Defendant or any Released Defendant Party or Parties in or to the Settlement Fund, if any,
27 shall be forever extinguished.

28

1 6.3 If all the conditions specified in ¶6.1 are not met, then the Stipulation shall be null and
2 void and of no force and effect subject to ¶¶9.3 and 9.4, unless Lead Counsel and counsel for
3 Defendants mutually agree in writing to proceed with the Stipulation.

4 **7. Attorneys’ Fees and Expenses and Service Awards**

5 7.1 Lead Counsel may apply for an award of attorneys’ fees and expenses from the
6 Settlement Amount (the “Fee and Expense Application”), including any interest on such attorneys’ fees
7 and expenses at the same rate and for the same period as earned by the Settlement Fund until paid.
8 Lead Counsel may also apply for service awards of up to \$5,000 each for Plaintiffs, for their time and
9 effort in prosecuting this Action for the benefit of the Class. The Parties acknowledge and agree that
10 any Fee and Expense Award, and any service award, shall be paid solely from the Settlement Fund.

11 7.2 Any attorneys’ fees and expenses awarded to Plaintiffs’ Counsel by the Court shall be
12 paid to Lead Counsel immediately upon an order awarding such fees and expenses to Plaintiffs’
13 Counsel, notwithstanding the existence of any timely filed objections thereto, or potential for appeal
14 therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs’ Counsel’s
15 obligation to make a full refund or repayment of the Settlement Fund plus interest earned thereon if, and
16 when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the
17 Fee and Expense Award is lowered or extinguished, or the Settlement fails to become Final for any
18 reason. The procedure for and the allowance or disallowance by the Court of any applications for
19 attorneys’ fees and expenses, or for service awards, to be paid out of the Settlement Fund, are not part
20 of the Settlement set forth in the Stipulation, and are to be considered by the Court separately from the
21 Court’s consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the
22 Stipulation, and any order or proceeding relating to the Fee and Expense Application, Fee and Expense
23 Award, or any appeal from any order relating thereto or reversal or modification thereof, shall not
24 operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving
25 the Stipulation and the Settlement of the Action set forth therein.

26 7.3 Lead Counsel shall allocate the Fee and Expense Award amongst Plaintiffs’ Counsel in a
27 manner which they, in good faith, believe reflects the contributions of such counsel to the prosecution
28 and settlement of the Action. Defendants and the Released Defendant Parties shall have no input into or

1 responsibility or liability for the allocation by Lead Counsel of the Fee and Expense Award. Any
2 dispute regarding allocation of the Fee and Expense Award amongst Plaintiffs' Counsel shall have no
3 effect on the validity of the Settlement.

4 **8. Stay Pending Court Approval**

5 8.1 Plaintiffs and Defendants agree that all outstanding discovery obligations will be stayed
6 without date and to stay all further proceedings in the Action and not to initiate any other proceedings
7 other than those incident to the Settlement itself pending the occurrence of the Effective Date. The
8 Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any
9 interim or final relief in favor of any Class Member in, any other proceedings against any of the
10 Released Defendant Parties which challenges the Settlement or otherwise asserts or involves, directly or
11 indirectly, a Released Plaintiffs' Claim.

12 **9. Termination of Settlement; Effect of Termination**

13 9.1 Plaintiffs and Defendants shall each have the right to terminate the Settlement and this
14 Stipulation by providing written notice of their election to do so to each other within ten (10) business
15 days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect,
16 substantially in the form attached hereto as Exhibit A; (b) the Court's declining to enter the Judgment in
17 any material respect, substantially in the form attached hereto as Exhibit B; or (c) the Court's entry of
18 the Judgment but on or following appellate review, remand, collateral attack or other proceedings, the
19 Judgment is modified or reversed in any material respect. Neither a modification nor a reversal on
20 appeal of the amount of the Fee and Expense Award shall be deemed a material modification of the
21 Judgment or this Stipulation.

22 9.2 Notwithstanding anything to the contrary set forth above, in the event that the Court
23 approves the Stipulation and enters the Judgment, but Defendants fail to cause the Settlement Amount
24 to be deposited in accordance with this Stipulation, nothing herein shall be construed to limit or
25 prejudice in any way any of Plaintiffs' rights to seek enforcement of the terms of the Settlement,
26 including specifically, rights to sue for breach of contract and for specific performance and/or to seek
27 appropriate legal and/or equitable relief from the Court to enforce the Settlement.

1 9.3 If either: (a) the Effective Date does not occur, (b) this Stipulation is disapproved,
2 canceled or terminated pursuant to its terms, or (c) the Settlement otherwise does not become Final for
3 any reason, then the Settlement Fund (including any interest or earnings thereon) shall be refunded (less
4 any Administrative Costs that have been paid or incurred) by the Escrow Agent to the Defendants and
5 insurance companies that deposited the Settlement Amount into the Account, pursuant to their written
6 instructions, within ten (10) business days after such notification is received by Plaintiffs' Counsel. The
7 Escrow Agent or their designee(s) shall apply for any tax refund owed on the Settlement Fund and pay
8 the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for
9 refund, to Defendants.

10 9.4 If the Effective Date does not occur, or if this Stipulation is disapproved, canceled or
11 terminated pursuant to its terms, or the Settlement otherwise does not become Final for any reason, this
12 Stipulation shall be deemed null and void with the exception of ¶¶6.3, 9.3, 9.4, 10.3, 10.6, 10.15 and
13 10.17 hereto, which shall remain in full force and effect, and Plaintiffs and Defendants shall be deemed
14 to have reverted to their respective litigation status as of the date and time immediately prior to July 8,
15 2015, they shall proceed in all respects as if the Stipulation had not been executed and the related orders
16 had not been entered, and in that event all of their respective claims and defenses as to any issue in the
17 Action shall be preserved without prejudice, and neither the Stipulation, the Exhibits hereto, nor the
18 settlement negotiations shall be used or referred to in any action or proceeding for any purpose.

19 **10. Miscellaneous Provisions**

20 10.1 The Settlement compromises claims which are contested and shall not be deemed an
21 admission by any Party as to the merits of any claim or defense.

22 10.2 All of the Exhibits attached hereto are material and integral parts hereof and shall be
23 incorporated by reference as though fully set forth herein.

24 10.3 This Stipulation may not be amended or modified, nor may any of its provisions be
25 waived, except by a written instrument signed by counsel for Plaintiffs and Defendants or their
26 successors-in-interest.

27 10.4 The headings herein are used for the purpose of convenience only and are not meant to
28 have legal effect.

1 10.5 Plaintiffs, on behalf of themselves and the other Released Plaintiff Parties, and
2 Defendants, on behalf of themselves and the other Released Defendant Parties, agree not to assert,
3 whether or not for attribution, that the Action was brought or prosecuted by Plaintiffs or defended by
4 Defendants in bad faith. Plaintiffs and Defendants represent and agree that the terms of the Settlement
5 were negotiated at arm's length and in good faith by Plaintiffs and Defendants, and reflect a settlement
6 that was reached voluntarily based upon adequate information and sufficient discovery and after
7 consultation with experienced legal counsel. Defendants and Plaintiffs agree that, during the course of
8 this litigation, the litigants and their respective counsel at all times complied with the requirements of
9 California Code of Civil Procedure §128.7.

10 10.6 Defendants deny any and all allegations of wrongdoing, fault, liability or damage in the
11 Action. Plaintiffs and Defendants covenant and agree that neither this Stipulation, nor any act
12 performed or document executed pursuant to or in furtherance of the Stipulation, or any
13 communications relating thereto, is evidence, or an admission or concession by Plaintiffs or Defendants
14 or their counsel, any Class Member, or any other Released Defendant Party or Released Plaintiff Party,
15 of any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or asserted in the
16 Action, or any other actions or proceedings, or as to the validity or merit of any of the claims or
17 defenses alleged or asserted in any such action or proceeding. This Stipulation is not a finding or
18 evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by
19 Plaintiffs, Defendants, any Class Member or other Released Defendant Party or Released Plaintiff
20 Party, or any damages or injury to Plaintiffs, Defendants, any Class Member or other Released
21 Defendant Party or Released Plaintiff Party. Neither this Stipulation, nor any of the terms and
22 provisions of this Stipulation, nor any of the negotiations or proceedings in connection herewith, nor
23 any of the documents or statements referred to herein, nor the Settlement, nor the fact of the Settlement,
24 nor the Settlement proceedings, nor any statements in connection therewith: (a) shall: (i) be argued,
25 used or construed as, offered or received in evidence as, or otherwise constitute an admission,
26 concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or
27 damages, or of any wrongful conduct, acts or omissions on the part of any of the Released Defendant
28 Parties or Released Plaintiff Parties, or of any infirmity of any defense, or of any damage to Plaintiffs or

1 any other Class Member; or (ii) otherwise be used to create or give rise to any inference or presumption
2 against any of the Released Defendant Parties or Released Plaintiff Parties concerning any fact or any
3 purported liability, fault, or wrongdoing of the Released Defendant Parties or Released Plaintiff Parties
4 or any injury or damages to any person or entity; or (b) shall otherwise be admissible, referred to or
5 used in any proceeding of any nature, including, but not limited to, any civil, criminal, or administrative
6 proceeding in any court, administrative agency, or other tribunal for any purpose whatsoever; provided,
7 however, that the Stipulation and Judgment may be introduced in any proceeding, whether in the Court
8 or otherwise, as may be necessary to argue and establish that the Stipulation and Judgment has *res*
9 *judicata*, collateral estoppel or other issue or claim preclusion effect or to otherwise consummate or
10 enforce the Settlement and Judgment or to secure any insurance rights of any of the Released Defendant
11 Parties or Released Plaintiff Parties or as otherwise required by law.

12 10.7 The consummation of the Settlement as embodied in this Stipulation shall be under the
13 authority of the Court, and the Court shall retain jurisdiction for the purpose of enforcement or
14 implementation of the terms of this Stipulation.

15 10.8 Without further Order of the Court, Plaintiffs and Defendants may agree to reasonable
16 extensions of time to carry out any of the provisions of this Stipulation.

17 10.9 To the extent permitted by law, all agreements made and orders entered during the
18 course of the Action relating to the confidentiality of documents or information shall survive this
19 Stipulation.

20 10.10 The waiver by Plaintiffs or Defendants of any breach of this Stipulation shall not be
21 deemed a waiver of any other prior or subsequent breach of any provision of this Stipulation.

22 10.11 This Stipulation and the Exhibits constitute the entire agreement between Plaintiffs, on
23 the one hand, and Defendants, on the other hand, and supersede any prior agreements among Plaintiffs,
24 on the one hand, and Defendants, on the other hand, with respect to the Settlement. No representations,
25 warranties or inducements have been made to or relied upon by any Party concerning this Stipulation or
26 its Exhibits, other than the representations, warranties and covenants expressly set forth in such
27 documents.

28

1 10.12 This Stipulation may be executed in one or more counterparts, including by facsimile
2 and electronic mail. All executed counterparts and each of them shall be deemed to be one and the
3 same instrument. A complete set of executed counterparts shall be filed with the Court.

4 10.13 The Parties and their respective counsel of record agree that they will use their
5 reasonable best efforts to obtain all necessary approvals of the Court required by this Stipulation
6 (including, but not limited to, using their reasonable best efforts to resolve any objections raised to the
7 Settlement), and to promptly agree upon and execute all such other documentation as may be
8 reasonably required to obtain final approval by the Court of the Settlement.

9 10.14 Each counsel signing this Stipulation represents and warrants that such counsel has been
10 duly empowered and authorized to sign this Stipulation on behalf of his or her clients.

11 10.15 This Stipulation shall not be construed more strictly against one Party than another
12 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the
13 Parties, it being recognized that the Stipulation is the result of arm's-length negotiations between the
14 Parties, and all Parties have contributed substantially and materially to the preparation of this
15 Stipulation.

16 10.16 This Stipulation shall bind and inure to the benefit of the current and former parents,
17 subsidiaries, predecessors, successors, partners (limited and general), agents, representatives,
18 successors, heirs, and assigns of the Parties, and shall inure to the benefit of all of the Released
19 Defendant Parties and the Released Plaintiff Parties (including the Class Members).

20 10.17 This Stipulation, the Settlement, and any and all disputes arising out of or relating in any
21 way to this Stipulation or Settlement, whether in contract, tort or otherwise, shall be governed by and
22 construed in accordance with the laws of the State of California, without regard to conflicts of law
23 principles. The Parties agree that any dispute arising out of or relating in any way to the Stipulation or
24 the Settlement shall not be litigated or otherwise pursued in any forum or venue other than the Court,
25 and the Parties expressly waive any right to demand a jury trial as to any such dispute.

26 IN WITNESS WHEREOF, the Parties hereto have caused the Stipulation to be executed, by
27 their duly authorized attorneys, dated as of November 30, 2015.

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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MICHAEL BEMIS, et al., Individually and on)	Lead Case No. 37-2013-00060593-CU-BT-CTL
Behalf of All Others Similarly Situated,)	
) (Consolidated with Case Nos. 37-2013-
Plaintiffs,)	00061332-CU-SL-CTL, 37-2013-00061612-
) CU-SL-CTL, 37-2013-00061751-CU-BT-CTL,
vs.)	37-2013-00062038-CU-BT-CTL, 37-2013-
) 00062069-CU-SL-CTL and 37-2013-00062130-
TRIUS THERAPEUTICS, INC., et al.,)	CU-SL-CTL)
)
Defendants.)	<u>CLASS ACTION</u>

JUDGE: Honorable Judith F. Hayes
DEPT: C-68
DATE ACTION FILED: 08/01/13

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT

EXHIBIT A

1 Plaintiffs Michael Bemis and David Beidler (collectively, “Plaintiffs”) and defendants Jeffrey
2 Stein, David S. Kabakoff, Brian G. Atwood, Nina Kjellson, Brendan O’Leary, Karin Eastham, Paul
3 Truex, Theodore R. Schroeder, and Seth H. Z. Fischer (collectively, “Defendants” and together with
4 Plaintiffs on behalf of the Class, the “Parties”), having applied to the Court for an order seeking a
5 provisional class action determination herein and determining certain matters in connection with the
6 proposed settlement (the “Settlement”) of the above-captioned action (the “Action”) in accordance with
7 the Stipulation of Settlement, dated November 30, 2015 (the “Stipulation”),¹ entered into by the Parties,
8 and for the entry of judgment in the Action upon the terms and conditions set forth in the Stipulation;

9 NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with
10 the Court and the Exhibits annexed thereto, and after due deliberation;

11 IT IS HEREBY ORDERED, this ____ day of _____, 2016, that:

12 1. Pursuant to Section 382 of the California Code of Civil Procedure, the Court certifies, for
13 purposes of effectuating this Settlement only, a class of all holders of Trius Therapeutics, Inc. (“Trius”
14 or the “Company”) common stock who received consideration for their shares in the acquisition of
15 Trius by Cubist Pharmaceuticals, Inc. (“Cubist Pharmaceuticals”) and BRGO Corporation, a wholly-
16 owned subsidiary of Cubist Pharmaceuticals (“BRGO” and together with Cubist Pharmaceuticals,
17 “Cubist”) at the price of \$13.50 per share in cash and one Contingent Value Right (“CVR”) per share,
18 first announced on July 30, 2013 (the “Class”). Excluded from the Class are Defendants and any
19 person, firm, trust, corporation, or other entity related to or affiliated with any Defendant. Also
20 excluded from the Class are those persons or entities who timely and properly request exclusion from
21 the Class pursuant to the instructions set forth in the Notice approved through this Order. However,
22 until such time as those persons or entities are excluded, they shall be treated as members of the Class.

23 2. The Court preliminarily finds and concludes that the Settlement as set forth in the
24 Stipulation is fair, reasonable, adequate, and in the best interests of the Class, and preliminarily
25 approves the Settlement and adopts the terms of the Settlement for the purpose of this Order.

26
27 ¹ All capitalized terms used herein have the same meanings as defined in the Stipulation, unless
28 otherwise stated.

1 3. A hearing (the “Settlement Hearing”) shall be held before this Court on _____,
2 2016, at __:__.m., in Department C-68 of the Superior Court of the State of California, County of San
3 Diego, located at 330 West Broadway, San Diego, CA 92101, to determine:

4 (a) whether the Settlement should be approved by the Court as fair, reasonable,
5 adequate, and in the best interests of the Class;

6 (b) whether the Judgment should be entered pursuant to the Stipulation;

7 (c) whether the proposed plan of distribution should be approved;

8 (d) whether the Court should approve Lead Counsel’s application for an award of
9 attorneys’ fees and expenses (*i.e.*, the “Fee and Expense Application”), and plaintiff service awards for
10 their time and effort in prosecuting this Action for the benefit of the Class, in accordance with the
11 Stipulation; and

12 (e) any other matters as the Court may deem appropriate.

13 4. The Court may adjourn the Settlement Hearing or any part thereof, without further notice
14 of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof.

15 5. The Court may approve the Settlement at or after the Settlement Hearing with such
16 modification as may be consented to by the Parties and without further notice to the Class.

17 6. Lead Counsel are hereby authorized to retain the firm of Gilardi & Co. LLC (“Claims
18 Administrator”) to supervise and administer the notice procedure as well as the processing of claims as
19 more fully set forth below:

20 (a) Within fourteen (14) calendar days of the date of this Order, Defendants, at their
21 expense, shall provide Lead Counsel or the Claims Administrator with the stockholder list and other
22 information, in an electronically-readable format, that was used as the basis for distributing the merger
23 consideration from the Acquisition to Trius’ stockholders;

24 (b) Within twenty-one (21) calendar days of the date of this Order, the Claims
25 Administrator shall cause a copy of the Notice and the Proof of Claim, substantially in the forms
26 annexed as Exhibits A-1 and A-2 hereto, to be mailed by United States mail, postage pre-paid, to all
27 members of the Class who can be identified with reasonable effort (the “Notice Date”); and
28

1 (c) Within fourteen (14) calendar days of the Notice Date, the Claims Administrator
2 shall cause the Summary Notice to be published once in the national edition of *Investor's Business*
3 *Daily* and once over a national newswire service.

4 7. At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall
5 serve on Defendants' counsel and file with the Court proof, by affidavit or declaration, of such mailing
6 and publishing.

7 8. The Claims Administrator shall make additional copies of the Notice and the Proof of
8 Claim available to nominee holders such as brokerage firms who held Company stock and received
9 consideration for their shares in the Acquisition. Such nominee holders are requested to forward copies
10 of the Notice and the Proof of Claim to all beneficial holders of such shares promptly after receipt of the
11 Notice and the Proof of Claim or to provide the Claims Administrator with a list of the names and
12 addresses of such beneficial holders promptly. The Claims Administrator shall mail copies of the
13 Notice and the Proof of Claim to any beneficial holders where addresses are provided to the Claims
14 Administrator by the nominee holders of such common shares.

15 9. The Notice, Stipulation, and Court Orders concerning the Settlement shall also be posted
16 on a Trius Settlement Website at www.triussecuritieslitigation.com.

17 10. The Court approves, as to form and content, the Notice and the Proof of Claim,
18 substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively, and finds that the
19 giving of notice as specified herein meets the requirements of the California Code of Civil Procedure
20 and due process, is the best notice practicable under the circumstances, including individual notice to all
21 Class Members who can be identified through reasonable efforts, and shall constitute due and sufficient
22 notice to all persons and entities entitled thereto.

23 11. Class Members who seek distribution from the Net Settlement Amount shall complete
24 and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court
25 orders otherwise, all Proofs of Claim must be postmarked or submitted electronically no later than
26 ninety (90) days from the Notice Date. Any Class Member who does not timely submit a Proof of
27 Claim within the time provided for shall be barred from sharing in the distribution of the proceeds of the
28 Net Settlement Amount, unless otherwise ordered by the Court or allowed by the Stipulation.

1 12. Class Members shall be bound by all determinations and judgments in this Action,
2 whether favorable or unfavorable, unless they request exclusion from the Class in a timely and proper
3 manner, as hereinafter provided. A Class Member wishing to make such request shall, no later than
4 fourteen (14) calendar days prior to the date scheduled herein for the Settlement Hearing, mail a request
5 for exclusion in written form by First-Class Mail postmarked to the address designated in the Notice.
6 Such request for exclusion shall indicate the name, address, and telephone number of the person seeking
7 exclusion, that the person requests to be excluded from the Class, and must be signed by such person.
8 Such persons requesting exclusion are also requested to state the number of shares of Trius common
9 stock they held that are subject to the Action. The request for exclusion shall not be effective unless it
10 is made in writing within the time stated above, and the exclusion is accepted by the Court. Class
11 Members requesting exclusion from the Class shall not be entitled to share in the distribution of the
12 proceeds of the Net Settlement Amount.

13 13. Any member of the Class may object to: (1) the Settlement; (2) the Judgment to be
14 entered with respect to the Action; (3) the proposed plan of distribution; or (4) the Fee and Expense
15 Application. Any member of the Class who wishes to be heard concerning any matter properly before
16 the Court at the Settlement Hearing may appear, in person or by counsel, at the Settlement Hearing;
17 provided, however, that no person or entity (other than counsel for Plaintiffs and Defendants) shall be
18 heard and no papers, briefs, pleadings, or other documents submitted by any person or entity shall be
19 considered by the Court unless, by _____, 2016 (fourteen (14) calendar days prior to the
20 Settlement Hearing), such person or entity files with the Clerk of the Court and serves upon counsel
21 listed below a written notice of intention to appear that includes: (i) the person or entity's name,
22 address, and telephone number; (ii) a statement that the person or entity is a member of the Class; (iii) a
23 statement of such person or entity's objections to any matters before the Court and the grounds therefor
24 or the reasons that such person or entity desires to appear and be heard; and (iv) a copy of all documents
25 or writings such person or entity desires the Court to consider. Such papers shall be served by hand, e-
26 filing, or overnight mail upon the following counsel on or before the date of filing with the Court:

27
28

1 David Knotts
2 ROBBINS GELLER RUDMAN
3 & DOWD LLP
4 655 West Broadway, Suite 1900
5 San Diego, CA 92101

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

6 14. Unless the Court otherwise directs, no person or entity shall be entitled to object to the
7 approval of the Settlement, any judgment entered thereon, the plan of distribution, the Fee and Expense
8 Application or any plaintiff service award, or otherwise be heard, except by serving and filing a written
9 objection and supporting papers and documents as prescribed above. Any person or entity who fails to
10 object or otherwise request to be heard in the manner described above shall be deemed to have waived
11 the right to object or otherwise be heard (including any right of appeal) and shall be forever barred from
12 raising such objection or request to be heard at the Settlement Hearing or in any other proceeding in the
13 Action.

14 15. Any moving papers filed in support of final approval of the Settlement, the Fee and
15 Expense Application, or plaintiff service awards shall be filed and served no later than twenty-eight (28)
16 calendar days prior to the Settlement Hearing and any reply papers shall be filed and served no later
17 than seven (7) calendar days prior to the Settlement Hearing.

18 16. Upon the Effective Date, all Class Members shall be subject to and bound by the
19 provisions of the Stipulation, the releases contained therein, and the Judgment with respect to all
20 Released Plaintiffs' Claims, regardless of whether such Persons seek or obtain by any means, including,
21 without limitation, by submitting a Proof of Claim, any distribution from the Settlement Fund or Net
22 Settlement Amount. All Class Members shall also be subject to and bound by all determinations and
23 judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

24 17. The passage of title and ownership of the Settlement Fund to the Escrow Agent in
25 accordance with the terms and obligations of the Stipulation is approved. No Person that is not a Class
26 Member or counsel to the Plaintiffs shall have any right to any portion of, or in the distribution of, the
27 Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

28 18. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*
legis, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be
distributed pursuant to further order(s) of the Court.

1 19. Neither the Defendants nor their counsel shall have any responsibility for the plan of
2 distribution or any application for attorneys' fees and expenses submitted by Lead Counsel, and such
3 matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

4 20. If the Settlement, including any amendment made in accordance with the Stipulation, is
5 not approved by the Court or shall not become effective for any reason whatsoever, the Settlement and
6 Stipulation (including any modification thereof), and any action taken or to be taken in connection
7 therewith (including this Order and any judgment entered herein) shall be terminated and shall become
8 null and void and of no further force and effect except that neither Plaintiffs nor any of their counsel
9 shall have any obligation to repay any amounts actually and properly disbursed from the Settlement
10 Fund for reasonable Administrative Costs, and neither the Stipulation, nor any provision contained in
11 the Stipulation, nor any action undertaken pursuant thereto, nor the negotiation thereof by any of the
12 Parties, shall be deemed an admission or offered or received as evidence at any proceeding in this or
13 any other action or proceeding.

14 21. All proceedings in the Action, other than proceedings as may be necessary to carry out
15 the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this
16 Court.

17 22. Neither the Stipulation, nor any of the terms and provisions of the Stipulation, nor any of
18 the negotiations or proceedings in connection therewith, nor any of the documents or statements
19 referred to therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings,
20 nor any statements in connection therewith: (a) shall: (i) be argued, used or construed as, offered or
21 received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence,
22 or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or
23 omissions on the part of any of the Released Defendant Parties or Released Plaintiff Parties, or of any
24 infirmity of any defense, or of any damage to Plaintiffs or any other Class Member; or (ii) otherwise be
25 used to create or give rise to any inference or presumption against any of the Released Defendant
26 Parties or Released Plaintiff Parties concerning any fact or any purported liability, fault, or wrongdoing
27 of the Released Defendant Parties or Released Plaintiff Parties or any injury or damages to any person
28 or entity; or (b) shall otherwise be admissible, referred to or used in any proceeding of any nature,

1 including, but not limited to, any civil, criminal, or administrative proceeding in any court,
2 administrative agency, or other tribunal for any purpose whatsoever; provided, however, that the
3 Stipulation and Judgment may be introduced in any proceeding, whether in the Court or otherwise, as
4 may be necessary to argue and establish that the Stipulation and Judgment has *res judicata*, collateral
5 estoppel or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement
6 and Judgment or to secure any insurance rights of any of the Released Defendant Parties or Released
7 Plaintiff Parties or as otherwise required by law.

8 23. The Court retains jurisdiction over all proceedings arising out of or related to the
9 Stipulation and/or the Settlement.

10 24. Without further order of the Court, the Parties may agree to reasonable extensions of
11 time to carry out any of the provisions of this Order or the Stipulation.

12 25. If the Settlement provided for in the Stipulation shall be approved by the Court following
13 the Settlement Hearing, a Judgment shall be entered as described in the Stipulation.

14 IT IS SO ORDERED.

15

16

17 DATED: _____

HONORABLE JUDITH F. HAYES
JUDGE OF THE SUPERIOR COURT

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EXHIBIT A-1

1 ROBBINS GELLER RUDMAN
& DOWD LLP
2 RANDALL J. BARON (150796)
A. RICK ATWOOD, JR. (156529)
3 DAVID T. WISSBROECKER (243867)
DAVID A. KNOTTS (235338)
4 EDWARD M. GERGOSIAN (105679)
655 West Broadway, Suite 1900
5 San Diego, CA 92101
Telephone: 619/231-1058
6 619/231-7423 (fax)

7 Lead Counsel for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 MICHAEL BEMIS, et al., Individually and on) Lead Case No. 37-2013-00060593-CU-BT-CTL
Behalf of All Others Similarly Situated,)
11) (Consolidated with Case Nos. 37-2013-
Plaintiffs,) 00061332-CU-SL-CTL, 37-2013-00061612-
12) CU-SL-CTL, 37-2013-00061751-CU-BT-CTL,
vs.) 37-2013-00062038-CU-BT-CTL, 37-2013-
13) 00062069-CU-SL-CTL and 37-2013-00062130-
TRIUS THERAPEUTICS, INC., et al.,)
14) CU-SL-CTL)
Defendants.)
15) CLASS ACTION

16 JUDGE: Honorable Judith F. Hayes
17 DEPT: C-68
DATE ACTION FILED: 08/01/13

18
19 NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT OF CLASS
20 ACTION, SETTLEMENT HEARING AND RIGHT TO APPEAR

21 EXHIBIT A-1
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1 **TO: ALL HOLDERS OF TRIUS THERAPEUTICS, INC. (“TRIOUS”) COMMON STOCK**
2 **WHO RECEIVED CONSIDERATION FOR THEIR SHARES IN THE ACQUISITION**
3 **OF TRIUS BY CUBIST PHARMACEUTICALS, INC. (“CUBIST**
4 **PHARMACEUTICALS”) AND BRGO CORPORATION, A WHOLLY-OWNED**
5 **SUBSIDIARY OF CUBIST PHARMACEUTICALS (“BRGO” AND TOGETHER WITH**
6 **CUBIST PHARMACEUTICALS, “CUBIST”) AT THE PRICE OF \$13.50 PER SHARE**
7 **IN CASH AND ONE CONTINGENT VALUE RIGHT PER SHARE, FIRST**
8 **ANNOUNCED ON JULY 30, 2013 (THE “CLASS”)**

9 **PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A**
10 **PROPOSED SETTLEMENT OF THE ACTION REFERRED TO IN THE**
11 **CAPTION AND CONTAINS IMPORTANT INFORMATION REGARDING**
12 **YOUR RIGHTS. IF THE COURT APPROVES THE PROPOSED**
13 **SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING**
14 **THE FAIRNESS, REASONABLENESS OR ADEQUACY OF THE PROPOSED**
15 **SETTLEMENT, AND FROM PURSUING THE RELEASED PLAINTIFFS’**
16 **CLAIMS (AS DEFINED BELOW).**

17 **IF YOU HELD SHARES OF TRIUS COMMON STOCK FOR THE BENEFIT**
18 **OF ANOTHER INDIVIDUAL OR ENTITY, PLEASE PROMPTLY TRANSMIT**
19 **THIS DOCUMENT TO SUCH BENEFICIAL HOLDER.**

20 **THE PURPOSE OF THIS NOTICE**

21 1. The purpose of this Notice is to inform you of a proposed settlement (the “Settlement”)
22 of the above-captioned action (the “Action”) by and among the parties to the Action pending before the
23 Superior Court of the State of California, County of San Diego (the “Court”), and of a hearing to be
24 held before the Court, in Department C-68, 330 West Broadway, San Diego, CA 92101, on
25 _____, 2016, at __:__.m. (the “Settlement Hearing”). The purpose of the Settlement Hearing
26 is to determine: (a) whether the Court should approve the proposed Settlement of the Action for a total
27 of Nine Million Four Hundred Thousand Dollars (\$9,400,000.00) on the terms and conditions set forth
28 in the Stipulation of Settlement dated November 30, 2015 (“Stipulation”); (b) whether the Court should
enter a final judgment in the Action as set forth in the Stipulation¹; (c) whether the Court should
approve the proposed plan of distribution; (d) whether the Court should grant the application by Lead
Counsel for an award of attorneys’ fees and expenses and the expenses of Plaintiffs; and (e) such other
matters as may properly come before the Court.

¹ The Stipulation and other settlement documents can be obtained on the case dedicated website at www.triusecuritieslitigation.com.

1 2. The Court has the right to adjourn the Settlement Hearing without further notice. The
2 Court also has the right to approve the Settlement with or without modifications, to enter its final
3 judgment, and to order the payment of attorneys' fees and expenses without further notice.

4 **THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF**
5 **THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION**
6 **OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS**
7 **OR DEFENSES BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS**
8 **OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING**
9 **YOU OF THE EXISTENCE OF THIS ACTION AND OF A HEARING ON A**
10 **PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE**
11 **DECISIONS AS TO STEPS YOU MAY WISH TO TAKE IN RELATION TO**
12 **THIS LITIGATION.**

9 **BACKGROUND AND DESCRIPTION OF THE LITIGATION**

10 3. On July 30, 2013, Trius announced that it had entered into a definitive merger agreement
11 (the "Merger Agreement") with Cubist, under which Cubist would commence a tender offer (the
12 "Tender Offer") to acquire all of the outstanding shares of Trius for \$13.50 per share in cash and one
13 Contingent Value Right, entitling the holder to receive an additional cash payment of up to \$2.00 for
14 each share they own if certain commercial sales milestones are achieved (the "Acquisition").

15 4. Between August 1, 2013 and August 12, 2013, several putative class action complaints
16 on behalf of Trius common stockholders were filed in this Court alleging, among other things, that the
17 members of Trius' Board of Directors breached their fiduciary duties in connection with the
18 Acquisition, and that Cubist and Trius aided and abetted those breaches (the "Related Actions"). In
19 addition, several actions alleging substantially the same claims on behalf of the same putative class of
20 Trius common stockholders were filed in the Delaware Court of Chancery (the "Delaware Actions").

21 5. On August 13, 2013, Cubist commenced the Tender Offer. On the same date, Trius filed
22 a Schedule 14D-9 Solicitation/Recommendation Statement (the "14D-9") with the United States
23 Securities and Exchange Commission ("SEC") in connection with the Tender Offer.

24 6. On August 21, 2013, Plaintiffs filed a motion seeking consolidation of the Related
25 Actions and the appointment of Robbins Geller Rudman & Dowd LLP ("Robbins Geller") as lead
26 counsel.

27 7. On August 28, 2013, plaintiff Bemis filed an amended complaint (the "Amended
28 Complaint") which, among other things, included the allegations in the initial complaints in the Related

1 Actions and added allegations that the Defendants violated their fiduciary duties by filing the 14D-9,
2 which allegedly omitted or misrepresented material information.

3 8. On September 4, 2013, the Delaware Chancery Court consolidated the Delaware Actions
4 (collectively, the “Consolidated Delaware Action”).

5 9. On September 11, 2013, Cubist consummated the Tender Offer and consummated the
6 Acquisition.

7 10. On September 24, 2013, Defendants, Trius and Cubist filed a motion for an order to stay
8 proceedings (“Motion to Stay”), seeking a stay of the Related Actions in favor of the Consolidated
9 Delaware Action.

10 11. On October 24, 2013, the Delaware plaintiffs filed a notice and proposed order of
11 voluntary dismissal of the Consolidated Delaware Action without prejudice, which the Delaware Court
12 of Chancery granted the same day. As a result, defendants took their Motion to Stay off the Court’s
13 calendar.

14 12. On February 28, 2014, Plaintiffs served their Consolidated Amended Class Action
15 Complaint for Breaches of Fiduciary Duty and Violations of State Law (“Consolidated Complaint”) on
16 Defendants and attempted to file and lodge it with the Court. The Court accepted the Consolidated
17 Complaint on or around September 29, 2014.

18 13. On March 12, 2014, the Court consolidated the Related Actions into this Action.

19 14. On March 28, 2014, the Parties filed a stipulation and order for voluntary dismissal of
20 Cubist without prejudice. The Court dismissed Cubist without prejudice on April 11, 2014.

21 15. On April 24, 2014, Defendants and Trius filed their motion to strike Plaintiffs’ jury
22 demand (“Motion to Strike”).

23 16. On April 29, 2014, Defendants filed their demurrer to Plaintiffs’ Consolidated Complaint
24 (“Demurrer”).

25 17. On May 16, 2014, Plaintiffs filed their opposition to Defendants’ Demurrer.

26 18. On May 16, 2014, Plaintiffs filed their opposition to Defendants’ Motion to Strike.

27 19. On May 21, 2014, the Parties filed a stipulation and proposed order for voluntary
28 dismissal of Trius with prejudice. The Court dismissed Trius with prejudice on July 22, 2014.

1 20. On May 22, 2014, Defendants filed their reply briefs in support of their Motion to Strike
2 and their Demurrer.

3 21. On September 5, 2014, the Court held a hearing regarding Defendants’ Demurrer and
4 Motion to Strike. After hearing the Parties’ arguments, on September 19, 2014, the Court granted
5 Defendants’ Motion to Strike and overruled Defendants’ Demurrer.

6 22. On September 29, 2014, Defendants filed their Answer to Plaintiffs’ Consolidated
7 Complaint.

8 23. From December 16, 2014 to January 13, 2015, several plaintiffs from the Related
9 Actions requested voluntary dismissals from the Action, which the Court granted.

10 24. On January 9, 2015, Plaintiffs filed their motion for class certification.

11 25. On June 23, 2015, Defendants filed their statement of non-opposition to Plaintiffs’
12 motion for class certification.

13 26. Also during this period, from approximately September 2014 to June 2015, the Parties
14 engaged in extensive fact discovery concerning the claims alleged in the Consolidated Complaint. The
15 Parties and various non-parties produced approximately 244,550 pages of documents. The Parties
16 completed 13 depositions. Plaintiffs pursued discovery from and served subpoenas on various third
17 parties. The Parties also served and responded to special interrogatories. The Parties also began
18 preparing to engage in expert discovery, including the designation of experts and exchange of initial
19 expert witness lists.

20 27. On June 8, 2015, after preparing and submitting materials to Jill R. Sperber, Esq. (the
21 “Mediator”), counsel for Plaintiffs and Defendants participated in a mediation session regarding a
22 possible global resolution of the Action before the Mediator.

23 28. Subsequently, the Mediator issued her recommendation outlining recommended terms
24 for the settlement of the Action, and the Mediator’s recommendation was accepted by the Parties.

25 29. On November 30, 2015, the Parties entered into the Stipulation setting forth the terms
26 and conditions of the Settlement, subject to approval by the Court.

27
28

1 **REASONS FOR THE SETTLEMENT**

2 30. Plaintiffs, through their counsel, have investigated the claims and allegations asserted in
3 the Action, as well as the underlying events and transactions relevant to the Action.

4 31. In evaluating the Settlement, Plaintiffs and their counsel have considered: (i) the
5 benefits to the members of the Class (as defined above) from the Settlement; (ii) the attendant risks of
6 continued litigation and the uncertainty of the outcome of the Action; (iii) the probability of success on
7 the merits and the allegations contained in the Action, including the uncertainty relating to the proof of
8 those allegations; (iv) the desirability of permitting the Settlement to be consummated as provided by
9 the terms of the Stipulation; and (v) the conclusion of Lead Counsel that the terms and conditions of the
10 Settlement are fair, reasonable, adequate, and in the best interests of Plaintiffs and the Class.

11 32. Defendants have denied, and continue to deny, that they have committed or aided and
12 abetted in the commission of any violation of law or engaged in any of the other wrongful acts alleged
13 in any of the above-described actions, and expressly maintain that they have diligently and scrupulously
14 complied with their fiduciary and other legal duties, and are entering into the Stipulation and Settlement
15 solely to eliminate the burden and expense of further litigation.

16 **SUMMARY OF THE SETTLEMENT TERMS**

17 33. The principal terms of the Settlement are as follows:

18 (a) In consideration for the full settlement and release of all Released Plaintiffs’
19 Claims (as defined below), Defendants and their insurers will cause a total of Nine Million Four
20 Hundred Thousand Dollars (\$9,400,000.00) (the “Settlement Amount”) to be paid for the benefit of the
21 Class.

22 (b) The full terms of the Settlement are set forth in the Stipulation (for further
23 information, see “Scope of This Notice” below).

24 **DISTRIBUTION OF THE SETTLEMENT AMOUNT**

25 34. If the Settlement is approved, the Settlement Amount, less any Fee and Expense Award
26 and plaintiff service awards approved by the Court, and administrative costs (the “Net Settlement
27 Amount”), will be distributed as follows:

28 (a) Proof of Claim

1 Any Class Member who wishes to participate in the distribution of the Net Settlement Amount
2 shall submit to the Claims Administrator a completed Proof of Claim in the form enclosed postmarked
3 (if mailed) or received (if filed electronically) no later than _____, 2016. Any Proof of
4 Claim submitted to the Claims Administrator after such date may be rejected as untimely. The claim
5 form may be submitted online at www.triussecuritieslitigation.com. All Class Members who submit a
6 valid Proof of Claim to the Claims Administrator will be “Settlement Payment Recipients.”

7 (b) Distribution of the Settlement Amount

8 Following the Effective Date, the Net Settlement Amount will be disbursed by the Claims
9 Administrator to the Settlement Payment Recipients and will be allocated on a per-share basis amongst
10 the Settlement Payment Recipients based on the number of shares of Trius common stock held by the
11 applicable Settlement Payment Recipient upon the closing of the Acquisition and the number of shares
12 of Trius common stock held by all Settlement Payment Recipients. If there is any balance remaining in
13 the Net Settlement Amount after six (6) months from the date of distribution of the Net Settlement
14 Amount (whether by reason of tax refunds, uncashed checks, or otherwise), then, after the Claims
15 Administrator has made reasonable and diligent efforts to have Class Members who are entitled to
16 participate in the distribution of the Net Settlement Amount cash their distributions, any balance
17 remaining shall be re-distributed among Settlement Payment Recipients in an equitable and economic
18 manner. Any distribution and re-distribution will require a \$10.00 minimum.

19 **JUDGMENT AND RELEASE OF CLAIMS**

20 35. If the Settlement is approved, the Court will enter an order and final judgment (the
21 “Judgment”) that will release Released Defendant Parties from any and all manner of claims, demands,
22 losses, rights, causes of action (including Unknown Claims), liabilities, damages, obligations,
23 judgments, suits, disputes, fees, expenses, costs, matters and issues of any kind or nature whatsoever,
24 whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed,
25 matured or unmatured, that have been or could have been asserted in the Action, Related Actions,
26 Delaware Actions, or in any court, tribunal, forum or proceeding (including, but not limited to, any
27 claims arising under federal, state or foreign law, common law, statute, rule, or regulation relating to
28 alleged fraud, breach of any duty, negligence, violations of the federal securities laws, or otherwise, and

1 including all claims within the exclusive jurisdiction of the federal courts), by any Class Member in his,
2 her, or its capacity as a stockholder of Trius, against the Released Defendant Parties, and that arise out
3 of, relate to, concern, or are based upon the allegations, conduct, facts, events, transactions, acts,
4 occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or
5 cause whatsoever, or any series thereof embraced, involved, or set forth or otherwise related, directly or
6 indirectly, to: (i) the Action; (ii) the Merger Agreement (including, but not limited to, any deliberations
7 or negotiations in connection with the Merger Agreement); (iii) the Acquisition (including, but not
8 limited to, the consideration received by Class Members in connection with the Acquisition); (iv) any
9 fiduciary obligations of any of the Defendants or Released Defendant Parties in connection with the
10 Acquisition; (v) the negotiations in connection with the Acquisition, including any deal-protection
11 devices; (vi) the disclosures or disclosure obligations of any of the Defendants or Released Defendant
12 Parties in connection with the Acquisition; and (vii) any alleged improper personal benefit or conflict of
13 interest in connection with the Acquisition; provided, however, that the Released Plaintiffs' Claims
14 shall not include a claim to enforce the Stipulation (the "Released Plaintiffs' Claims").

15 36. The Judgment to be entered by the Court will also release Released Plaintiff Parties
16 from, to the fullest extent permitted by law all claims (including Unknown Claims), demands, losses,
17 rights, and causes of action of any nature whatsoever that have been or could have been asserted in the
18 Action, or in any court, tribunal, forum or proceeding, by any Released Defendant Party against any of
19 the Released Plaintiff Parties, which arise out of or relate in any way to the institution, prosecution or
20 settlement of the Action; provided, however, that the Released Defendant Parties' Claims shall not
21 include claims to enforce the Stipulation (the "Released Defendant Parties' Claims").

22 37. "Released Defendant Parties," as used in Paragraphs 35 and 36 above, means:
23 Defendants, Trius, Cubist, and/or any of their families, parent entities, controlling or managing persons
24 or entities, associates, investors, affiliates or subsidiaries and each and all of their past, present, or future
25 officers, directors, stockholders, employees, attorneys, financial or investment advisors, insurers, excess
26 insurers and reinsurers, consultants, accountants, investment bankers, commercial bankers, engineers,
27 advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, personal
28 representatives, estates, administrators, and each of their respective heirs, predecessors, successors, and

1 assigns, and investment funds that any of the Defendants managed or advised and such funds'
2 respective affiliates, agents, employees, directors, predecessors, and successors.

3 38. "Released Plaintiff Parties," as used in Paragraph 36 above, means: Plaintiffs, all Class
4 Members, Lead Counsel and/or Plaintiffs' Counsel.

5 39. "Unknown Claims," as used in Paragraphs 35 and 36 above, means:

6 (a) any and all Released Plaintiffs' Claims which Plaintiffs or any other Class
7 Member does not know or suspect to exist in his, her, or its favor at the time of the release of the
8 Released Plaintiffs' Claims against the Released Defendant Parties, including (without limitation)
9 claims which if known by him, her, or it, might have affected his, her, or its decision(s) with respect to
10 the Settlement; and

11 (b) any and all Released Defendant Parties' Claims which any Defendant or any
12 other Released Defendant Party does not know or suspect to exist in his, her, or its favor at the time of
13 the release of the Released Defendant Parties' Claims against the Released Plaintiff Parties, including
14 (without limitation) claims which if known by him, her, or it might have affected his, her, or its
15 decision(s) with respect to the Settlement.

16 **STAY**

17 40. All proceedings in this Action, other than such proceedings as may be necessary to carry
18 out the terms and conditions of the Settlement, have been stayed and suspended until further order of
19 the Court.

20 **THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES**

21 41. Concurrently with seeking final approval of the Settlement, Lead Counsel will apply to
22 the Court for an award of attorneys' fees of up to 30% of the Settlement Amount (or up to \$2.82
23 million) and up to \$250,000 in expenses, plus interest thereon (the "Fee and Expense Application"). At
24 the same time, Lead Counsel may also apply to the Court for service awards to the Plaintiffs of up to
25 \$5,000 each. Any Fee and Expense Award or plaintiff service awards approved by the Court will be
26 paid from the Settlement Fund.

27 42. Lead Counsel will make the Fee and Expense Application on or before
28 _____.

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EXCLUSION FROM THE SETTLEMENT

43. If you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself from, or “opting out” of, the Class.

44. To exclude yourself from the Class, you must send a letter by mail saying that you want to be excluded from the Class in the following action: *Bemis v. Trius Therapeutics, Inc.*, Lead Case No. 37-2013-00060593-CU-BT-CTL. Be sure to include your name, address, telephone number, and sign the letter. You should also include the number of shares of Trius common stock you held that are subject to the Action. Your exclusion request must be postmarked no later than _____, 2016 and sent to the Claims Administrator at:

Trius Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 990
Corte Madera, CA 94976-0990

You cannot exclude yourself by phone or by e-mail. If you make a proper request for exclusion, you will not receive a Settlement payment, and you cannot object to the Settlement. If you make a proper request for exclusion, you will not be legally bound by anything that happens in this lawsuit.

RIGHT TO APPEAR AND OBJECT

45. Any Class Member who objects to the Settlement, the Judgment to be entered in the Action, the proposed plan of distribution or the Fee and Expense Application, or who otherwise wishes to be heard, may appear personally or by counsel at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that no person or entity (other than counsel for Plaintiffs and Defendants) shall be heard and no papers, briefs, pleadings, or other documents submitted by any person or entity shall be considered by the Court unless, by _____, 2016, such person or entity files with the Clerk of the Court and serves upon counsel listed below a written notice of intention to appear that includes: (i) the person or entity’s name, address, and telephone number, and, if represented, their counsel; (ii) a written statement certifying that the person or entity is a member of the Class; (iii) a detailed written statement of such person or entity’s objections to any matters before the Court and the grounds therefor or the reasons that such person or

1 entity desires to appear and be heard; and (iv) a copy of all documents or writings such person or entity
2 desires the Court to consider. Such papers shall be served by hand, e-filing, or overnight mail upon the
3 following counsel on or before the date of filing with the Court:

4 David Knotts
ROBBINS GELLER RUDMAN
5 & DOWD LLP
6 655 West Broadway, Suite 1900
San Diego, CA 92101

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

7
8
9 At the same time, these papers must be filed with the Clerk of the Court, San Diego County Superior
10 Court, Hall of Justice, 330 West Broadway, San Diego, CA 92101. Unless the Court otherwise directs,
11 no Class Member shall be entitled to object to the Settlement, or to the Judgment to be entered herein,
12 or to the plan of distribution, or to the award of attorneys' fees and expenses to Lead Counsel, or
13 otherwise to be heard, except by serving and filing written objections as described above. Any person
14 who fails to object in the manner provided above shall be deemed to have waived such objection and
15 shall forever be barred from making any such objection in the Action or in any other action or
16 proceeding. The parties to this Action will submit responses, if any, to any objectors on or before

17 _____
18 **THE ORDER AND FINAL JUDGMENT OF THE COURT**

19 46. If the Court determines that the Settlement, as provided for in the Stipulation, is fair,
20 reasonable, adequate and in the best interests of the Class, the parties to the Action will ask the Court to
21 enter a Judgment, which will, among other things:

22 (a) approve the Settlement as fair, reasonable, adequate, and in the best interests of
23 the Class and direct consummation of the Settlement in accordance with its terms and conditions;

24 (b) release the Released Defendant Parties from the Released Plaintiffs' Claims, and
25 release the Released Plaintiff Parties from the Released Defendant Parties' Claims;

26 (c) effectively prevent the members of the Class from instituting, commencing,
27 prosecuting, participating in, or continuing any action or other proceeding in any court or tribunal of
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1 any jurisdiction, either directly, representatively, derivatively, or in any other capacity, asserting any
2 Released Plaintiffs' Claims; and

3 (d) retain jurisdiction over all matters relating to the administration and
4 consummation of the Settlement described therein.

5 47. In the event the Settlement is not approved, or such approval does not become final, the
6 Settlement shall be of no further force and effect and each party shall then be returned to his, her, or its
7 respective position prior to the Settlement without prejudice and as if the Settlement had not been
8 entered into.

9 **SCOPE OF THIS NOTICE**

10 48. The foregoing description of the Settlement Hearing, the Action, the terms of the
11 proposed Settlement and other matters described herein does not purport to be comprehensive.
12 Accordingly, Class Members are referred to the documents filed with the Court in the Action. You or
13 your attorney may examine the documents filed in the Action during regular business hours on any
14 business day at the office of the Clerk of the Court, San Diego County Superior Court, Hall of Justice,
15 330 West Broadway, San Diego, CA 92101 or online at: <https://roa.sdcourt.ca.gov/roa/>.

16 If you would like further information, you may contact:

17 Rick Nelson
18 ROBBINS GELLER RUDMAN
& DOWD LLP
19 655 West Broadway, Suite 1900
San Diego, CA 92101
20 1-800-449-4900

21 **NOTICE TO THOSE HOLDING STOCK FOR THE BENEFIT OF OTHERS**

22 49. Brokerage firms, banks and/or other persons or entities who held shares of Trius
23 common stock for the benefit of others are directed promptly to send this Notice to all of their
24 respective beneficial holders. If additional copies of the Notice are needed for forwarding to such
25 beneficial holders, any requests for such additional copies may be made to:

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Trius Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 990
Corte Madera, CA 94976-0990

PLEASE DO NOT WRITE OR CALL THE COURT.

DATED: _____, 2016

BY ORDER OF THE COURT
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

EXHIBIT A-2

1 ROBBINS GELLER RUDMAN
& DOWD LLP
2 RANDALL J. BARON (150796)
A. RICK ATWOOD, JR. (156529)
3 DAVID T. WISSBROECKER (243867)
DAVID A. KNOTTS (235338)
4 EDWARD M. GERGOSIAN (105679)
655 West Broadway, Suite 1900
5 San Diego, CA 92101
Telephone: 619/231-1058
6 619/231-7423 (fax)

7 Lead Counsel for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 MICHAEL BEMIS, et al., Individually and on) Lead Case No. 37-2013-00060593-CU-BT-CTL
Behalf of All Others Similarly Situated,)
11) (Consolidated with Case Nos. 37-2013-
Plaintiffs,) 00061332-CU-SL-CTL, 37-2013-00061612-
12) CU-SL-CTL, 37-2013-00061751-CU-BT-CTL,
vs.) 37-2013-00062038-CU-BT-CTL, 37-2013-
13) 00062069-CU-SL-CTL and 37-2013-00062130-
14 TRIUS THERAPEUTICS, INC., et al.,)
CU-SL-CTL)
Defendants.)
15) CLASS ACTION

16 JUDGE: Honorable Judith F. Hayes
17 DEPT: C-68
DATE ACTION FILED: 08/01/13

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19 PROOF OF CLAIM AND RELEASE

20 EXHIBIT A-2
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1 **I. GENERAL INSTRUCTIONS**

2 1. All capitalized terms not otherwise defined shall have the same meanings as set forth in
3 the Stipulation of Settlement dated as of November 30, 2015 (“Stipulation”), which can be downloaded
4 at www.triussecuritieslitigation.com.

5 2. To recover as a Class Member based on your claims in the action entitled *Bemis v. Trius*
6 *Therapeutics, Inc.*, Lead Case No. 37-2013-00060593-CU-BT-CTL (the “Action”), you must complete
7 and, on page ___ hereof, sign this Proof of Claim and Release form (“Proof of Claim”). If you fail to
8 file a properly addressed (as set forth in paragraph 4 below) Proof of Claim, your claim may be rejected
9 and you may be precluded from any recovery from the Net Settlement Amount created in connection
10 with the proposed Settlement.

11 3. Submission of this Proof of Claim, however, does not assure that you will share in the
12 proceeds of the Settlement of the Action.

13 4. YOU MUST MAIL (POSTMARKED ON OR BEFORE _____, 2016) OR
14 SUBMIT ONLINE (ON OR BEFORE _____, 2016) YOUR COMPLETED AND SIGNED PROOF
15 OF CLAIM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN,
16 ADDRESSED AS FOLLOWS:

17 *Trius Litigation*
18 Claims Administrator
19 c/o Gilardi & Co. LLC
20 P.O. Box 990
21 Corte Madera, CA 94976-0990
22 online submissions: www.triussecuritieslitigation.com

23 If you are NOT a member of the Class, as defined below and in the Notice of Pendency of Class Action,
24 Proposed Settlement of Class Action, Settlement Hearing and Right to Appear (“Notice”), DO NOT
25 submit a Proof of Claim.

26 5. If you are a Class Member and you did not timely request exclusion in response to the
27 Notice, you are bound by the terms of any judgment entered in the Action, including the releases
28 provided therein, **WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM.**

1 **II. DEFINITIONS**

2 1. “Class” means all holders of Trius common stock who received consideration for their
3 shares in the Acquisition at the price of \$13.50 per share in cash and one Contingent Value Right
4 (“CVR”) per share, first announced on July 30, 2013. Excluded from the Class are Defendants and any
5 person, firm, trust, corporation or other entity related to or affiliated with any Defendant. Also excluded
6 from the Class are those persons or entities who timely and properly request exclusion from the Class
7 pursuant to the instructions set forth in the Notice approved through the Preliminary Approval Order.
8 However, until such time as those persons or entities are excluded, they shall be treated as members of
9 the Class.

10 2. “Defendants” means Jeffrey Stein, David S. Kabakoff, Brian G. Atwood, Nina Kjellson,
11 Brendan O’Leary, Karin Eastham, Paul Truex, Theodore R. Schroeder, and Seth H. Z. Fischer.

12 3. “Released Defendant Parties” means Defendants, Trius, Cubist, and/or any of their
13 families, parent entities, controlling or managing persons or entities, associates, investors, affiliates or
14 subsidiaries and each and all of their past, present, or future officers, directors, stockholders, employees,
15 attorneys, financial or investment advisors, insurers, excess insurers and reinsurers, consultants,
16 accountants, investment bankers, commercial bankers, engineers, advisors or agents, heirs, executors,
17 trustees, general or limited partners or partnerships, personal representatives, estates, administrators,
18 and each of their respective heirs, predecessors, successors, and assigns, and investment funds that any
19 of the Defendants managed or advised and such funds’ respective affiliates, agents, employees,
20 directors, predecessors, and successors.

21 **III. CLAIMANT IDENTIFICATION**

22 If you (i) held Trius common stock and received consideration for your shares in the acquisition
23 of Trius by Cubist at the price of \$13.50 per share in cash and one Contingent Value Right per share
24 (the “Acquisition”), and (ii) held the share(s) in your name, you are the beneficial holder as well as the
25 record holder. If, however, you held Trius common stock and the share(s) were registered in the name
26 of a third party, such as a nominee or brokerage firm, you are the beneficial holder and the third party is
27 the record holder.

28

1 Use Part I of this form entitled "Claimant Identification" to identify each holder of record
2 ("nominee"), if different from the beneficial holder of Trius common stock which forms the basis of
3 this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL HOLDER(S) OR THE
4 LEGAL REPRESENTATIVE OF SUCH HOLDER(S) OF THE TRIUS COMMON STOCK UPON
5 WHICH THIS CLAIM IS BASED.

6 All joint holders must sign this claim. Executors, administrators, guardians, conservators, and
7 trustees must complete and sign this claim on behalf of Persons represented by them and their authority
8 must accompany this claim and their titles or capacities must be stated. The Social Security (or
9 taxpayer identification) number and telephone number of the beneficial holder may be used in verifying
10 the claim. Failure to provide the foregoing information could delay verification of your claim or result
11 in rejection of the claim.

12 **IV. CLAIM FORM**

13 Use Part II of this form entitled "Schedule of Transactions in Trius Common Stock" to supply
14 the number of shares of Trius common stock you held and received consideration for in the Acquisition.

15 Broker confirmations or other documents, verifying that you held Trius common stock and
16 received consideration for it in the Acquisition, should be attached to your claim. Failure to do so could
17 delay verification of your claim or result in rejection of your claim.

18 NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of
19 transactions may request, or may be requested, to submit information regarding their transactions in
20 electronic format. All claimants MUST submit a manually signed paper Proof of Claim whether or not
21 they also submit electronic copies. If you wish to file your claim electronically, you must contact the
22 Claims Administrator at 1-844-535-0115 to obtain the required file layout. No electronic files will be
23 considered to have been properly submitted unless the Claims Administrator issues to the claimant a
24 written acknowledgment of receipt and acceptance of electronically submitted data.

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF SAN DIEGO

3 *Bemis v. Trius Therapeutics, Inc.,*

4 Lead Case No. 37-2013-00060593-CU-BT-CTL

5 PROOF OF CLAIM AND RELEASE

6 Must Be Postmarked (if Mailed) or Received (if Filed Electronically) No Later Than:

7 [DATE]

8 Please Type or Print

9 **PART I: CLAIMANT IDENTIFICATION**

10 _____
11 Beneficial Owner's Name (First, Middle, Last)

12 _____
13 Street Address

14 _____
15 City

14 _____
State or Province

16 _____
17 Zip Code or Postal Code

16 _____
Country

18 _____
19 Social Security Number or
Taxpayer Identification Number

20 _____
21 Area Code

21 _____
Telephone Number (work)

22 _____
23 Area Code

23 _____
Telephone Number (home)

24 _____
25 Record Owner's Name (if different from beneficial owner listed above)

1 **PART II: SCHEDULE OF TRANSACTIONS IN TRIUS COMMON STOCK**

2 A. Number of shares of Trius common stock you held and received consideration for in the
3 acquisition of Trius by Cubist at the price of \$13.50 per share in cash and one
4 Contingent Value Right per share: _____

5 **V. SUBMISSION TO JURISDICTION OF COURT AND
6 ACKNOWLEDGMENTS**

7 I (We) submit this Proof of Claim under the terms of the Stipulation described in the Notice. I
8 (We) also submit to the jurisdiction of the Superior Court of the State of California, County of San
9 Diego, with respect to my (our) claim as a Class Member and for purposes of enforcing the release set
10 forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any
11 judgment that may be entered in the Action. I (We) agree to furnish additional information to the
12 Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other
13 claim covering the Trius common stock I (we) held and received consideration for in the Acquisition at
14 the price of \$13.50 per share in cash and one Contingent Value Right per share, and know of no other
15 person having done so on my (our) behalf.

16 **VI. RELEASE**

17 1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully,
18 finally, and forever settle, release, and discharge from and covenant not to sue with respect to, the
19 Released Plaintiffs' Claims each and all of the Released Defendant Parties.

20 2. "Released Plaintiffs' Claims" means any and all manner of claims, demands, losses,
21 rights, causes of action (including Unknown Claims), liabilities, damages, obligations, judgments, suits,
22 disputes, fees, expenses, costs, matters and issues of any kind or nature whatsoever, whether known or
23 unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or
24 unmatured, that have been or could have been asserted in the Action, Related Actions, Delaware
25 Actions, or in any court, tribunal, forum or proceeding (including, but not limited to, any claims arising
26 under federal, state or foreign law, common law, statute, rule, or regulation relating to alleged fraud,
27 breach of any duty, negligence, violations of the federal securities laws, or otherwise, and including all
28 claims within the exclusive jurisdiction of the federal courts), by any Class Member in his, her, or its
capacity as a stockholder of Trius, against the Released Defendant Parties, and that arise out of, relate

1 to, concern, or are based upon the allegations, conduct, facts, events, transactions, acts, occurrences,
2 statements, representations, misrepresentations, omissions, or any other matter, thing or cause
3 whatsoever, or any series thereof embraced, involved, or set forth or otherwise related, directly or
4 indirectly, to: (i) the Action; (ii) the Merger Agreement (including, but not limited to, any deliberations
5 or negotiations in connection with the Merger Agreement); (iii) the Acquisition (including, but not
6 limited to, the consideration received by Class Members in connection with the Acquisition); (iv) any
7 fiduciary obligations of any of the Defendants or Released Defendant Parties in connection with the
8 Acquisition; (v) the negotiations in connection with the Acquisition, including any deal-protection
9 devices; (vi) the disclosures or disclosure obligations of any of the Defendants or Released Defendant
10 Parties in connection with the Acquisition; and (vii) any alleged improper personal benefit or conflict of
11 interest in connection with the Acquisition; provided, however, that the Released Plaintiffs' Claims
12 shall not include a claim to enforce the Stipulation.

13 3. This release shall be of no force or effect unless and until the Court approves the
14 Stipulation and the Stipulation becomes effective on the Effective Date (as defined in the Stipulation).

15 4. I (We) hereby warrant and represent that I (we) have not assigned or transferred or
16 purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release
17 or any other part or portion thereof.

18 5. I (We) hereby warrant and represent that I (we) have included information about all of
19 my (our) holdings in Trius common stock requested in this Proof of Claim.

20 6. I (We) certify that I am (we are) not subject to backup withholding under the provisions
21 of Section 3406(a)(1)(C) of the Internal Revenue Code.

22 I declare under penalty of perjury under the laws of the State of California and of the United
23 States of America that the foregoing information supplied by the undersigned is true and correct.

24 Executed this _____ day of _____ (Month/Year) in
25 _____ (City/State/Country)

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27 _____
28 (Sign your name here)

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(Type or print your name here)

(Capacity of person(s) signing,
e.g., Beneficial Holder,
Executor or Administrator)

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

Reminder Checklist:

- 1. Please sign the above release and declaration.
- 2. Remember to attach copies of supporting documentation, if available.
- 3. **Do not send** originals of certificates.
- 4. Keep a copy of your claim form and all supporting documentation for your records.
- 5. If you desire an acknowledgment of receipt of your claim form, please send it Certified

Mail, Return Receipt Requested.

- 6. If you move, please send your new address to the address below.
- 7. **Do not use red pen or highlighter** on the Proof of Claim or supporting documentation.

**THIS PROOF OF CLAIM MUST BE SUBMITTED ONLINE OR, IF MAILED,
POSTMARKED NO LATER THAN _____, 2016, ADDRESSED AS FOLLOWS:**

Trius Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 990
Corte Madera, CA 94976-0990
www.triussecuritieslitigation.com

EXHIBIT A-3

1 ROBBINS GELLER RUDMAN
& DOWD LLP
2 RANDALL J. BARON (150796)
A. RICK ATWOOD, JR. (156529)
3 DAVID T. WISSBROECKER (243867)
DAVID A. KNOTTS (235338)
4 EDWARD M. GERGOSIAN (105679)
655 West Broadway, Suite 1900
5 San Diego, CA 92101
Telephone: 619/231-1058
6 619/231-7423 (fax)

7 Lead Counsel for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 MICHAEL BEMIS, et al., Individually and on) Lead Case No. 37-2013-00060593-CU-BT-CTL
Behalf of All Others Similarly Situated,)
11) (Consolidated with Case Nos. 37-2013-
Plaintiffs,) 00061332-CU-SL-CTL, 37-2013-00061612-
12) CU-SL-CTL, 37-2013-00061751-CU-BT-CTL,
vs.) 37-2013-00062038-CU-BT-CTL, 37-2013-
13) 00062069-CU-SL-CTL and 37-2013-00062130-
14 TRIUS THERAPEUTICS, INC., et al.,)
CU-SL-CTL)
Defendants.)
15) CLASS ACTION

16 JUDGE: Honorable Judith F. Hayes
17 DEPT: C-68
DATE ACTION FILED: 08/01/13

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19 SUMMARY NOTICE

20 EXHIBIT A-3
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1 **IF YOU HELD SHARES OF COMMON STOCK IN TRIUS THERAPEUTICS,**
2 **INC. (“TRIOUS”) AND RECEIVED CONSIDERATION FOR YOUR SHARES IN**
3 **THE ACQUISITION OF TRIUS BY CUBIST PHARMACEUTICALS, INC.**
4 **(“CUBIST PHARMACEUTICALS”) AND BRGO CORPORATION, A**
5 **WHOLLY-OWNED SUBSIDIARY OF CUBIST PHARMACEUTICALS**
6 **(“BRGO” AND TOGETHER WITH CUBIST PHARMACEUTICALS**
7 **“CUBIST”) AT THE PRICE OF \$13.50 PER SHARE IN CASH AND ONE**
8 **CONTINGENT VALUE RIGHT PER SHARE, YOUR RIGHTS MAY BE**
9 **AFFECTED BY THE SETTLEMENT OF A CLASS ACTION.**

10 YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Superior Court of the State of
11 California, County of San Diego, that a hearing will be held on _____, 2016, at __:__.m., in
12 Department C-68, 330 West Broadway, San Diego, CA 92101, for the purpose of determining:
13 (1) whether the proposed settlement of the claims in the Action for the sum of \$9,400,000.00 in cash
14 plus accrued interest should be approved by the Court as fair, reasonable, and adequate; (2) whether the
15 Court should enter a final judgment in the Action as set forth in the Stipulation of Settlement, dated
16 November 30, 2015 (“Stipulation”)¹; (3) whether the plan of distribution is fair, reasonable, and
17 adequate and therefore should be approved; and (4) whether the application of Lead Counsel for an
18 award of attorneys’ fees and expenses incurred in connection with this Action and service awards to
19 Plaintiffs should be approved.

20 If you held Trius common stock and received consideration for your shares in the acquisition of
21 Trius by Cubist at the price of \$13.50 per share in cash and one Contingent Value Right per share, your
22 rights may be affected by the settlement of this Action. If you have not received a detailed Notice of
23 Pendency of Class Action, Proposed Settlement of Class Action, Settlement Hearing and Right to
24 Appear (“Notice”) and a copy of the Proof of Claim and Release form, you may obtain copies by
25 writing to *Trius Litigation*, Claims Administrator, c/o Gilardi & Co. LLC, P.O. Box 990, Corte Madera,
26 CA 94976-0990, or you can download a copy at www.triussecuritieslitigation.com. If you are a Class
27 Member, in order to share in the distribution of the Net Settlement Amount, you must submit a Proof of
28 Claim and Release form by mail (postmarked no later than _____, 2016) or electronically no
later than _____, 2016, establishing that you are entitled to recovery. You will be bound by any
judgment rendered in the Action whether or not you make a claim.

¹ All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

1 IF YOU DESIRE TO BE EXCLUDED FROM THE CLASS, YOU MUST SUBMIT A
2 REQUEST FOR EXCLUSION SUCH THAT IT IS POSTMARKED NO LATER THAN
3 _____, 2016, IN THE MANNER AND FORM EXPLAINED IN THE NOTICE REFERRED
4 TO ABOVE. ALL CLASS MEMBERS WHO HAVE NOT REQUESTED EXCLUSION FROM THE
5 CLASS WILL BE BOUND BY THE SETTLEMENT ENTERED IN THE ACTION EVEN IF THEY
6 DO NOT FILE A TIMELY PROOF OF CLAIM AND RELEASE FORM.

7 IF YOU ARE A CLASS MEMBER, YOU HAVE THE RIGHT TO OBJECT TO THE
8 SETTLEMENT, THE PLAN OF DISTRIBUTION, THE REQUEST BY LEAD COUNSEL FOR AN
9 AWARD OF ATTORNEYS' FEES AND EXPENSES, AND/OR THE PAYMENT TO PLAINTIFFS
10 FOR THEIR TIME AND EXPENSES. ANY OBJECTIONS MUST BE FILED WITH THE COURT
11 AND SENT TO LEAD COUNSEL BY _____, 2016, IN THE MANNER AND FORM
12 EXPLAINED IN THE NOTICE.

13 **PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE**
14 **REGARDING THIS NOTICE.**

15 DATED: _____, 2016

BY ORDER OF THE COURT
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

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EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MICHAEL BEMIS, et al., Individually and on)	Lead Case No. 37-2013-00060593-CU-BT-CTL
Behalf of All Others Similarly Situated,)	
) (Consolidated with Case Nos. 37-2013-
Plaintiffs,)	00061332-CU-SL-CTL, 37-2013-00061612-
) CU-SL-CTL, 37-2013-00061751-CU-BT-CTL,
vs.)	37-2013-00062038-CU-BT-CTL, 37-2013-
) 00062069-CU-SL-CTL and 37-2013-00062130-
TRIUS THERAPEUTICS, INC., et al.,)	CU-SL-CTL)
)
Defendants.)	<u>CLASS ACTION</u>

JUDGE: Honorable Judith F. Hayes
DEPT: C-68
DATE ACTION FILED: 08/01/13

[PROPOSED] ORDER AND FINAL JUDGMENT

EXHIBIT B

1 This matter having come before the Superior Court of California for the County of San Diego
2 (the “Court”) for hearing (the “Settlement Hearing”) on a motion for final approval of the terms of the
3 Stipulation of Settlement dated November 30, 2015 (the “Stipulation”); and due and adequate notice of
4 the Settlement Hearing having been given to the Class as ordered in the Court’s _____, 2016
5 Order Granting Preliminary Approval of Class Action Settlement; and the Court having considered the
6 papers filed and proceedings herein and otherwise being fully informed, and good cause appearing
7 therefore, it is now ORDERED, ADJUDGED, AND DECREED THAT:

8 1. This Court has jurisdiction over the subject matter of this Action and over all of the
9 parties to the Action, including all members of the Class.

10 2. This Order and Final Judgment (the “Judgment”) incorporates and makes part hereof: (i)
11 the Stipulation; and (ii) the Court-approved Notice of Pendency of Class Action, Proposed Settlement
12 of Class Action, Settlement Hearing and Right to Appear (the “Notice”), Proof of Claim and Release
13 form, and Summary Notice, which were filed with the Court as Exhibits A-1, A-2, and A-3 to the
14 Stipulation. This Judgment incorporates by reference the definitions in the Stipulation, and all terms
15 used herein shall have the same meanings as set forth in the Stipulation.

16 3. The Notice given to the Class was the best notice practicable under the circumstances,
17 including individual notice to all members of the Class who could be identified through reasonable
18 effort along with publication of the Summary Notice. The Notice provided due and adequate notice of
19 the Action and of the matters set forth in the Stipulation, including the Settlement, to all persons entitled
20 to such notice, and the Notice fully satisfied the requirements of state law and due process, and any
21 other applicable law, statute or rule. A full opportunity to be heard has been afforded to all Parties, the
22 Class, and any other persons in interest.

23 4. Pursuant to Section 382 of the California Code of Civil Procedure, the Court hereby
24 finally certifies, for purposes of effectuating this Settlement only, a class of all holders of Trius
25 Therapeutics, Inc. (“Trius” or the “Company”) common stock who received consideration for their
26 shares in the acquisition of Trius by Cubist Pharmaceuticals, Inc. (“Cubist Pharmaceuticals”) and
27 BRGO Corporation, a wholly-owned subsidiary of Cubist Pharmaceuticals (“BRGO” and together with
28 Cubist Pharmaceuticals, “Cubist”) at the price of \$13.50 per share in cash and one Contingent Value

1 Right (“CVR”) per share, first announced on July 30, 2013 (the “Class”). Excluded from the Class are
2 Defendants and any person, firm, trust, corporation, or other entity related to or affiliated with any
3 Defendant. Also excluded from the Class are those persons or entities who timely and properly
4 requested exclusion from the Class.

5 5. The Court hereby finds that the Settlement as set forth in the Stipulation should be
6 approved in that the Settlement is, in all respects, fair, reasonable, and adequate to the Class and the
7 Parties. Accordingly, the Stipulation and the terms of the Settlement, as described in the Stipulation,
8 are hereby approved in their entirety, pursuant to the requirements of Section 382 of the California
9 Code of Civil Procedure and Rule 3.769 of the California Rules of Court. The Parties are hereby
10 directed to effectuate the Settlement according to the terms of the Stipulation. The Parties and all
11 members of the Class are hereby bound by this Judgment and by the terms of the Settlement as set forth
12 in the Stipulation.

13 6. Upon the Effective Date, Plaintiffs and each and every Class Member, for themselves
14 and any Person claiming by or through them, shall be deemed to have, and by operation of this
15 Judgment shall have, to the maximum extent permitted by law, fully, finally, and forever released,
16 relinquished, and discharged each and all of the Released Defendant Parties from the Released
17 Plaintiffs’ Claims (including Unknown Claims).

18 7. Upon the Effective Date, Plaintiffs and each and every Class Member, for themselves
19 and for any Person claiming now or in the future through or on behalf of them, shall covenant or be
20 deemed to have covenanted not to sue the Released Defendant Parties with respect to all such Released
21 Plaintiffs’ Claims, except to enforce the terms and conditions contained in the Stipulation or this
22 Judgment.

23 8. Upon the Effective Date, each of the Released Defendant Parties for themselves and any
24 Person claiming by or through them shall be deemed to have, and by operation of this Judgment shall
25 have, to the maximum extent permitted by law, fully, finally, and forever released, relinquished, and
26 discharged Released Plaintiff Parties from the Released Defendant Parties’ Claims (including Unknown
27 Claims).

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1 9. Neither this Judgment, nor any of the terms and provisions of the Stipulation, nor any of
2 the negotiations or proceedings in connection herewith, nor any of the documents or statements referred
3 to herein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any
4 statements in connection therewith: (a) shall: (i) be argued, used or construed as, offered or received in
5 evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a
6 finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or
7 omissions on the part of any of the Released Defendant Parties or Released Plaintiff Parties, or of any
8 infirmity of any defense, or of any damage to Plaintiffs or any other Class Member; or (ii) otherwise be
9 used to create or give rise to any inference or presumption against any of the Released Defendant
10 Parties or Released Plaintiff Parties concerning any fact or any purported liability, fault, or wrongdoing
11 of the Released Defendant Parties or Released Plaintiff Parties or any injury or damages to any person
12 or entity; or (b) shall otherwise be admissible, referred to or used in any proceeding of any nature,
13 including, but not limited to, any civil, criminal, or administrative proceeding in any court,
14 administrative agency, or other tribunal, for any purpose whatsoever; provided, however, that the
15 Stipulation and Judgment may be introduced in any proceeding, whether in the Court or otherwise, as
16 may be necessary to argue and establish that the Stipulation and Judgment has *res judicata*, collateral
17 estoppel or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement
18 and Judgment or to secure any insurance rights of any of the Released Defendant Parties or Released
19 Plaintiff Parties or as otherwise required by law.

20 10. The Action is hereby concluded, provided however, and without affecting the finality of
21 this Judgment in any way, this Court hereby retains jurisdiction over: (1) interpretation, implementation,
22 and enforcement of the Stipulation; and (2) all parties hereto for the purpose of enforcement and
23 administration of the Settlement, pursuant to Rule 3.769(h) of the California Rules of Court. This
24 Judgment shall not discharge or release any claim to enforce, or any claim arising out of or relating to,
25 any breach of the Stipulation.

26 11. In the event that the Settlement does not become effective in accordance with the terms
27 of the Stipulation, or the Effective Date does not occur, then this Judgment shall be rendered null and
28 void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such

1 event, all orders entered and releases delivered in connection herewith shall be null and void to the
2 extent provided by and in accordance with the Stipulation.

3 12. Any plan of distribution submitted by Plaintiffs' Counsel or any order entered regarding
4 any attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be
5 considered separate from this Judgment.

6 13. The Court finds that during the course of the Action, the Parties and their respective
7 counsel at all times acted professionally and in compliance with California Code of Civil Procedure
8 §128.7, and all other similar statutes or court rules with respect to any claims or defenses in the Action.

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

11 15. There being no just reason for delay, the Court hereby directs that this Judgment be
12 entered by the Clerk of the Court.

13 16. Plaintiffs shall give notice of this Judgment to all Parties.

14 IT IS SO ORDERED.

15 DATED: _____

THE HONORABLE JUDITH F. HAYES
JUDGE OF THE SUPERIOR COURT

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