

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

TODD SALLEY

Plaintiff, derivatively on behalf of

OSIRIS THERAPEUTICS, INC.,

Nominal Defendant

v.

LODE DEBRANDERE, *et al.*,

Defendants

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Civil Action No. 17-cv-03777

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**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF SHAREHOLDER
DERIVATIVE ACTIONS**

**TO: ALL RECORD OR BENEFICIAL OWNERS OF
OSIRIS THERAPEUTICS, INC. SECURITIES AS OF OCTOBER 24, 2018:**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IT CONTAINS
IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS. THIS NOTICE
RELATES TO A PROPOSED SETTLEMENT OF SHAREHOLDER DERIVATIVE
ACTIONS AND SHAREHOLDER DEMANDS (THE “DERIVATIVE ACTIONS”), AND
CLAIMS ASSERTED ON BEHALF OF OSIRIS THERAPEUTICS, INC. (“OSIRIS” OR
THE “COMPANY”).**

**IF THE COURT APPROVES THE SETTLEMENT AND DISMISSAL OF THE
DERIVATIVE ACTIONS, SHAREHOLDERS OF OSIRIS WILL BE FOREVER BARRED
FROM CONTESTING THE APPROVAL OF THE PROPOSED SETTLEMENT AND
FROM PURSUING THE RELEASED CLAIMS.**

**THESE ACTIONS ARE NOT CLASS ACTIONS. THUS, THERE IS NO COMMON
FUND UPON WHICH YOU CAN MAKE A CLAIM FOR A MONETARY PAYMENT.**

PURPOSE OF THIS NOTICE

This Notice of Pendency and Proposed Settlement of Shareholder Derivative Actions (the “Notice”) is provided to Osiris shareholders pursuant to an order of the United States District Court for the District of Maryland (the “Court”). This is not a solicitation from a lawyer.

The purpose of this Notice is to advise you that, pursuant to the Court’s Preliminary Approval Order,¹ a hearing will be held on February 1, 2019, at 2:00 p.m., before the Honorable Ellen L. Hollander or such other judge as may be sitting in her place and stead, at the Edward A. Garmatz United States Courthouse, 101 W. Lombard Street, Baltimore, MD 21201 (or at such a date and time as the Court may direct without further notice) (the “Settlement Hearing”) to determine: (i) whether the terms of a proposed settlement (the “Settlement”) of the derivative actions described below is fair, reasonable, and adequate, and in the best interests of Osiris; (ii) whether this Notice fully satisfied the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and due process; (iii) whether the Final Order and Judgment should be entered dismissing the above-captioned matter with prejudice, releasing the Released Persons from the Released Claims and permanently barring and enjoining the institution and prosecution by Derivative Plaintiffs, and their counsel, and all other persons of any action asserting any Released Claim against any of the Released Persons; (iv) whether the amount of attorneys’ fees and expenses to be awarded to Derivative Plaintiffs’ Counsel is fair and reasonable; (v) whether the Service Awards to Derivative Plaintiffs should be approved, and (vi) any other matters that come before the Court. You have an opportunity to be heard at this hearing.

¹ The capitalized terms used in this Notice and not otherwise defined herein shall have the same meaning as in the Stipulation of Settlement (the “Stipulation”) dated October 24, 2018, which is available on the website of Osiris at <http://www.osiris.com>, at the Investors page under the “Corporate Governance” caption.

The Court may adjourn the Settlement Hearing by oral or other announcement at such hearing or make any other adjournment without further notice of any kind. The Court may approve the Settlement with or without modification, enter the Final Order and Judgment, and order the payment of the Fee and Expense Award and Service Awards without further notice of any kind.

The terms and conditions of the proposed Settlement are summarized in this Notice and set forth in full in the Stipulation.

The Court has not determined the merits of Derivative Plaintiffs' claims or Derivative Defendants' defenses. By this Notice, the Court does not express any opinion as to the merits of any claim or defense asserted by any party in the Derivative Actions.

I. BACKGROUND OF THE DERIVATIVE ACTIONS

a. The *Lee* Demand and Action

On February 16, 2016, counsel for Plaintiff Brian Lee wrote to Osiris Chairman Friedli demanding that the Company's Board of Directors (the "Board") initiate litigation against certain of the Company's officers and directors. In response, the Board formed an independent Special Committee to investigate the allegations of the demand. The Special Committee retained the law firm of Saul Ewing LLP to assist it in conducting an extensive investigation into the allegations in the demand.

On May 11, 2017, Plaintiff Lee filed a complaint in the Circuit Court for Howard County, Maryland captioned *Lee v. Friedli, et al.*, Case No. 13-C-171111441 (Cir. Ct. Md. 2017), derivatively on behalf of Osiris, against certain current and former directors and executive officers of Osiris—Friedli, Debrabandere, Gutzwiller, Jacoby, Law, and Montgomery—alleging that those individuals breached their fiduciary duties through a lack of oversight relating to the alleged filing of misleading statements with the United States Securities and Exchange Commission ("SEC"), including registration statements, prospectuses, and statements of additional information dating

from as early as May 12, 2014, as well as in annual, semi-annual, and quarterly reports, written press releases, letters, and other written communications, and also in oral communications, including communications by the individual defendants to investors on conference calls and in statements to analysts. On or about December 8, 2017, the Company's Special Committee informed counsel for Plaintiff Lee that his demand had been refused by the Company's Board.

b. The *Connelly* Action

On March 2, 2016, Plaintiff Kevin Connelly filed a complaint in the Circuit Court for Howard County, Maryland captioned *Connelly v. Debrabandere, et al.*, Case No. 13-C-16106815 (Cir. Ct. Md. 2016), derivatively on behalf of Osiris, against certain current and former directors and certain former executive officers of Osiris—Debrabandere, Jacoby, Friedli, Moyes, Yves Huwyler (“Huwyler”), and Klingemann—alleging that those individuals breached their fiduciary duties through a lack of oversight, engaged in gross mismanagement of the Company, and were unjustly enriched as a result of failing to disclose that Osiris had filed misleading statements with the SEC, and that making a demand on the Board would have been futile. On March 12, 2018, Plaintiff Connelly filed an amended complaint with substantially similar allegations.

c. The Kort Demand

By letter dated April 4, 2016, counsel for Gregory Kort, a putative shareholder of the Company, made a demand that the Company address certain alleged breaches of fiduciary duty by officers and directors of the Company (the “Kort Demand”). On or about December 8, 2017, the Special Committee informed counsel for Mr. Kort that his demand had been refused by the Board.

d. The *Salley* Demand and Action

On November 15, 2016, counsel for Plaintiff Todd Salley made a demand to the Board that the Company address certain alleged breaches of fiduciary duty by officers and directors of the

Company. The Special Committee informed counsel for Plaintiff Salley on or about December 8, 2017, that his demand had been refused by the Board.

On December 21, 2017, Plaintiff Salley filed a complaint in the above-captioned matter, derivatively on behalf of Osiris, against certain current and former directors and certain former executive officers of Osiris—Debrabandere, Montgomery, Jacoby, Law, Friedli, Gutzwiller, Moyers, and Klingemann—alleging that those individuals breached their fiduciary duties through a lack of oversight relating to the alleged filing of misleading statements filed with the SEC. Plaintiff Salley also alleged that certain current and former directors and certain former executive officers engaged in gross mismanagement of Osiris and were unjustly enriched as a result of failing to disclose that Osiris had filed misleading statements with the SEC, and that they failed to maintain adequate internal controls over Osiris' financial reporting. Finally, Plaintiff Salley alleged that his demand was wrongfully refused by the Board.

e. The *Recupero* Action

On February 9, 2017, Plaintiff Elizabeth Recupero filed a complaint in the United States District Court for the District of Maryland captioned *Recupero v. Friedle, et al.*, Case No. 17-cv-00381 (D. Md. 2017), derivatively on behalf of Osiris, against certain current and former directors of Osiris—Friedli, Moyes, Huwyler, and Brandt—alleging that those individuals breached their fiduciary duties through a lack of oversight, engaged in gross mismanagement of the Company, and were unjustly enriched as a result of failing to disclose that Osiris had filed misleading statements with the SEC, and that making a demand on the Board would have been futile. On April 5, 2018, an amended complaint was filed on behalf of Plaintiffs Recupero and Ray Morrison.

II. SETTLEMENT NEGOTIATIONS AND STATUS OF THE DERIVATIVE ACTIONS

Counsel for Osiris and for the plaintiffs in the *Connelly*, *Recupero*, *Lee*, and *Salley* Actions (collectively with the Kort Demand, the “Derivative Actions”), have engaged in extensive arm’s-length discussions and negotiations, both telephonically and in writing, concerning a possible settlement of the Derivative Actions based on certain corporate governance reforms.

After such arm’s-length negotiations, Derivative Plaintiffs’ Counsel and counsel for the Derivative Defendants reached an agreement concerning a proposed settlement of the Derivative Actions, the terms of which are set forth in the Stipulation (and summarized herein).

As a result of this agreement, the Settling Parties moved to stay all proceedings in the Derivative Actions other than the *Lee* Action, except for settlement-related proceedings, pending final approval of the Settlement by the Court. In the *Lee* Action, in the interest of avoiding unnecessary expense in prosecuting the action, the parties filed a Stipulation of Voluntary Dismissal Without Prejudice on August 15, 2018. In a separate letter agreement, the parties agreed that, should the instant Settlement not fully resolve the claims in the *Lee* Action for any reason, Plaintiff Lee may refile his lawsuit in the Circuit Court for Howard County. The defendants in the *Lee* Action waived and agreed not to assert any and all defenses that could be related to the voluntary dismissal, including, but not limited to any defense related to any statute of limitations or statute of repose. On August 16, 2018, the court closed the *Lee* Action.

III. SUMMARY OF THE SETTLEMENT TERMS

The terms and conditions of the proposed Settlement are set forth fully in Section VI of the Stipulation. The following is only a summary of its terms.

Pursuant to the Settlement of the Derivative Actions, Osiris has or shall within 30 days after the Court’s entry of the Final Order and Judgment implement certain corporate governance

reforms, which shall remain in effect for no less than three (3) years from the Effective Date of the Settlement. Specifically, Osiris has or will make the following changes to the Company's policies and procedures, which will serve to improve the Company's compliance with applicable laws and regulations, and enhance Board oversight of the Company's compliance function:

- a. Compensation Clawback Policy: Osiris shall adopt a compensation clawback policy that is consistent with the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. That policy will apply prospectively from the date of adoption. Osiris will also adopt a policy that any future executive officer employment agreements will not contain terms that are inconsistent with the new compensation clawback policy, as in effect from time to time.
- b. Majority Voting: The Board submitted to the Company's shareholders at its last annual meeting a proposal (which was approved) to amend Section 7 of the Company's bylaws to provide that all director nominees must receive the affirmative vote of a majority of votes cast in order to be elected or reelected in an uncontested election. The bylaw provision also provides that any incumbent director who fails to receive the affirmative vote of a majority of votes cast shall tender his or her resignation to the Board. The Nominating Committee will make a recommendation to the Board as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board will act on the tendered resignation, taking into account the Nominating Committee's recommendation, and publicly disclose (by a press release, a filing with the SEC or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within 90 days from the date of the certification of the election results.
- c. Removal of Directors: The Board submitted to the Company's shareholders at its last annual meeting a proposal (which was approved) to amend Section 5.7 of the Company's Articles of Restatement to provide that directors may be removed, with or without cause, by an affirmative vote of a majority of votes cast.
- d. Related-Person Transaction Policy: The Board shall adopt a related-person transaction policy consistent with the disclosure contained in the Form 8-K filed by Osiris with the SEC on March 27, 2017. That policy shall be posted on the Investors page of the Company's website and will be described in the Company's proxy statement for its annual meeting.
- e. Audit Committee Charter: The Board shall amend the Audit Committee Charter as follows:

Section III shall be revised to replace the word "periodically" with "quarterly."

Section IV (A) (6) shall be revised to provide for the annual review of significant changes to generally accepted accounting principles ("GAAP").

Section IV (A) (9) shall be revised to provide for the Audit Committee’s annual review of management’s anti-fraud program.

Section IV (A) (10) shall be revised to replace “approve” with “review.”

Section IV (C) (1) shall be revised to replace “annually” with “quarterly.”

Section IV (C) (2) shall be revised to provide for the Company’s annual review of efficacy of its procedures for (a) any complaints received by the company regarding accounting, internal accounting control or auditing matters, and (b) the confidential anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters.

Section IV (C) (2) shall be revised to provide for the Company’s General Counsel to provide quarterly reports to the Audit Committee regarding the status and/or outcome of any pending complaints or confidential submissions that have been submitted (a) to the Audit Committee and/or (b) reported within the Company through other means.

Section IV (C) (3) shall be revised to provide for the Audit Committee’s quarterly review of any investigations as to fraud, irregularities or failure to adhere to internal controls.

Section IV (C) (4) shall be revised to provide for the Audit Committee’s annual review of the Company’s codes of conduct.

A requirement shall be adopted providing that the Audit Committee shall meet quarterly with Company management (including the CEO and CFO) and the Company’s independent auditor to review the adequacy of the information that is provided to the Audit Committee for it to perform its functions.

A requirement shall be added providing that all action taken by the Audit Committee shall be reported to the Board at the next Board meeting following such action, to the extent such reporting requirement is not covered above or does not currently exist in the Audit Committee Charter.

- f. Corporate Governance Principles: The Company’s Corporate Governance Principles shall be revised as follows:

Section I shall be revised to mandate annual review of the Corporate Governance Principles by the Board.

Section VII shall be revised to provide that the chairpersons of each Board committee shall report the substance, including any actions taken of each committee meeting to the full Board at the next annual meeting.

The composition of each Board committee and each committee charter shall be displayed on the Investor page of the Company's website and updated promptly when changes are made.

- g. Whistleblower Hotline and Policy: The Company shall continue to maintain its anonymous reporting policy as amended herein. The policy shall be amended to provide that concerns of any nature, not just accounting or auditing matters, may be reported anonymously to the Company's existing whistleblower hotline and/or secure web form. The policy shall also be amended to mandate that non-retaliation policies are strictly complied with to protect any Osiris employee who reports a complaint via the hotline, email to the Audit Committee, or secure web form.

These changes and enhancements were made, in material part, to augment the Board's oversight and address certain matters alleged or asserted in the Derivative Actions.

IV. RELEASES AND DISMISSAL

The Settlement calls for Releasing Parties, including Derivative Plaintiffs (on behalf of themselves, all Current Osiris Shareholders and, derivatively, on behalf of Osiris), their Related Persons, and anyone making claims through or on behalf of any of them, to release any and all of the Released Claims against each and all of the Released Persons, as defined in the Stipulation. The term "Released Claims" shall collectively mean any and all claims for relief (including "Unknown Claims" as defined in the Stipulation), rights, demands, causes of action, liabilities, debts, obligations, matters, issues, and suits of every nature and description whatsoever, including without limitation, claims for negligence, gross negligence, breach of duty of care and/or breach of duty of loyalty, fraud or breach of fiduciary duty, abuse of control, or corporate waste, or violations of the common law, administrative rule or regulation, or any state or federal statute, rule, or regulation, whether direct or class, arbitrable or non-arbitrable, known or unknown, contingent or absolute, matured or unmatured, discoverable or undiscoverable, whether or not concealed or hidden, whether based on federal, state, local, statutory, foreign or common law or any other law, rule, or regulation, including Unknown Claims, that have been alleged or asserted or could have been alleged or asserted in any pleading or forum by any of the Derivative Plaintiffs

(or any other Osiris shareholder derivatively on behalf of Osiris), Osiris, or any of the Derivative Plaintiffs' Counsel against any Released Person based upon, arising from, or relating in any way whatsoever to (i) any of the claims, facts, events, transactions, occurrences, acts, disclosures, statements, alleged omissions or failures to act, or any other circumstance alleged (or that could have been alleged), set forth, or referred to by Derivative Plaintiffs in the Derivative Actions or which relate to the subject matter of the Derivative Actions, or (ii) the settlement of the Derivative Actions. For the avoidance of doubt, "Released Claims" shall include Plaintiff Lee's claims that were voluntarily dismissed.

Excluded from the term "Released Claims" are all claims, rights, or causes of action or liabilities whatsoever related to the enforcement of the Settlement, including, without limitation, any of the terms of the Stipulation or orders or judgments issued by the courts in connection with this Settlement. Also excluded from the term "Released Claims" are all claims asserted in the *Nallagonda* Action (which the Settling Parties understand are covered by a separate settlement that has been preliminarily approved by the Court in that action).

Should the Court approve the Settlement and enter the Final Order and Judgment in the above-captioned matter, all of Plaintiff Salley's Released Claims against the Derivative Defendants shall be dismissed with prejudice and the Released Persons shall be released from the Released Claims. Further, within ten (10) business days of the Court entering the Final Order and Judgment, counsel for Plaintiffs Recupero and Connelly shall request that the courts in which their respective lawsuits are pending dismiss the actions with prejudice.

V. DERIVATIVE PLAINTIFFS' COUNSEL'S POSITION CONCERNING SETTLEMENT

Derivative Plaintiffs' Counsel believe that the claims asserted in the Derivative Actions have substantial merit yet support settling the Derivative Actions because they believe that a

settlement of the Derivative Actions on the terms provided for in the Stipulation is fair, reasonable, and adequate and provides substantial benefits to the Company and its shareholders based upon the terms and procedures outlined therein (and summarized herein).

Derivative Plaintiffs' Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as the Derivative Actions, as well as the difficulties and delays inherent in such litigation. Derivative Plaintiffs' Counsel are also mindful of the inherent problems of proof and the possible defenses to the claims alleged in the Derivative Actions.

VI. DERIVATIVE DEFENDANTS' POSITION CONCERNING SETTLEMENT

With the exception of the Jacoby Plea entered in the criminal action styled *USA v. Jacoby*, No. 1:17-cv-00676 (S.D.N.Y.), the Derivative Defendants have denied, and continue to deny, each and all of the claims and contentions alleged in the Derivative Actions, and the Derivative Defendants expressly have denied and continue to deny that they have committed, threatened to commit, aided and abetted the commission of, or controlled any person or entity with respect to any breach of duty or contractual obligation or violation of law alleged or that could have been alleged, or engaged in any of the alleged wrongful acts alleged or that could have been alleged, and expressly maintain that they diligently and scrupulously complied at all times with their fiduciary and other legal duties.

The Derivative Defendants entered into the Stipulation solely because the Settlement would eliminate the burden, expense, and uncertainties inherent in further litigation. The Derivative Defendants believe that the settlement of the Derivative Actions on the terms provided for in the Stipulation is fair, reasonable, and adequate based upon the terms and procedures outlined therein.

Osiris acknowledges that the initiation and prosecution of the Derivative Actions and discussions with Derivative Plaintiffs' Counsel were a material cause of the adoption and implementation of the governance reforms described in the Stipulation, and that such reforms confer a substantial benefit on the Company.

As set forth in additional detail in the Stipulation, neither the Stipulation, nor any of its terms or provisions, nor entry of the Final Order and Judgment, nor any document or exhibit referred in or attached to the Stipulation, nor any action taken to carry out the Stipulation, is, may be construed as, or may be used as evidence of the validity of any of the Released Claims, or an admission by or against the Derivative Defendants of any fault, wrongdoing, or concession of liability.

VII. DERIVATIVE PLAINTIFFS' COUNSEL'S ATTORNEYS' FEES AND EXPENSE AWARD AND SERVICE AWARDS FOR DERIVATIVE PLAINTIFFS

Derivative Plaintiffs' Counsel have asked the Court to approve an agreed-to award of attorneys' fees and expenses that have been incurred or will be incurred in connection with the Derivative Actions in the amount of \$900,000.00 (the "Fee and Expense Award"), as appropriate consideration for the substantial benefits conferred upon Osiris as a result of the prosecution and settlement of the Derivative Actions. In addition, Derivative Plaintiffs' Counsel may apply to the Court for an aggregate service award to be paid to the named plaintiffs in the Derivative Actions in recognition of their participation and efforts in the prosecution of the Derivative Actions (the "Service Awards"). The Service Awards shall only be paid if approved by the Court, and any Service Awards approved by the Court shall be funded from the Fee and Expense Award distributed to Derivative Plaintiffs' Counsel.

VIII. THE RIGHT TO BE HEARD AT THE SETTLEMENT HEARING

Any Current Osiris Shareholder may appear at the Settlement Hearing and show cause, if he, she, or it has any reason why the Settlement of the Derivative Actions embodied in the Stipulation should not be approved as fair, reasonable, and adequate, or why the Final Order and Judgment should or should not be entered, or why the Fee and Expense Award or Service Awards should not be awarded (an “Objection”).

To object, the shareholder must: (a) file a written Objection, stating the case name and number, *Salley v. Osiris Therapeutics, et al.*, Case No. 17-cv-03777, and stating all reasons for the Objection; (b) give proof of current ownership of Osiris stock as well as documentary evidence of when such stock ownership was acquired; (c) clearly identify any and all evidence that would be presented at the Settlement Hearing in connection with such Objections; and (d) identify any case, by name, court, and docket number, in which the objector or his, her, or its attorney, if any, has objected to a settlement in the last three years. Any written Objections shall be filed with Clerk of the Court at least fourteen (14) calendar days prior to the Settlement Hearing, at the below address:

CLERK OF COURT

Edward A. Garmatz United States Courthouse,
101 W. Lombard Street,
Baltimore, MD 21201

and copies of such Objections shall be served at the same time upon the following by first-class mail:

Counsel for Plaintiff Salley:

Melissa Fortunato
Bragar Eigel & Squire, P.C.
885 Third Ave.
New York, NY 10022

Counsel for Nominal Defendant Osiris:

Scott Haiber
Hogan Lovells US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202

Any Current Osiris Shareholder wishing to be heard at the Settlement Hearing is required to include a notice of intention to appear at the Settlement Hearing together with his, her, or its written Objection.

Unless the Court otherwise directs, any Current Osiris Shareholder who does not make his, her, or its Objection in the manner provided in the preceding paragraph of this Notice shall be deemed to have waived such objection, shall be bound by the Final Order and Judgment, and shall forever be foreclosed from (a) making any objections to the fairness, adequacy, or reasonableness of the Settlement, or (b) making any objections to the fairness and reasonableness of the Fee and Expense Award or Service Awards.

IX. CONDITIONS FOR SETTLEMENT

The Settlement is conditioned on the occurrence of certain events described in the Stipulation, including: (a) entry of the Final Order and Judgment by the Court; (b) dismissal with prejudice of the *Recupero* and *Connelly* Actions. If, for any reason, any one of the conditions described in the Stipulation is not met and the entry of the Final Order and Judgment does not occur, the Stipulation might be terminated and, if terminated, will become null and void and the parties to the Stipulation will be restored to their respective positions as of October 24, 2018.

X. EXAMINATION OF PAPERS AND INQUIRIES

This Notice contains a summary of the terms of the Settlement. For a more detailed statement of the matters involved in the Actions, reference is made to the Stipulation, which is available on Osiris' website at <http://www.osiris.com> at the Investors page or may be inspected at the Clerk of the Court's office at the Edward A. Garmatz United States Courthouse, 101 W. Lombard Street, Baltimore, MD 21201, during business hours each day.

Any other inquiries regarding the Settlement or the Derivative actions should be addressed in writing to the following:

Counsel for Plaintiff Salley:

Melissa Fortunato
Bragar Egel & Squire, P.C.
885 Third Ave.
New York, NY 10022

Counsel for Nominal Defendant Osiris:

Scott Haiber
Hogan Lovells US LLP
100 International Drive, Suite 2000
Baltimore, MD 21202

PLEASE DO NOT TELEPHONE THE COURT OR ANY REPRESENTATIVE OF OSIRIS REGARDING THIS NOTICE