

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN L. DOUGHERTY, Individually and on Behalf of All Others Similarly Situated,)	Civ. No. 2:16-cv-10089-AJT-RSW
)	
Plaintiff,)	<u>CLASS ACTION</u>
)	
vs.)	
)	
ESPERION THERAPEUTICS, INC., et al.,)	
)	
Defendants.)	
)	

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED ESPERION THERAPEUTICS, INC. (“ESPERION” OR THE “COMPANY”) COMMON STOCK BETWEEN AUGUST 18, 2015 AND SEPTEMBER 28, 2015, INCLUSIVE, AND WERE ALLEGEDLY DAMAGED THEREBY

**A FEDERAL COURT HAS AUTHORIZED THIS NOTICE.
IT IS NOT A SOLICITATION FROM A LAWYER.**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THE SETTLEMENT PROCEEDS, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM (“PROOF OF CLAIM”) **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE SEPTEMBER 24, 2021.**

This Notice of Pendency and Proposed Settlement of Class Action (“Notice”)¹ has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an order of the United States District Court for the Eastern District of Michigan (the “Court”). The purpose of this Notice is to inform you of the pendency of this class action (the “Litigation”) between Class Representatives Ronald E. Wallace and Walter J. Minett and Esperion and Tim M. Mayleben (“Defendants”) and the proposed \$18,250,000 settlement reached therein (the “Settlement”) and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement as well as Class Counsel’s application for fees and expenses. This Notice describes what steps you may take in relation to the Settlement and this class action.

This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Litigation as to any of the Defendants or the merits of the claims or defenses asserted by or against the Defendants. This Notice is solely to advise you of the proposed Settlement of the Litigation and of your rights in connection therewith.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	The only way to be eligible to receive a payment from the Settlement. Proofs of Claim must be postmarked or submitted online on or before September 24, 2021.
EXCLUDE YOURSELF	Get no payment. This is the only option that <i>potentially</i> allows you to ever be part of any other lawsuit against the Defendants or any other Released Defendants Parties about the legal claims being resolved by this Settlement. Should you elect to exclude yourself from the Class you should understand that Defendants and the other Released Defendants Parties will have the right to assert any and all defenses they may have to any claims that you may seek to assert, including, without limitation, the defense that any such claims are untimely under applicable statutes of limitations and statutes of repose. Exclusions must be received on or before August 2, 2021.
OBJECT	Write to the Court about why you do not like the Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and expenses. You will still be a Member of the Class. Objections must be received by the Court and counsel on or before August 2, 2021. If you submit a written objection, you may (but do not have to) attend the hearing.

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation of Settlement dated April 26, 2021 (the “Stipulation”), which is available on the website www.EsperionSecuritiesSettlement.com.

GO TO THE HEARING ON AUGUST 23, 2021	Ask to speak in Court about the fairness of the Settlement. Requests to speak must be received by the Court and counsel on or before August 2, 2021.
DO NOTHING	Receive no payment. You will, however, still be a Member of the Class, which means that you give up your right to ever be part of any other lawsuit against the Defendants or any other Released Defendants Parties about the legal claims being resolved by this Settlement and you will be bound by any judgments or orders entered by the Court in the Litigation.

SUMMARY OF THIS NOTICE

Statement of Class Recovery

Pursuant to the Settlement described herein, an \$18.25 million settlement has been reached in this Litigation. Based on Class Representatives' estimate of the number of Esperion shares eligible to recover under the Settlement, the average distribution per share under the Plan of Allocation is approximately \$3.38 before deduction of any taxes on the income earned on the Settlement Amount thereof, notice and administration costs, and the attorneys' fees and expenses as determined by the Court. **Class Members should note, however, that these are only estimates.** A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that claimant's claims as compared to the total claims of all Class Members who submit acceptable Proofs of Claim. An individual Class Member may receive more or less than this estimated average amount. See Plan of Allocation set forth and discussed at pages 9-11 below for more information on the calculation of your claim.

Statement of Potential Outcome of Case

The Settling Parties disagree on both liability and damages and do not agree on the amount of damages that would be recoverable if the Class prevailed on each claim alleged. Throughout this Litigation, Defendants have denied, and continue to deny, any and all allegations of fault, liability, wrongdoing or damages whatsoever. Defendants deny that they are liable to the Class and deny that the Class has suffered any damages. The Settling Parties disagree on numerous issues, including, but not limited to: (1) whether Defendants engaged in conduct that would give rise to any liability to the Class under the federal securities laws; (2) whether Defendants have valid defenses to any such claims of liability; (3) the appropriate economic model for determining the amount by which the price of Esperion common stock was allegedly artificially inflated (if at all) during the Class Period; (4) the amount, if any, by which the price of Esperion common stock was allegedly artificially inflated (if at all) during the Class Period; (5) the effect of various market forces on the price of Esperion common stock at various times during the Class Period; (6) the extent to which external factors influenced the price of Esperion common stock at various times during the Class Period; (7) the extent to which the various matters that Class Representatives alleged were materially false or misleading influenced (if at all) the price of Esperion common stock at various times during the Class Period; and (8) the extent to which the various allegedly adverse material facts that Class Representatives alleged were omitted influenced (if at all) the price of Esperion common stock at various times during the Class Period.

Statement of Attorneys' Fees and Expenses Sought

Since the Litigation's inception, Class Counsel have expended considerable time and effort in the prosecution of this Litigation on a wholly contingent basis and have advanced the expenses of the Litigation in the expectation that if they were successful in obtaining a recovery for the Class, they would be paid from such recovery. Class Counsel will apply to the Court for an award of attorneys' fees to Lead Plaintiffs' Counsel not to exceed 32.5% of the Settlement Amount, plus expenses not to exceed \$1,000,000, plus interest earned on both amounts at the same rate as earned by the Settlement Fund. If the amounts requested are approved by the Court, the average cost per Esperion common stock will be approximately \$1.28.

Further Information

For further information regarding the Litigation, this Notice or to review the Stipulation of Settlement, please contact the Claims Administrator toll-free at 1-866-246-1515, or visit the website www.EsperionSecuritiesSettlement.com.

You may also contact a representative of counsel for the Class: Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, www.rgrdlaw.com, or Alexander Burns, Esq., Kahn Swick & Foti, LLC, 1100 Poydras Street, Suite 3200, New Orleans, LA 70163, (504) 455-1400, www.ksfcounsel.com.

Please Do Not Call the Court or Defendants with Questions About the Settlement.

Reasons for the Settlement

Class Representatives' principal reason for entering into the Settlement is the substantial and immediate benefit to the Class, without further risk or the delays inherent in continued litigation. The cash benefit under the Settlement must be considered against the significant risk that a smaller recovery—or, indeed, no recovery at all—might be achieved after contested motions, trial, and likely appeals, a process that could last several years into the future. Defendants have denied and continue to deny all allegations of liability, fault, or wrongdoing arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. For Defendants, the principal reason for entering into the Settlement is to eliminate the uncertainty, risk, costs, and burdens inherent in any litigation. Defendants have concluded that further conduct of this Litigation could be protracted and distracting.

BASIC INFORMATION

1. Why did I get this Notice package?

This Notice was sent to you pursuant to an Order of a U.S. District Court because you or someone in your family or an investment account for which you serve as custodian may have purchased or otherwise acquired Esperion common stock during the period between August 18, 2015 and September 28, 2015, inclusive (the “Class Period”).

This Notice explains the class action lawsuit, the Settlement, Class Members’ legal rights in connection with the Settlement, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the Litigation is the United States District Court for the Eastern District of Michigan, and the case is known as *Dougherty v. Esperion Therapeutics, Inc., et al.*, Civ. No. 2:16-cv-10089-AJT-RSW. The case has been assigned to the Honorable Arthur J. Tarnow. The individuals representing the Class are the “Class Representatives,” and the Company and individual they sued and who have now settled are called the “Defendants.”

2. What is this lawsuit about?

The Amended Complaint for Violation of the Federal Securities Laws (the “Complaint”), filed on May 20, 2016, alleges that Defendants violated §§10(b) and 20(a) of the Securities Exchange Act of 1934. More specifically, the Complaint alleges that between August 17, 2015 and September 28, 2015, inclusive, Defendants allegedly made materially false and misleading statements and/or failed to disclose adverse information concerning the Food and Drug Administration (“FDA”) approval process for its product under development to lower LDL-cholesterol, conveyed to Esperion during the August 11, 2015 End-of-Phase 2 meeting with the FDA, which according to the Complaint, caused the price of Esperion common stock to trade at artificially inflated prices, until the market learned of the alleged false and misleading statements or omissions, and the Company’s stock price declined. Defendants deny each and all of Class Representatives’ allegations. Defendants contend that they did not make any false or misleading statements, that they disclosed all information required to be disclosed by the federal securities laws, and that they did not act with recklessness or with the intent to manipulate, deceive or defraud investors. Defendants also maintain that they have meritorious defenses to all claims that were raised or could have been raised in the Litigation, and that any losses allegedly suffered by Members of the Class were not caused by any allegedly false or misleading statements by them and/or were caused by intervening events.

On December 27, 2016, the Court granted Defendants’ motion to dismiss the Complaint. On June 19, 2017, Class Representatives appealed the dismissal to the U.S. Court of Appeals for the Sixth Circuit. On September 27, 2018, the Sixth Circuit reversed the Court’s dismissal.

On June 6, 2019, Class Representatives filed their motion to certify the action as a class action. On November 19, 2020, the Court granted the motion to certify the Class, appointing Ronald E. Wallace and Walter J. Minett as Class Representatives and Robbins Geller Rudman & Dowd LLP and Kahn Swick & Foti, LLC as Class Counsel.

The Settling Parties have engaged in extensive discovery, including the production and review of non-public documents and the taking of depositions. The Settling Parties have also retained experts on the various issues raised in the Litigation.

The Class Representatives and Defendants filed cross motions for summary judgment on September 15, 2020, and oppositions were filed on October 23, 2020. Reply briefs were filed on November 20, 2020.

On May 2, 2019, the Settling Parties attended an in-person mediation with Michelle Yoshida, Esq. of Phillips ADR. In advance of the mediation, the Settling Parties exchanged and provided to Ms. Yoshida detailed mediation statements. Although the Settling Parties negotiated in good faith, no settlement was reached, and litigation efforts continued. On November 3, 2020, the Settling Parties attended a mediation, via video conference, with the Hon. Gerald E. Rosen (Ret.), a retired federal district judge from the Eastern District of Michigan and an experienced mediator. In advance of the mediation, the Settling Parties exchanged and provided to Judge Rosen detailed mediation statements. The Settling Parties negotiated in good faith, but no settlement was reached, and litigation continued. Settlement discussions continued through Judge Rosen, and on March 12, 2021, the Settling Parties reached an agreement-in-principle to resolve the Litigation, and executed a Term Sheet memorializing their agreement. The agreement included, among other things, the Settling Parties’ agreement to settle the Litigation in return for a cash payment of \$18,250,000 for the benefit of the Class, subject to the negotiation of the terms of a Stipulation of Settlement and approval by the Court. The Stipulation (together with the Exhibits thereto) reflects the final and binding agreement between the Settling Parties.

3. Why is there a settlement?

The Court has not decided in favor of Defendants or of the Class Representatives. Instead, both sides agreed to the Settlement to avoid the distraction, costs, and risks of further litigation, and Class Representatives agreed to the Settlement in order to ensure that Class Members will receive compensation.

WHO IS IN THE SETTLEMENT

4. How do I know if I am a Member of the Class?

The Court directed that everyone who fits this description is a Class Member: all Persons who purchased or otherwise acquired Esperion common stock during the Class Period, and were allegedly damaged thereby.

Excluded from the Class are: Defendants, the officers and directors of Esperion, members of their immediate families, their legal representatives, heirs, successors and assigns, and any entity in which Defendants have or had a controlling interest. Also excluded from the Class is any Person who would otherwise be a Member of the Class but who validly and timely requests exclusion in accordance with the requirements set forth in question 11 below.

Please Note: Receipt of this Notice does not mean that you are a Class Member or that you will be entitled to receive a payment from the Settlement. If you are a Class Member and you wish to be eligible to participate in the distribution of proceeds from the Settlement, you are required to submit the Proof of Claim that is being distributed with this Notice and the required supporting documentation as set forth therein postmarked or submitted online on or before September 24, 2021.

5. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at 1-866-246-1515, or you can fill out and return the Proof of Claim enclosed with this Notice package to see if you qualify.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the Settlement provide?

The Settlement provides that, in exchange for the release of the Released Claims (defined below) and dismissal of the Litigation, Defendants will pay \$18.25 million in cash to be distributed to Class Members who send in a valid Proof of Claim, on a *pro rata* basis pursuant to the Court-approved Plan of Allocation less any taxes, tax expenses, notice and claims administration expenses, and approved fees and expenses. The Plan of Allocation is described in more detail at the end of this Notice.

7. How much will my payment be?

At this time, it is not possible to make any determinations as to how much any individual Class Member may receive from the Settlement. Your share of the Net Settlement Fund will depend on several things, including the total dollar amount of claims represented by the valid Proofs of Claim that Class Members send in, compared to the dollar amount of your claim, all as calculated under the Plan of Allocation discussed below.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

8. How can I get a payment?

To be eligible to receive a payment from the Settlement, you must submit a Proof of Claim. A Proof of Claim form is enclosed with this Notice. It may also be downloaded at www.EsperionSecuritiesSettlement.com. Read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and **mail or submit it online so that it is postmarked or received no later than September 24, 2021**. The Proof of Claim may be submitted online at www.EsperionSecuritiesSettlement.com.

9. When would I get my payment?

The Court will hold a Settlement Hearing on August 23, 2021, at 3:00 p.m., to decide whether to approve the Settlement. If the Court approves the Settlement, there might be appeals. It is always uncertain whether appeals can be resolved, and if so, how long it would take to resolve them. It also takes time for all the Proofs of Claim to be processed. Please be patient.

10. What am I giving up to get a payment or to stay in the Class?

Unless you timely and validly exclude yourself, you are staying in the Class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or the Released Defendants Parties (as defined below) about the Released Claims (as defined below).² It also means that Court's orders and the Judgment will apply to you and legally bind you. If you remain a Class Member, and if the Settlement is approved, you will give up all "Released Claims" (as defined below), including "Unknown Claims" (as defined below), against the "Released Persons" (as defined below):

- "Released Claims" means any and all claims, demands, losses, rights, and causes of action of every nature and description whatsoever whether class or individual in nature, including both known claims and Unknown Claims, whether arising under federal, state, common or foreign law, by the Releasing Plaintiffs Parties against any of the Released Defendants Parties, that have been or could have been asserted in the Litigation or could in the future be asserted in any forum, whether foreign or domestic, or which arise out of, are based upon, or relate in any way to (a) any of the allegations, acts, transactions, facts, events, matters, occurrences, statements, representations, misrepresentations, or omissions that were or could have been involved, set forth, alleged or referred to in this Litigation by Class Representatives or Class Members, and (b) the purchase or acquisition of Esperion common stock during the Class Period. "Released Claims" does not include any claims to enforce the Settlement. "Released Claims" includes "Unknown Claims" as defined below.
- "Released Defendants' Claims" means any and all claims and causes of action of every nature and description whatsoever, including both known claims and Unknown Claims (as defined below), against Class Representatives, Lead Plaintiffs' Counsel, or any Class Member that Defendants could have asserted against any of the Releasing Plaintiffs Parties that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Defendants in the Litigation, except for claims relating to the enforcement of the Settlement.
- "Released Defendant Party" or "Released Defendants Parties" or "Released Persons" mean each and all of the Defendants, Defendants' Counsel, and each of their respective past, present or future subsidiaries, parents, divisions, affiliates, principals, and each of Defendants' and Defendants' Counsel's respective present or former principals, assigns, successors, predecessors, joint venturers, officers, directors, underwriters, trustees, partners, members, agents, fiduciaries, contractors, employees, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants or auditors, financial or investment advisors or consultants, banks or investment bankers, personal or legal representatives, estates, heirs, related or affiliated entities, any firm, trust, corporation or entity in which a Defendant has or had a controlling interest during the Class Period; the spouse, members of the immediate family, representatives, and heirs of Defendant Mayleben, as well as any trust of which Defendant Mayleben is a settlor or which is for the benefit of him and/or member(s) of his family, and each of the heirs, executors, administrators, predecessors, successors, and assigns of the foregoing; and the Related Parties.
- "Releasing Plaintiff Party" or "Releasing Plaintiffs Parties" mean each and every Class Member, Class Representatives, Class Counsel, Liaison Counsel, Lead Plaintiffs' Counsel, and each of their respective past or present trustees, officers, directors, partners, employees, contractors, auditors, principals, agents, attorneys, predecessors, successors, affiliates, assigns, insurers, parents, subsidiaries, general or limited partners or partnerships, and limited liability companies; and the spouses, members of the immediate families, representatives, and heirs of any Releasing Plaintiff Party who is an individual, as well as any trust of which any Releasing Plaintiff Party is the settlor or which is for the benefit of any of their immediate family members. Releasing Plaintiffs Parties do not include any Person who timely and validly seeks exclusion from the Class.
- "Related Parties" means each Defendant's respective former, present or future parents, subsidiaries, divisions and affiliates and the respective present and former employees, members, partners, principals, officers, directors, controlling shareholders, agents, attorneys, advisors, accountants, auditors, and insurers and reinsurers of each of them; and the predecessors, successors, estates, immediate family members, spouses, heirs, executors, trusts, trustees, administrators, agents, legal or personal representatives, assigns, and assignees of each of them, in their capacity as such.
- "Unknown Claims" means (a) any and all Released Claims which the Releasing Plaintiffs Parties do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendants Parties, which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Defendants Parties, or might have affected his, her, or its decision(s) with respect to the Settlement, including, but not limited to, whether or not to object to this Settlement or seek exclusion from the Class; and (b) any and all Released Defendants' Claims that the Released Defendants Parties do not

² The Stipulation also provides for certain releases of the Class Representatives, the Class, and Lead Plaintiffs' Counsel. The full terms of the releases can be found in the Stipulation, which can be viewed at www.EsperionSecuritiesSettlement.com.

know or suspect to exist in his, her, or its favor at the time of the release of the Class Representatives, Lead Plaintiffs' Counsel, or any Class Members, which, if known by him, her, or it, might have affected his, her, or its settlement and release of Class Representatives, Lead Plaintiffs' Counsel, or Class Members. With respect to any and all Released Claims and Released Defendants' Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Settling Parties shall expressly waive and each Releasing Plaintiff Party and Released Defendant Party shall be deemed to have, and by operation of the Judgment shall have expressly waived, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Settling Parties shall expressly waive, and each Releasing Plaintiff Party and Released Defendant Party shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542. The Releasing Plaintiffs Parties and Released Defendants Parties acknowledge that they may hereafter discover facts in addition to or different from those which he, she, it, or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims or Released Defendants' Claims, but the Settling Parties shall expressly fully, finally, and forever waive, compromise, settle, discharge, extinguish, and release, and each Releasing Plaintiff Party and Released Defendant Party shall be deemed to have waived, compromised, settled, discharged, extinguished, and released, and upon the Effective Date, and by operation of the Judgment shall have waived, compromised, settled, discharged, extinguished, and released, fully, finally, and forever, any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, heretofore have existed, or may hereafter exist, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Settling Parties acknowledge, and the Releasing Plaintiffs Parties and Released Defendants Parties shall be deemed by operation of the Judgment to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was separately bargained for and is a material element of the Settlement.

EXCLUDING YOURSELF FROM THE CLASS

If you do not want to participate in this Settlement, and you want to keep the right to potentially sue the Defendants and the other Released Persons on your own regarding the claims being released by the Settlement, then you must take steps to remove yourself from the Settlement. This is called excluding yourself—or is sometimes referred to as "opting out." If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this Litigation, you may want to consult an attorney and discuss whether any individual claim that you may wish to pursue would be time-barred by the applicable statutes of limitation or repose.

11. How do I get out of the Class and the proposed Settlement?

To exclude yourself from the Class and the Settlement, you must send a letter by First-Class Mail stating that you "request exclusion from the Class in the *Esperion Securities Settlement*." Your letter must include your purchases or acquisitions of Esperion common stock during the Class Period, including the dates, the number of shares purchased or acquired, and price paid for each such purchase or acquisition. In addition, you must include your name, address, telephone number, and your signature. You must submit your exclusion request so that it is **received no later than August 2, 2021** to:

Esperion Securities Settlement
Claims Administrator
c/o Gilardi & Co. LLC
EXCLUSIONS
150 Royall Street, Suite 101
Canton, MA 02021

If you ask to be excluded, you will not get any payment from the Settlement, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit, and you may be able to sue the Defendants and the other Released Persons about the Released Claims in the future.

12. If I do not exclude myself, can I sue the Defendants and the other Released Persons for the same thing later?

No. Unless you exclude yourself, you give up any rights you may potentially have to sue the Defendants and the other Released Persons for any and all Released Claims. If you have a pending lawsuit against the Released Persons, speak to your lawyer in that case immediately. You may need to exclude yourself from the Class in this Litigation to continue your own lawsuit. Remember, the exclusion deadline is August 2, 2021.

13. If I exclude myself, can I get money from the proposed Settlement?

No. If you exclude yourself, you should not send in a Proof of Claim to ask for any money. But you may have the right to potentially sue or be part of a different lawsuit against the Defendants and the other Released Persons.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

The Court ordered that the law firms of Robbins Geller Rudman & Dowd LLP and Kahn Swick & Foti, LLC represent the Class Members, including you. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers be paid?

Class Counsel will apply to the Court for an award of attorneys' fees not to exceed thirty-two and a half percent (32.5%) of the Settlement Amount and for expenses, costs and charges in an amount not to exceed \$1,000,000 in connection with the Litigation, plus interest on such fees and expenses at the same rate as earned by the Settlement Fund. In addition, Class Representatives may seek up to \$15,000 in the aggregate for their costs and expenses incurred in representing the Class pursuant to 15 U.S.C. §78u-4(a)(4). Such sums as may be approved by the Court will be paid from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or any part of it.

16. How do I tell the Court that I object to the proposed Settlement?

If you are a Class Member, you can comment on or object to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Plaintiffs' Counsel's fee and expense application. You can write to the Court setting out your comment or objection. The Court will consider your views. Any objections, filings, and other submissions by an objecting Class Member must: (i) state the name, address, and telephone number of the Person objecting and must be signed by the objector; (ii) contain a statement of the Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention and whether the objection applies only to the objector, a specific subset of the Class, or to the entire Class; and (iii) include documents sufficient to prove membership in the Class, including the objecting Class Member's purchases, acquisitions, and sales of Esperion common stock during the Class Period, including the dates, the number of shares purchased, acquired or sold, and price paid or received for each such purchase, acquisition, or sale. Your comments or objection must be filed with the Court and mailed or delivered to each of the following addresses such that it is **received no later than August 2, 2021:**

COURT

CLERK OF THE COURT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Theodore Levin U.S. Courthouse
231 W. Lafayette Blvd.
Detroit, MI 48226

CLASS COUNSEL

ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART
655 West Broadway, Suite 1900
San Diego, CA 92101

KAHN SWICK & FOTI, LLC
ALEXANDER BURNS
1100 Poydras Street, Suite 3200
New Orleans, LA 70163

DEFENDANTS' COUNSEL

GOODWIN PROCTER LLP
DEBORAH BIRNBACH
KATHERINE MCKENNEY
100 Northern Avenue
Boston, MA 02210

17. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object **only** if you stay in the Class.

Excluding yourself is telling the Court that you do not want to be paid and do not want to release any claims you think you may have against Defendants and the Released Defendants Parties. If you exclude yourself, you cannot object to the Settlement because it does not affect you.

THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to.

18. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Settlement Hearing at **3:00 p.m., on August 23, 2021**, in the Courtroom of the Honorable Arthur J. Tarnow, at the United States District Court for the Eastern District of Michigan, Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226. At the hearing, the Court will consider whether the Settlement and the Plan of Allocation are fair, reasonable, and adequate. If there are objections, the Court will consider them, even if you do not ask to speak at the hearing. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Lead Plaintiffs' Counsel and Class Representatives, as discussed in question 15. After the Settlement Hearing, the Court will decide whether to approve the Settlement and the Plan of Allocation. We do not know how long these decisions will take. You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Class Members.

In addition, the Coronavirus (COVID-19) is a fluid situation that creates the possibility that the Court may decide to conduct the Settlement Hearing by video or telephonic conference, or otherwise allow Class Members to appear at the hearing by telephone, without further written notice to the Class. **In order to determine whether the date and time of the Settlement Hearing have changed, or whether Class Members must or may participate by telephone or video, it is important that you monitor the Court's docket or the Settlement website, www.EsperionSecuritiesSettlement.com, before making any plans to attend the Settlement Hearing. Any updates regarding the Settlement Hearing, including any changes to the date and time of the hearing or updates regarding in-person or telephonic appearances at the hearing, will be posted to the Settlement website, www.EsperionSecuritiesSettlement.com. Also, if the Court requires or allows Class Members to participate in the Settlement Hearing by telephone, the telephone number for accessing the telephonic conference will be posted to the Settlement website.** If you want to attend the hearing, either in person or telephonically, you should check with Class Counsel or the Settlement website beforehand to be sure that the date and/or time has not changed.

19. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

20. May I speak at the hearing?

If you object to the Settlement, the Plan of Allocation, and/or the fee and expense application, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (see question 16 above) a statement saying that it is your "Notice of Intention to Appear in the *Esperion Securities Settlement*." Persons who intend to object to the Settlement, the Plan of Allocation, and/or any attorneys' fees and expenses to be awarded to Class Counsel and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. Your notice of intention to appear must be **received no later than August 2, 2021**, and addressed to the Clerk of Court, Class Counsel, and Defendants' Counsel, at the addresses listed above in question 16.

You cannot speak at the Settlement Hearing if you exclude yourself from the Class.

IF YOU DO NOTHING

21. What happens if I do nothing?

If you do nothing, you will not receive any money from this Settlement. In addition, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants and the Released Defendants Parties about the Released Claims in this case.

GETTING MORE INFORMATION

22. How do I get more information?

For even more detailed information concerning the matters involved in this Litigation, you can obtain answers to common questions regarding the proposed Settlement by contacting the Claims Administrator toll-free at 1-866-246-1515. This Notice also contains reference to the Stipulation, to the pleadings in support of the Settlement, to the Orders entered by the Court, and to the other Settlement-related papers filed in the Litigation, which are posted on the Settlement website at www.EsperionSecuritiesSettlement.com, and which may be inspected at the Office of the Clerk of the United States District Court for the Eastern District of Michigan, during regular business hours. For a fee, the Court's docket is available at www.pacer.gov.

THE PROPOSED PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS

23. How will my claim be calculated?

As discussed above, the Settlement provides \$18,250,000 in cash for the benefit of the Class. The Settlement Amount and any interest it earns constitute the "Settlement Fund." The Settlement Fund, after deduction of Court-approved attorneys' fees and expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court, is the "Net Settlement Fund." If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants—*i.e.*, Members of the Class who timely submit valid Proofs of Claim—in accordance with this proposed Plan of Allocation ("Plan of Allocation" or "Plan") or such other plan of allocation as the Court may approve. Class Members who do not timely submit valid Proofs of Claim will not share in the Net Settlement Fund but will otherwise be bound by the Settlement. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Class. Any order modifying the Plan of Allocation will be posted on the Settlement website, www.EsperionSecuritiesSettlement.com.

The objective of the Plan of Allocation is to distribute the Settlement proceeds equitably among those Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The Plan of Allocation is not a formal damage analysis, and the calculations made in accordance with the Plan of Allocation are not intended to be estimates of, or indicative of, the amounts that Class Members might have been able to recover after a trial. Nor are the calculations in accordance with the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants under the Settlement. The computations under the Plan of Allocation are only a method to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund.

The Plan of Allocation is intended to compensate Class Members who purchased or acquired Esperion common stock during the period between August 18, 2015 and September 28, 2015, inclusive ("Class Period"), and were allegedly damaged thereby under the Securities Exchange Act of 1934 ("Exchange Act").

For purposes of determining the amount a claimant may recover under the Plan, Class Counsel conferred with their damages expert, and the Plan reflects an assessment of the per share artificial inflation amounts which allegedly were proximately caused by Defendants' alleged false and misleading statements and material omissions. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, the Class Representatives' damages expert considered price changes in Esperion common stock in reaction to public disclosures that allegedly corrected the respective alleged misrepresentations and omissions, adjusting the price changes for factors that were attributable to market or industry forces, and for Company-specific information unrelated to the alleged fraud.

In order to have recoverable damages (a "Recognized Loss") in connection with purchases and/or acquisitions of Esperion common stock during the Class Period, disclosure(s) of the allegedly misrepresented or omitted information must be the proximate cause of the decline in the price of Esperion common stock. In this case, the Class Representatives allege that Defendants made false statements and omitted material facts during the Class Period, which had the effect of artificially inflating the price of Esperion common stock. As the result of the alleged corrective disclosures, the Class Representatives allege that artificial inflation was removed from the price of Esperion common stock on September 29, 2015. In order to have a Recognized Loss under the Plan of Allocation, a Class Member who or which purchased or otherwise acquired Esperion common stock during the Class Period must have held those shares through the date where new corrective information released to the market removed the allegedly artificial inflation from the price of Esperion common stock.

To the extent there are sufficient funds in the Net Settlement Fund, each claimant will receive an amount equal to the claimant's "Recognized Loss," as described below. If, however, as expected, the amount in the Net Settlement Fund is not sufficient to permit payment of the total Recognized Loss of each claimant, then each claimant shall be paid the percentage of the Net Settlement Fund that each claimant's Recognized Loss bears to the total of the Recognized Loss of all claimants—*i.e.*, the claimant's *pro rata* share of the Net Settlement Fund.

For each Class Period purchase of Esperion common stock that is properly documented, a "Recognized Loss" will be calculated according to the formulas described below. If a Recognized Loss Amount calculates to a negative number or zero under the formulas below, that Recognized Loss Amount will be zero.

A claim will be computed as follows:

For each share of Esperion publicly traded common stock purchased or otherwise acquired from August 18, 2015 through September 28, 2015, inclusive, and:

- a) sold before September 29, 2015, the Recognized Loss Amount for each share shall be zero;
- b) sold from September 29, 2015 through and including the close of market trading on December 24, 2015, the Recognized Loss Amount for each share is **the lesser of**: (i) \$12.21, the amount of artificial inflation per share; or (ii) the purchase/acquisition price per share **minus** the average closing price of Esperion common stock between September 29, 2015 and the date of sale as stated in Table 1 below;
- c) held as of the close of market trading on December 24, 2015, the Recognized Loss Amount for each share is **the lesser of**: (i) \$12.21, the amount of artificial inflation per share; or (ii) the purchase/acquisition price **minus** \$25.26, the average closing price of Esperion common stock between September 29, 2015 and December 24, 2015, as shown on the last row of Table 1 below.

TABLE 1
90-Day Look-back Table for Esperion Common Stock
Closing Price and Average Closing Price
September 29, 2015 through December 24, 2015

Date	Closing Price	Average Closing Price between September 29, 2015 and Date Shown	Date	Closing Price	Average Closing Price between September 29, 2015 and Date Shown
9/29/2015	\$18.33	\$18.33	11/11/2015	\$28.13	\$24.63
9/30/2015	\$23.59	\$20.96	11/12/2015	\$26.60	\$24.69
10/1/2015	\$23.82	\$21.91	11/13/2015	\$26.61	\$24.75
10/2/2015	\$26.80	\$23.14	11/16/2015	\$26.90	\$24.81
10/5/2015	\$24.97	\$23.50	11/17/2015	\$25.78	\$24.84
10/6/2015	\$24.07	\$23.60	11/18/2015	\$27.72	\$24.92
10/7/2015	\$24.74	\$23.76	11/19/2015	\$26.44	\$24.96
10/8/2015	\$24.14	\$23.81	11/20/2015	\$26.23	\$24.99
10/9/2015	\$24.96	\$23.94	11/23/2015	\$27.47	\$25.05
10/12/2015	\$24.31	\$23.97	11/24/2015	\$27.81	\$25.12
10/13/2015	\$22.19	\$23.81	11/25/2015	\$28.20	\$25.19
10/14/2015	\$21.96	\$23.66	11/27/2015	\$28.59	\$25.27
10/15/2015	\$24.39	\$23.71	11/30/2015	\$28.41	\$25.34
10/16/2015	\$23.11	\$23.67	12/1/2015	\$29.15	\$25.43
10/19/2015	\$23.51	\$23.66	12/2/2015	\$29.82	\$25.52
10/20/2015	\$22.80	\$23.61	12/3/2015	\$27.15	\$25.56
10/21/2015	\$22.51	\$23.54	12/4/2015	\$27.81	\$25.60
10/22/2015	\$22.35	\$23.48	12/7/2015	\$25.81	\$25.61
10/23/2015	\$22.38	\$23.42	12/8/2015	\$25.80	\$25.61
10/26/2015	\$23.62	\$23.43	12/9/2015	\$25.42	\$25.61
10/27/2015	\$23.80	\$23.45	12/10/2015	\$26.57	\$25.63
10/28/2015	\$25.05	\$23.52	12/11/2015	\$25.03	\$25.61
10/29/2015	\$24.04	\$23.54	12/14/2015	\$23.67	\$25.58
10/30/2015	\$24.00	\$23.56	12/15/2015	\$22.95	\$25.53
11/2/2015	\$26.52	\$23.68	12/16/2015	\$23.72	\$25.50
11/3/2015	\$27.40	\$23.82	12/17/2015	\$23.98	\$25.47
11/4/2015	\$28.73	\$24.00	12/18/2015	\$22.58	\$25.42
11/5/2015	\$27.50	\$24.13	12/21/2015	\$22.59	\$25.37
11/6/2015	\$27.77	\$24.25	12/22/2015	\$22.83	\$25.33
11/9/2015	\$29.22	\$24.42	12/23/2015	\$22.95	\$25.29
11/10/2015	\$27.56	\$24.52	12/24/2015	\$23.37	\$25.26

If a claimant had a market gain with respect to his, her, or its overall transactions in Esperion publicly traded common stock during the Class Period, the value of the claimant's Recognized Claim will be zero.³ If a claimant suffered an overall market loss with respect to his, her, or its overall transactions in Esperion common stock during the Class Period but that market loss was less than the claimant's total Recognized Claim calculated above, then the claimant's Recognized Claim will be limited to the amount of the actual market loss.

If a Class Member held Esperion common stock at the beginning of the Class Period or made multiple purchases, acquisitions or sales of Esperion common stock during or after the Class Period, the starting point for calculating a claimant's Recognized Loss is to match the claimant's holdings, purchases, and acquisitions to their sales using the FIFO (*i.e.*, first-in-first-out) method. Under the FIFO method, Esperion common stock sold during the Class Period will be matched, in chronological order, first against the common stock held at the beginning of the Class Period. The remaining sales of Esperion common stock purchased or acquired during the Class Period will then be matched, in chronological order, against the purchased or acquired Esperion common stock during the Class Period.

A Class Member will be eligible to receive a distribution from the Net Settlement Fund only if a Class Member had a net overall loss, after all profits from transactions in all Esperion common stock during the Class Period are subtracted from all losses. However, the proceeds from sales of shares that have been matched against the Esperion common stock held at the beginning of the Class Period will not be used in the calculation of such net loss.

Purchases or acquisitions and sales of Esperion common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance, or operation of law of Esperion common stock during the Class Period shall not be deemed a purchase, acquisition, or sale of Esperion common stock for the calculation of Recognized Loss unless (i) the donor or decedent purchased or otherwise acquired such Esperion common stock during the Class Period; (ii) no Proof of Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such Esperion common stock; and (iii) it is specifically so provided in the instrument of gift or assignment.

The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the Esperion common stock shares. The date of a "short sale" is deemed to be the date of sale of Esperion common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" and the purchases/acquisition covering "short sales" is zero. In the event that a Claimant has an opening short position in Esperion common stock, the earliest Class Period purchases or acquisitions shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

With respect to Esperion common stock purchased or sold through the exercise of an option, the purchase/sale date of the common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

An Authorized Claimant's Recognized Loss shall be the amount used to calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. If the sum total of Recognized Losses of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Loss divided by the total of the Recognized Losses of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Given the costs of distribution, the Net Settlement Fund will be allocated among all Authorized Claimants whose distribution calculates to \$10.00 or greater.

Distributions will be made to Authorized Claimants after all claims have been processed, after the Court has finally approved the Settlement, and after any appeals are resolved. If there is any balance remaining in the Net Settlement Fund after at least six (6) months from the initial date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), the Claims Administrator shall, if feasible, reallocate such balance among Authorized Claimants in an equitable and economic fashion. These redistributions shall be repeated until the balance remaining in the Net Settlement Fund is no longer economically feasible to distribute to Class Members. Thereafter, any balance that still remains in the Net Settlement Fund shall be donated to any appropriate non-sectarian, non-profit charitable organization(s) serving the public interest selected by Class Counsel.

Please contact the Claims Administrator or Class Counsel if you disagree with any determinations made by the Claims Administrator regarding your Proof of Claim. If you are dissatisfied with the determinations, you may ask the Court, which retains jurisdiction over all Class Members and the claims administration process, to decide the issue by submitting a written request.

³ Under Section 21(D)(e)(1) of the Exchange Act, "in any private action arising under this Act in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the statute, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of Esperion common stock during the 90-day look-back period. The mean (average) closing price for Esperion common stock during this 90-day look-back period was \$25.26.

The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Authorized Claimants. Defendants, their respective counsel, and all other Released Persons will have no responsibility or liability whatsoever for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim. No Person shall have any claim against the Class Representatives, Lead Plaintiffs' Counsel, the Claims Administrator, or other Person designated by Lead Plaintiffs' Counsel, Defendants, or Defendants' Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court.

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you purchased or acquired Esperion common stock during the Class Period for the beneficial interest of an individual or organization other than yourself, the Court has directed that, WITHIN TEN (10) BUSINESS DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased or acquired such securities during such time period, or (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within ten (10) business days mail the Notice and Proof of Claim form directly to the beneficial owners of the securities referred to herein. If you choose to follow alternative procedure (b), upon such mailing, you must send a statement to the Claims Administrator confirming that the mailing was made as directed and retain the names and addresses for any future mailings to Class Members. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Your reasonable expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator at notifications@gilardi.com or:

Esperion Securities Settlement
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 43390
Providence, RI 02940-3390

DATED: May 6, 2021

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN