

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KEVIN L. DOUGHERTY, Individually ) Civ. No. 2:16-cv-10089-AJT-RSW  
and on Behalf of All Others Similarly )  
Situating, ) CLASS ACTION  
Plaintiff, ) STIPULATION OF SETTLEMENT  
vs. )  
ESPERION THERAPEUTICS, INC., et )  
al., )  
Defendants. )  
\_\_\_\_\_ )

This Stipulation of Settlement, dated April 26, 2021 (the “Stipulation”), is made and entered into by and among: (i) Class Representatives Ronald E. Wallace and Walter J. Minett (on behalf of themselves and each Class Member), by and through Class Counsel; and (ii) Esperion Therapeutics, Inc. (“Esperion” or the “Company”) and Tim M. Mayleben (collectively, “Defendants”), by and through their counsel of record in the Litigation.<sup>1</sup> The Class Representatives and Defendants are referred to herein as the “Settling Parties.” The Stipulation is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims, subject to the approval of the Court and the terms and conditions set forth in this Stipulation.

## **I. THE LITIGATION**

This Litigation is currently pending before the Honorable Arthur J. Tarnow in the United States District Court for the Eastern District of Michigan (the “Court”). The initial complaint in this action was filed on January 12, 2016. On April 5, 2016, the Court appointed Lead Plaintiffs and Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) and Kahn Swick & Foti, LLC (“Kahn Swick”) as Lead Counsel and The Miller Law Firm, P.C. as Liaison Counsel.

The Amended Complaint for Violation of the Federal Securities Laws (the “Complaint”), filed on May 20, 2016, alleges that Defendants violated §§10(b) and

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<sup>1</sup> All capitalized terms not otherwise defined shall have the meanings ascribed to them in §IV.1 herein.

20(a) of the Securities Exchange Act of 1934 by making materially false and misleading statements between August 17, 2015 and September 28, 2015, inclusive.

Defendants moved to dismiss the Complaint, and on December 27, 2016, the Court granted Defendants' motion. On June 19, 2017, Lead Plaintiffs 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, Lead Plaintiffs filed their motion to certify the action as a class action. On November 19, 2020, the Court granted the motion to certify the Class, and appointed Lead Plaintiffs as Class Representatives and Lead Counsel 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 participated in an in-person mediation session with Michelle Yoshida, Esq. of Phillips ADR. The mediation was preceded by submission of mediation statements and exhibits. The Settling Parties engaged in

arm's-length negotiations during the mediation session, but were unable to reach an agreement at the mediation, and litigation continued. On November 3, 2020, the Settling Parties participated, via video conference, in a mediation with the Hon. Gerald E. Rosen (Ret.), but were unable to reach an agreement. Following the mediation, the Settling Parties continued to pursue litigation activity while settlement discussions continued through Judge Rosen. On March 12, 2021, the Settling Parties reached an agreement-in-principle to resolve the Litigation. This Stipulation (together with the Exhibits hereto) reflects the final and binding agreement between the Settling Parties.

## **II. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

Throughout this Litigation, Defendants have denied, and continue to deny, any and all allegations of fault, liability, wrongdoing, or damages whatsoever. Defendants have expressly denied, and continue to deny, that they have committed any act or omission giving rise to any liability under §§ 10(b) or 20(a) of the Securities Exchange Act of 1934. Specifically, Defendants expressly have denied, and continue to deny, each and all of the claims alleged by the Class Representatives in the Litigation, including, without limitation, any liability arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. Defendants also have denied, and continue to deny, among other allegations, the allegations that the Class Representatives or the Class have suffered

any damages, that they made any material misrepresentations or omissions, or that the Class Representatives or the Class were harmed by the conduct alleged in the Litigation or that could have been alleged as part of the Litigation. In addition, Defendants maintain that they have meritorious defenses to all claims alleged in the Litigation.

As set forth below, neither the Settlement nor any of the terms of this Stipulation shall in any event be construed or deemed to be evidence of or constitute an admission, concession, or finding of any fault, liability, wrongdoing, or damage whatsoever or any infirmity in the defenses that Defendants have, or could have, asserted. Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendants also have taken into account the uncertainty and risks inherent in any litigation. Defendants have determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

### **III. CLASS REPRESENTATIVES' CLAIMS AND THE BENEFITS OF SETTLEMENT**

Class Representatives and Class Counsel believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims asserted therein. However, Class Representatives and Class Counsel recognize and

acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and through appeals. Class Representatives and Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Class Representatives and Class Counsel also are mindful of the inherent problems of proof under and possible defenses to the securities law violations asserted in the Litigation. Class Representatives and Class Counsel believe that the Settlement set forth in this Stipulation confers substantial benefits upon the Class. Based on their evaluation, Class Representatives and Class Counsel have determined that the Settlement set forth in this Stipulation is in the best interests of Class Representatives and the Class.

#### **IV. TERMS OF THE STIPULATION AND AGREEMENT OF SETTLEMENT**

Without any concession by the Class Representatives that the Litigation lacks merit, and without any concession by Defendants of any liability or wrongdoing or lack of merit in their defenses, NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties, by and through their counsel or attorneys of record, that, subject to the Court's approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be

dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of this Stipulation, as follows:

**1. Definitions**

As used in this Stipulation the following terms, when capitalized, have the meanings specified below:

1.1 “Authorized Claimant” means any Class Member who submits a valid Claim to the Claims Administrator that is accepted for payment.

1.2 “Claim(s)” means a paper claim submitted on a Proof of Claim and Release form or an electronic claim that is submitted to the Claims Administrator.

1.3 “Claims Administrator” means Gilardi & Co. LLC.

1.4 “Class” means all Persons who purchased or otherwise acquired the common stock of Esperion between August 18, 2015 and September 28, 2015, inclusive, and were allegedly damaged thereby. Excluded from the Class are: Defendants, the officers and directors of the Company, 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 by the Court.

1.5 “Class Counsel” means, collectively, the law firms of Robbins Geller and Kahn Swick.

1.6 “Class Member” or “Member of the Class” mean a Person who falls within the definition of the Class as set forth in ¶1.4 above.

1.7 “Class Period” means the period from August 18, 2015 through September 28, 2015, inclusive.

1.8 “Class Representatives” means Ronald E. Wallace and Walter J. Minett.

1.9 “Defendants” means, collectively, Esperion and Tim M. Mayleben.

1.10 “Defendants’ Counsel” means the law firms of Goodwin Procter LLP and Plunkett Cooney.

1.11 “Effective Date,” or the date upon which this Settlement becomes “effective,” means the first date by which all of the events and conditions specified in ¶7.1 of the Stipulation have been met and have occurred or have been waived.

1.12 “Escrow Agent” means the law firms of Robbins Geller and Kahn Swick or their respective successor(s).

1.13 “Final” means when the last of the following with respect to the Judgment shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) the expiration of the time for the filing or noticing of any appeal from the Judgment without any such filing or noticing having been made; and (iii) if a motion to alter or amend is filed or if an appeal is taken, the final determination of that motion or appeal such that no further judicial review or appeal is permitted, whether by reason of affirmance by a court of last resort, expiration of time for any further judicial review, final dismissal of the appeal or otherwise in such a manner as to permit the consummation of the Settlement. For purposes of this paragraph, an “appeal” shall include any motion for reconsideration or petition for a writ of *certiorari* or other writ that may be filed in connection with approval or disapproval of this Settlement. Any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to: (i) attorneys’ fees, costs, or expenses, (ii) the Plan of Allocation (as submitted or subsequently modified), or (iii) the procedures for determining Authorized Claimants’ recognized claims, shall not in any way delay, affect, or preclude the time set forth above for the Judgment to become Final, or otherwise preclude the Judgment from becoming Final.



1.14 “Judgment” means the Order and Final Judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit B, as well as any form of final judgment that may be entered by the Court in a form other than the form attached hereto as Exhibit B and where none of the parties hereto elects to terminate this Settlement by reason of such variance.

1.15 “Lead Counsel” means, collectively, the law firms of Robbins Geller and Kahn Swick.

1.16 “Lead Plaintiffs” means Ronald E. Wallace and Walter J. Minett.

1.17 “Lead Plaintiffs’ Counsel” means any attorney or firm who has appeared in the Litigation on behalf of Lead Plaintiffs or the Class.

1.18 “Liaison Counsel” means The Miller Firm, P.C.

1.19 “Litigation” means the action captioned *Dougherty v. Esperion Therapeutics, Inc.*, Case No. 2:16-cv-10089-AJT-RSW (E.D. Mich.).

1.20 “Net Settlement Fund” means the Settlement Fund less: (i) any Court-awarded attorneys’ fees, expenses, and interest thereon; (ii) Notice and Administration Expenses; (iii) Taxes and Tax Expenses; and (iv) other Court-approved deductions.

1.21 “Person(s)” means an individual, corporation (including all divisions and subsidiaries), limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and all of their respective spouses, heirs, beneficiaries, executors, administrators, predecessors, successors, representatives, or assignees.

1.22 “Plan of Allocation” means a plan or formula of allocation of the Net Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized Claimants, subject to the approval of the Court. Any Plan of Allocation is not part of

this Stipulation and neither Defendants nor the Released Defendants Parties shall have any responsibility or liability with respect thereto.

1.23 “Proof of Claim and Release” means the Proof of Claim and Release form for submitting a Claim, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-2, that a Class Member must complete and submit should that Class Member seek to share in a distribution of the Net Settlement Fund.

1.24 “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.

1.25 “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 in ¶1.35 hereof.

1.26 “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, 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.

1.27 “Released Defendant Party” or “Released Defendants Parties” mean 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.

1.28 “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.

1.29 “Settlement” means the resolution of the Litigation in accordance with the terms and provisions of this Stipulation.

1.30 “Settlement Amount” means Eighteen Million Two Hundred and Fifty Thousand Dollars (\$18,250,000.00) to be paid by check or wire transfer to the Escrow Agent pursuant to ¶2.2 of this Stipulation.

1.31 “Settlement Fund” means the Settlement Amount plus all interest and accretions thereto.

1.32 “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

1.33 “Settling Parties” means, collectively, Defendants and the Class Representatives, on behalf of themselves and the Class.

1.34 “Tax” or “Taxes” mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority, including, but not limited to, any local, state, and federal taxes.

1.35 “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 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.

## **2. The Settlement**

2.1 The obligations incurred pursuant to the Stipulation are: (a) subject to approval by the Court and the Judgment, reflecting such approval, becoming Final;

and (b) in full and final disposition of the Litigation with respect to the Releasing Plaintiffs Parties and Released Defendants Parties and any and all Released Claims and Released Defendants' Claims.

**a. The Settlement Amount**

2.2 In full and final settlement of the claims asserted in the Litigation against Defendants and in consideration of the releases specified in ¶4 herein, Defendants shall cause the Settlement Amount to be paid by check or wire transfer within twenty (20) business days of the later of: (i) the date the Court grants preliminary approval of the Settlement, substantially in the form of Exhibit A attached hereto, or (ii) provision of: (a) check delivery and wire transfer instructions (to include ABA number, SWIFT Code, bank name, bank address, and bank account number); (b) payee name, telephone number, and address; and (c) a complete and executed Form W-9 for the Settlement Fund that reflects a valid tax identification number. The Escrow Agent shall deposit the Settlement Amount plus any accrued interest in a segregated escrow account (the "Escrow Account") maintained by the Escrow Agent.

2.3 If the entire Settlement Amount is not timely paid to the Escrow Agent, Class Counsel may terminate the Settlement but only if: (i) Class Counsel has notified Defendants' Counsel in writing of Class Counsel's intention to terminate the Settlement, and (ii) the entire Settlement Amount is not transferred to the Escrow Account within seven (7) calendar days after Class Counsel has provided such written notice.

2.4 Other than the obligation of Esperion to cause to be paid the Settlement Amount into the Settlement Fund set forth in ¶2.2 herein, the Released Defendants Parties shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel or the Claims Administrator, or any of their respective designees, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or

distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any Claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any federal, state, or local returns.

2.5 Other than the obligation of Defendants to cause the payment of the Settlement Amount pursuant to ¶2.2, Defendants shall have no obligation to make any other payments into the Escrow Account, to any Class Member, or to Lead Plaintiffs' Counsel pursuant to the Stipulation.

**b. The Escrow Agent**

2.6 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶2.2 hereof in United States Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund, and the Released Defendants Parties shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

2.7 The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the prior written agreement of Defendants' Counsel.

2.8 Subject to further order(s) and/or directions as may be made by the Court, or as provided in this Stipulation, the Escrow Agent is authorized to execute such



transactions as are consistent with the terms of this Stipulation. The Released Defendants Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

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

2.10 Notwithstanding the fact that the Effective Date of the Settlement has not yet occurred, Class Counsel may pay from the Settlement Fund, without further approval from Defendants and/or order of the Court, reasonable costs and expenses actually incurred in connection with providing notice of the Settlement to the Class by mail, publication and other means, locating Class Members, assisting with the submission of Claims, processing Proof of Claim and Release forms, administering the Settlement, and paying escrow taxes, fees and costs, if any (“Notice and Administration Expenses”) up to the sum of \$250,000. Prior to the Effective Date, all such Notice and Administration Expenses in excess of \$250,000 shall be paid from the Settlement Fund subject to prior approval of the Court. After the Effective Date, Notice and Administration Expenses may be paid as incurred, without approval of Defendants or further order of the Court.

2.11 It shall be Class Counsel’s responsibility to disseminate the Notice, Proof of Claim and Release, and Summary Notice to the Class in accordance with this Stipulation and as ordered by the Court. The Released Defendants Parties shall have no responsibility for or liability whatsoever with respect to the Notice and Administration Expenses, nor shall they have any responsibility or liability whatsoever for any claims with respect thereto.

**c. Taxes**

2.12 The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1, and the regulations promulgated thereunder. The Settling Parties and the Escrow Agent further agree that the Settlement Fund shall be established pursuant to the Court’s subject matter jurisdiction within the meaning of Treas. Reg. §1.468B-1(c)(1). In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.12, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” (as defined in Treas. Reg. §1.468B-2(k)(3)) shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other federal, state, or local tax returns necessary or advisable with respect to the earnings on the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the elections described in ¶2.12(a) hereof) shall be consistent with this ¶2.12 and in all events shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.12(c) hereof.

(b) All (i) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Defendants Parties or their counsel with respect to any income earned by the Settlement Fund for any period,

after the deposit of the Settlement Amount, during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶2.12 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶2.12) (“Tax Expenses”), shall be paid out of the Settlement Fund; in all events the Released Defendants Parties and their counsel shall have no liability or responsibility whatsoever for the Taxes or the Tax Expenses. The Escrow Agent, through the Settlement Fund, shall indemnify and hold each of the Released Defendants Parties and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither the Released Defendants Parties nor their counsel are responsible nor shall they have any liability for any Taxes or Tax Expenses, nor for the filing of any tax returns or other documents with the Internal Revenue Service or any other taxing authority, nor any expenses associated therewith. The Settling Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.12.

2.13 This is not a claims-made settlement. As of the Effective Date, the Released Defendants Parties, and/or any other Person funding the Settlement on their

behalf, shall not have any right to the return of the Settlement Fund or any portion thereof for any reason, and shall not have liability should Claims made exceed the amount available in the Settlement Fund for payment of such Claims. The Released Defendants Parties shall not be liable for the loss of any portion of the Settlement Fund, nor have any liability, obligation, or responsibility for the payment of Claims, Taxes, legal fees, or any other expenses payable from the Settlement Fund.

**d. Termination of Settlement**

2.14 In the event that this Stipulation is not approved or the Settlement is not approved, or is terminated, canceled, or the Effective Date otherwise fails to occur for any reason, including, without limitation, in the event the Judgment is reversed or vacated or materially altered following any appeal taken therefrom, or is successfully collaterally attacked, the Settlement Fund less Notice and Administration Expenses or Taxes or Tax Expenses actually paid, incurred, or due and owing pursuant to ¶¶2.10 and 2.12 hereof in connection with the Settlement provided for herein, shall be refunded pursuant to written instructions from Defendants' Counsel in accordance with ¶7.6 herein. At the request of Defendants' Counsel, the Escrow Agent or its designees shall apply for any tax refund owed on the amounts in the Escrow Account or pay the proceeds, after any deduction of any fees or expenses incurred in connection with such application(s), of such refund to the Person(s) that made the deposits or as otherwise directed.

**3. Preliminary Approval Order and Settlement Hearing**

3.1 Immediately following execution of this Stipulation, Class Counsel shall submit this Stipulation together with its Exhibits to the Court and shall apply for entry of an order (the "Preliminary Approval Order"), substantially in the form of Exhibit A attached hereto, requesting, *inter alia*, the preliminary approval of the Settlement set forth in this Stipulation and approval for the mailing of a settlement notice (the

“Notice”) and publication of a summary notice (“Summary Notice”), substantially in the forms of Exhibits A-1 and A-3 attached hereto. The Notice shall include the general terms of the Settlement set forth in this Stipulation, the proposed Plan of Allocation, the general terms of the Fee and Expense Application, as defined in ¶6.1 hereof, and the date of the Settlement Hearing as defined below.

3.2 Esperion shall provide to the Claims Administrator, at no cost to the Class Representatives or the Class, within ten (10) business days of the date of entry of the Preliminary Approval Order or any other order directing notice to the Class, reasonably available transfer records in electronic searchable form, such as Excel, containing the names and addresses of Persons who purchased or acquired Esperion common stock during the Class Period. It shall be solely Class Counsel’s responsibility to disseminate the Notice and Summary Notice to the Class in accordance with this Stipulation and as ordered by the Court. Class Members shall have no recourse as to the Released Defendants Parties with respect to any claims they may have that arise from any failure of the notice process.

3.3 Class Counsel shall request that, after notice is given and not earlier than ninety (90) calendar days after the later of the dates on which the appropriate Federal official and the appropriate State officials are provided with notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1715 *et seq.* (“CAFA”) as set forth in ¶3.4 below, the Court hold a hearing (the “Settlement Hearing”) and approve the Settlement of the Litigation as set forth herein. At or after the Settlement Hearing, Class Counsel also will request that the Court approve the proposed Plan of Allocation and the Fee and Expense Application.

3.4 Defendants shall no later than ten (10) calendar days following the filing of this Stipulation with the Court serve upon the appropriate State official of each State in which a Class Member resides and the Attorney General of the United States a notice of the proposed Settlement in compliance with the requirements of CAFA.

Defendants are solely responsible for the costs of the CAFA notice and administering the CAFA notice.

#### **4. Releases**

4.1 Upon the Effective Date, as defined in ¶1.11 hereof, the Class Representatives shall, and each and every Releasing Plaintiff Party shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendants Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendants Parties, whether or not such Releasing Plaintiff Party executes and delivers the Proof of Claim and Release or shares in the Net Settlement Fund. Claims to enforce the terms of this Stipulation are not released.

4.2 Any Proof of Claim and Release that is executed by Class Members shall release all Released Claims against the Released Defendants Parties and shall be substantially in the form contained in Exhibit A-2 attached hereto.

4.3 Upon the Effective Date, the Releasing Plaintiffs Parties will be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting the Released Claims against any of the Released Defendants Parties.

4.4 Upon the Effective Date, each of the Released Defendants Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Defendants' Claims against the Releasing Plaintiffs Parties. Claims to enforce the terms of this Stipulation are not released.

**5. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of the Settlement Fund**

5.1 The Claims Administrator, subject to such supervision and direction of Class Counsel and the Court as may be necessary or as circumstances may require, shall administer and calculate the Claims submitted by Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants. Other than Esperion's obligation to provide its securities holders' records as provided in ¶3.2 above, the Released Defendants Parties and Defendants' Counsel shall have no responsibility for or interest in whatsoever with respect to the administration of the Settlement or the actions or decisions of the Claims Administrator, and shall have no liability whatsoever to the Releasing Plaintiffs Parties, including Class Representatives, any other Class Members, or Class Counsel, in connection with such administration, including, but not limited to: (i) any act, omission, or determination by Lead Counsel, the Escrow Agent, and/or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management or investment of the Settlement Fund or the Net Settlement Fund, or the distribution of the Net Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any Claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

5.2 The Settlement Fund shall be applied as follows:

- (a) to pay all Notice and Administration Expenses;
- (b) to pay the Taxes and Tax Expenses;
- (c) to pay attorneys' fees and expenses of Lead Plaintiffs' Counsel (the "Fee and Expense Award"), and to pay any award to Class Representatives

pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class, if and to the extent allowed by the Court; and

(d) after the Effective Date, to distribute the Net Settlement Fund to Authorized Claimants as provided by this Stipulation, the Plan of Allocation, or the orders of the Court.

5.3 After the Effective Date, and in accordance with the terms of this Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following provisions of this Stipulation.

5.4 Within one hundred-twenty (120) calendar days after the mailing of the Notice or such other time as may be set by the Court, each Class Member shall be required to submit to the Claims Administrator a completed Proof of Claim and Release, substantially in the form of Exhibit A-2 attached hereto, signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and Release.

5.5 Except as otherwise ordered by the Court, all Class Members who fail to timely submit a valid Proof of Claim and Release within such period, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Stipulation and the Settlement set forth herein, but will in all other respects be subject to and bound by the provisions of this Stipulation, the releases contained herein, and the Judgment, and will be barred from bringing any action against the Released Defendants Parties concerning the Released Claims. Notwithstanding the foregoing, Class Counsel shall have the discretion (but not an obligation) to accept late-submitted Claims for processing by the Claims Administrator so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby. No Person shall have any claim against



Class Representatives, Lead Plaintiffs' Counsel, the Claims Administrator or any Class Member by reason of the exercise or non-exercise of such discretion.

5.6 Each Proof of Claim and Release shall be submitted to and reviewed by the Claims Administrator, under the supervision of Class Counsel, who shall determine, in accordance with this Stipulation and the approved Plan of Allocation, the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to ¶5.8 below.

5.7 Proof of Claim and Release forms that do not meet the submission requirements may be rejected. Prior to rejecting a Proof of Claim and Release in whole or in part, the Claims Administrator shall communicate with the claimant in writing to give the claimant the chance to remedy any curable deficiencies in the Proof of Claim and Release submitted. The Claims Administrator, under the supervision of Class Counsel, shall notify, in a timely fashion and in writing, all claimants whose Claims the Claims Administrator proposes to reject in whole or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose Claim is to be rejected has the right to a review by the Court if the claimant so desires and complies with the requirements of ¶5.8 below.

5.8 If any claimant whose timely Claim has been rejected in whole or in part for curable deficiency desires to contest such rejection, the claimant must, within twenty (20) calendar days after the date of mailing of the notice required in ¶5.7 above, or a lesser period of time if the Claim was untimely, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Class Counsel shall thereafter present the claimant's request for review to the Court.

5.9 Each claimant who declines to be excluded from the Class shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's Claim, including, but not limited to, all releases provided for herein and in the Judgment, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to the claimant's status as a Class Member and the validity and amount of the claimant's Claim. In connection with processing the Proof of Claim and Releases, no discovery shall be allowed on the merits of the Litigation or the Settlement. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court, but shall not in any event delay or affect the finality of the Judgment. All Class Members, other claimants, and parties to this Settlement expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

5.10 The Preliminary Approval Order shall provide that requests for exclusion shall be received no later than twenty-one (21) calendar days prior to the Settlement Hearing. Upon receiving any request for exclusion pursuant to the Notice, the Claims Administrator shall as expeditiously as possible, and certainly no later than five (5) calendar days after receiving any request for exclusion or fifteen (15) calendar days prior to the Settlement Hearing, whichever is earlier, cause copies of all requests for exclusion and any written revocations of requests for exclusion, to be provided simultaneously to Class Counsel and Defendants' Counsel.

5.11 Following the Effective Date, the Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with the Plan of Allocation set forth in the Notice and approved by the Court. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than

\$10.00. If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the date of the distribution of the Net Settlement Fund, Lead Counsel shall, if feasible, reallocate such balance among Authorized Claimants who negotiated the checks sent in the initial distribution and who would receive a minimum of \$10.00. These redistributions shall be repeated until the balance remaining in the Net Settlement Fund is *de minimis*. Any *de minimis* balance that still remains in the Net Settlement Fund after such reallocation(s) and payments, which is not feasible or economical to reallocate, shall be donated to any appropriate non-sectarian, non-profit charitable organization(s) serving the public interest selected by Class Counsel.

5.12 The Released Defendants Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of Claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claim of any kind against the Released Defendants Parties with respect to the matters set forth in ¶¶5.1-5.14 hereof; and the Releasing Plaintiffs Parties release the Released Defendants Parties from any and all liability and claims arising from or with respect to the administration, investment, or distribution of the Settlement Fund.

5.13 No Person shall have any claim against the Released Defendants Parties, Class Representatives, Lead Plaintiffs' Counsel or the Claims Administrator, or any other Person designated by Class Counsel based on determinations or distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

5.14 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund, including, but not limited to, any adjustments to an Authorized Claimant's Claim set forth therein, is not a part of this

Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect the finality of the Court's Judgment approving this Stipulation and the Settlement set forth herein, or any other orders entered pursuant to the Stipulation.

## **6. Lead Plaintiffs' Counsel's Attorneys' Fees and Expenses**

6.1 Class Counsel may submit an application or applications (the "Fee and Expense Application") from the Settlement Fund for: (a) an award of attorneys' fees; plus (b) expenses or charges in connection with prosecuting the Litigation; plus (c) any interest earned on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. An application for fees and expenses may include a request for an amount to the Class Representatives pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class. Class Counsel reserves the right to make additional applications for fees and expenses incurred.

6.2 The amount of attorneys' fees and expenses awarded by the Court is within the sole discretion of the Court. Any fees and expenses, as awarded by the Court, shall be paid to Class Counsel from the Settlement Fund, as ordered, immediately after the Court executes the Judgment and an order awarding such fees and expenses, notwithstanding the existence of any timely filed objections thereto or to the Settlement, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. Class Counsel may thereafter allocate the attorneys' fees among Lead Plaintiffs' Counsel in a manner in which it in good faith believes reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Litigation.

6.3 In the event that the Effective Date does not occur, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or this Stipulation is canceled or terminated for any other reason, and such reversal, modification, cancellation or termination becomes Final and not subject to review, and in the event that the Fee and Expense Award has been paid to any extent, then Class Counsel, including its respective partners and/or shareholders, and such other Lead Plaintiffs' Counsel, including their law firms, partners, and/or shareholders, and Class Representatives who have received any portion of the Fee and Expense Award shall, within ten (10) business days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund all such fees and expenses previously paid to them from the Settlement Fund plus the interest earned thereon in an amount consistent with such reversal, modification, cancellation or termination. Any refunds required pursuant to ¶6.3 shall be the several obligation of Lead Plaintiffs' Counsel, including their law firms, partners, and/or shareholders, and Class Representatives that received fees or expenses to make appropriate refunds or repayments to the Settlement Fund. Each such Lead Plaintiffs' Counsel or Class Representatives receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that (a) such Person and its partners, shareholders, and/or members are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph, and (b) are severally liable for the full amount of all fees, expenses, and costs paid from the Settlement Fund. Without limitation, Lead Plaintiffs' Counsel and Class Representatives and their partners, shareholders, and/or members agree that the Court may, upon application of Defendants and notice to Class Counsel and Lead Plaintiffs' Counsel, summarily issue orders, including, but not limited to, judgments and attachment orders, and may make appropriate findings of or sanctions for contempt,

should such law firms or their partners, shareholders, or members fail to timely repay fees and expenses pursuant to this paragraph.

6.4 The procedure for and the allowance or disallowance by the Court of any applications by any Lead Plaintiffs' Counsel for attorneys' fees and expenses to be paid out of the Settlement Fund is not part of the Settlement set forth in this Stipulation, and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation, and shall have no effect on the terms of the Stipulation or on the validity or enforceability of this Settlement. The approval of the Settlement, and it becoming Final, shall not be contingent on the award of attorneys' fees and expenses, any award to Class Representatives, Class Counsel, or Lead Plaintiffs' Counsel, nor any appeals to such awards. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Stipulation, or affect or delay the finality of the Judgment approving this Stipulation and the Settlement of the Litigation set forth therein.

6.5 Any fees and/or expenses awarded by the Court shall be paid solely from the Settlement Fund. With the sole exception of Defendants' obligation to cause the Settlement Amount to be paid into the Escrow Account as provided for in ¶2.2, the Released Defendants Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees and/or expenses (including Taxes) to Lead Plaintiffs' Counsel, or any other counsel or Person who receives payment from the Net Settlement Fund.

6.6 The Released Defendants Parties shall have no responsibility for, and no liability whatsoever with respect to, the allocation among Lead Plaintiffs' Counsel and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Litigation.

6.7 The Released Defendants Parties shall have no responsibility for, and no liability whatsoever with respect to, any attorneys' fees, costs, or expenses (including Taxes) incurred by or on behalf of any Class Member, whether or not paid from the Escrow Account.

**7. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

7.1 The Effective Date of the Settlement shall be conditioned on the occurrence of all of the following events:

(a) the Court has entered the Preliminary Approval Order or any other order directing notice to the Class, as required by ¶3.1 hereof;

(b) the Settlement Amount has been deposited into the Escrow Account;

(c) Defendants have not exercised their option to terminate the Stipulation pursuant to ¶7.3 hereof;

(d) the Court has entered the Judgment following notice to the Class and the Settlement Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(e) the Judgment has become Final, as defined in ¶1.13 hereof.

7.2 Upon the Effective Date, any and all remaining interest or right of the Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. If the conditions specified in ¶7.1 hereof are not met, then the Settlement shall be canceled and terminated subject to ¶¶7.5, 7.6 and 7.7 hereof unless Class Counsel and Defendants' Counsel mutually agree in writing to proceed with the Settlement.

7.3 Defendants shall have the right (which must be exercised unanimously) to terminate the Settlement and render it null and void in the event that Class Members who purchased or otherwise acquired more than a certain percentage of

Esperion common stock subject to this Settlement exclude themselves from the Class, as set forth in a separate agreement (the “Supplemental Agreement”) executed between Class Representatives and Defendants, by and through their counsel. The Settling Parties agree to maintain the confidentiality of the Supplemental Agreement, which is being executed concurrently herewith. The Supplemental Agreement shall not be filed with the Court unless and until: a dispute arises as to its terms, or as otherwise ordered by the Court, nor shall the Supplemental Agreement otherwise be disclosed unless ordered by the Court. If submission of the Supplemental Agreement required for resolution of a dispute or is ordered by the Court, the Settling Parties will seek to have the Supplemental Agreement submitted to the Court *in camera* or filed under seal, but such disclosure shall be carried out to the fullest extent possible in accordance with the practices of the Court so as to preserve the confidentiality of the Supplemental Agreement, particularly the threshold aggregate number of shares.

7.4 The Class Representatives and Defendants each shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other parties hereto within thirty (30) calendar days of: (a) the Court’s final non-appealable refusal to enter the Preliminary Approval Order in any respect that the terminating party reasonably and in good faith believes is materially adverse to it; (b) the Court’s final non-appealable refusal to approve this Stipulation or any material part of it that the terminating party reasonably and in good faith believes is materially adverse to it; (c) the Court’s final non-appealable refusal to enter the Judgment in any respect that the terminating party reasonably and in good faith believes is materially adverse to it; or (d) the date upon which the Judgment is modified or reversed in any respect that the terminating party reasonably and in good faith believes is materially adverse to it by the Court, the U.S. Court of Appeals for the Sixth Circuit, or the Supreme Court of the United States. For avoidance of doubt, no order of the Court or modification or reversal on appeal of any



order of the Court concerning the Plan of Allocation or the amount of any attorney's fees, expenses, and interest awarded by the Court to Class Counsel or Class Representatives shall operate to terminate or cancel this Stipulation or constitute grounds for cancellation or termination of the Stipulation.

7.5 Unless otherwise ordered by the Court, in the event this Stipulation is not approved or this Stipulation or the Settlement is terminated, or canceled, or the Effective Date otherwise fails to occur for any reason, including, without limitation, in the event the Judgment is reversed or vacated or materially altered following any appeal taken therefrom, or is successfully collaterally attacked, within ten (10) business days after written notification of such event is sent by Defendants' Counsel or Class Counsel to the Escrow Agent, the Settlement Fund, less Taxes, Tax Expenses and Notice and Administration Expenses which have either been disbursed pursuant to ¶¶2.10 and/or 2.12 hereof, or are chargeable to the Settlement Fund pursuant to ¶¶2.10 and/or 2.12 hereof, shall be refunded by the Escrow Agent to the Persons who contributed to the Settlement Fund in proportion to their respective contribution. Such refunds shall be pursuant to written instructions from Defendants' Counsel. The Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Amount and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund to the same Persons in the same manner as the Settlement Fund described in this ¶7.5. Such payments shall be pursuant to written instructions from Defendants' Counsel.

7.6 In the event that this Stipulation is not approved or this Stipulation or the Settlement is terminated, canceled, or the Effective Date otherwise fails to occur for any reason, the Settling Parties shall be restored to their respective positions in the Litigation as of March 12, 2021. In such event, the terms and provisions of the Stipulation, with the exception of ¶¶1.1-1.35, 2.8-2.10, 2.12-2.14, 6.3-6.4, 7.4-7.6, and 9.5 hereof, shall have no further force and effect with respect to the Settling Parties

and shall not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or any Fee and Expense Award shall operate to terminate or cancel this Stipulation or constitute grounds for cancellation or termination of this Stipulation.

7.7 If the Effective Date does not occur, or if this Stipulation is terminated pursuant to its terms, neither the Class Representatives nor Lead Plaintiffs' Counsel shall have any obligation to repay any amounts disbursed pursuant to ¶¶2.10 or 2.12. In addition, any amounts already incurred pursuant to ¶¶2.10 or 2.12 hereof at the time of such termination or cancellation but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of this Stipulation prior to the balance being refunded in accordance with ¶¶2.14 and 7.5 hereof.

## **8. No Admission of Wrongdoing**

8.1 Neither the Settlement, this Stipulation (whether or not consummated), including the Exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of this Stipulation and the Settlement, nor any proceedings taken pursuant to or in connection with this Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered or received against or to the prejudice of any Defendant as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Defendant of the truth of any allegations by the Class Representatives or any Member of the Class or the validity of any claim that has been or could have been asserted in the Litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any other litigation, including, but not limited to, litigation of the Released Claims, or of

any liability, negligence, fault, or wrongdoing of any kind of any of the Defendants or in any way referred to for any other reason as against or to the prejudice of any of the Defendants, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered or received against or to the prejudice of any Defendant as evidence of a presumption, concession, or admission of any fault, misrepresentations, or omission with respect to any statement or written document approved or made by any Defendant, or against or to the prejudice of the Class Representatives or any Member of the Class as evidence of any infirmity in the claims of the Class Representatives and the Class;

(c) shall be offered or received against or to the prejudice of any Defendant as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against or to the prejudice of any of the parties to this Stipulation, in any other civil, criminal, or administrative action or proceeding; provided, however, that if this Stipulation is approved by the Court, Defendants and the Released Defendants Parties may refer to it to effectuate the release granted them hereunder; or

(d) shall be construed against or to the prejudice of Defendants, the Class Representatives, or the Class as evidence of a presumption, concession or admission that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial or in any proceeding other than this Settlement.

## **9. Miscellaneous Provisions**

9.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and

to exercise their best efforts to accomplish the foregoing terms and conditions of this Stipulation.

9.2 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises all claims that were asserted or that could have been asserted by the Settling Parties with respect to the Released Claims and Released Defendants' Claims, and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Judgment will contain a finding that, during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. The Settling Parties agree that the Settlement Amount and the other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum regarding the Litigation, including that the Litigation was brought or defended in bad faith or without a reasonable basis.

9.3 While maintaining their position that the claims asserted in the Litigation are meritorious, Class Representatives and Lead Plaintiffs' Counsel shall not make any public statement or statements (whether or not for attribution) that disparage the business, conduct, or reputation of any Defendants or Defendants' Counsel, that describe or characterize the discovery record in the Litigation as it relates to Esperion's communications with the U.S. Food and Drug Administration, or describe or characterize the discovery record in the Litigation more generally in a way that suggests Plaintiffs would have prevailed at trial. While maintaining their position that the claims asserted in the Litigation are not meritorious, Defendants and Defendants' Counsel shall not make any public statement or statements (whether or not for attribution) that disparage the business, conduct, or reputation of Class

Representatives or Lead Plaintiffs' Counsel, or that describe or characterize the discovery record in the Litigation in a way that suggests Defendants would have prevailed at trial.

9.4 Defendants and/or the Released Defendants Parties may file this Stipulation and/or the Judgment from this action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, statute of limitations, statute of repose, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate any liability protection under any applicable insurance policy. The Settling Parties may file this Stipulation and/or the Judgment in any action that may be brought to enforce the terms of this Stipulation and/or Judgment. All Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

9.5 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

9.6 All of the Exhibits to this Stipulation and the Supplemental Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

9.7 This Stipulation, along with its Exhibits and the Supplemental Agreement, may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

9.8 This Stipulation and the Exhibits attached hereto together with the Supplemental Agreement constitute the entire agreement among the Settling Parties hereto as to the subject matter hereof and supersede any prior or contemporaneous written or oral agreements or understandings between the Settling Parties. No representations, warranties, or inducements have been made to any party concerning this Stipulation, its Exhibits, or the Supplemental Agreement, other than the

representations, warranties, and covenants contained and memorialized in such documents.

9.9 If any disputes arise out of the finalization of the settlement documentation or the Settlement itself prior to submission to the Court of the application for preliminary approval of the Settlement, those disputes will be resolved by Judge Rosen first by way of expedited telephonic mediation and, if unsuccessful, then by final, binding, non-appealable resolution by Judge Rosen, with the fees and expenses of Judge Rosen to be divided equally between Lead Plaintiffs on the one hand and Defendants on the other.

9.10 Except as otherwise provided herein, each party shall bear his, her, or its own fees and costs. This paragraph shall not alter or amend any previously-agreed-upon indemnification agreements between and among Defendants.

9.11 Class Counsel, on behalf of the Class, is expressly authorized by the Class Representatives to take all appropriate action required or permitted to be taken by the Class pursuant to this Stipulation to effectuate its terms and also is expressly authorized to enter into any modifications or amendments to this Stipulation on behalf of the Class which it deems appropriate.

9.12 Each counsel or other Person executing this Stipulation, its Exhibits, the Supplemental Agreement, or any related Settlement document, on behalf of any party hereto hereby warrants that such Person has the full authority to do so, and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms, without requiring additional consent, approval, or authorization of any other Person, board, entity, tribunal, or other regulatory or governmental authority.

9.13 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same

instrument. A complete set of executed counterparts shall be filed with the Court. Signatures sent by facsimile or pdf'd via e-mail shall be deemed originals.

9.14 All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed duly given (i) when delivered personally to the recipient, (ii) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid), or (iii) seven (7) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

***If to the Class Representatives or to Class Counsel:***

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

KAHN SWICK & FOTI, LLC  
RAMZI ABADOU  
912 Cole Street, #251  
San Francisco, CA 94117

***If to the Defendants or to Defendants' Counsel:***

GOODWIN PROCTER LLP  
DEBORAH S. BIRNBACH  
KATHERINE G. McKENNEY  
100 Northern Avenue  
Boston, MA 02210

9.14 This Stipulation shall be binding upon, and inure to the benefit of, Defendants, the Class Representatives, all other Class Members, Released Defendants Parties, and Releasing Plaintiffs Parties, as well as their respective heirs, executors,

administrators, predecessors, successors, affiliates and assigns, in their capacities as such.

9.15 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation, and all Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation and matters related to the Settlement, except the Supplemental Agreement.

9.16 The waiver by one Settling Party of any breach of this Stipulation by any other party shall not be deemed a waiver by any other Settling Party or a waiver of any other prior or subsequent breach of this Stipulation.

9.17 Pending approval of the Court of this Stipulation and its Exhibits, all proceedings in this Litigation shall be stayed and all Members of the Class shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Defendants Parties.

9.18 This Stipulation, its Exhibits and the Supplemental Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Michigan and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of Michigan without giving effect to its choice-of-law principles, except to the extent that federal law requires that federal law govern.



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

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

9.21 Nothing in the Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney-client privilege, joint defense privilege, or work product protection.

9.22 Unless otherwise provided, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation without further order of the Court.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated April 26, 2021.

ROBBINS GELLER RUDMAN  
& DOWD LLP



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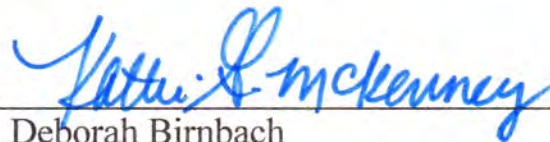
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*Counsel for Defendants Esperion  
Therapeutics, Inc. and Tim M. Mayleben*

**CERTIFICATE OF SERVICE**

I, Ellen Gusikoff Stewart, hereby certify that on April 26, 2021, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail address on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Ellen Gusikoff Stewart

---

ELLEN GUSIKOFF STEWART

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## Mailing Information for a Case 2:16-cv-10089-AJT-RSW Dougherty v. Esperion Therapeutics, Inc. et al

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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



<u>Identifier</u>	<u>Title</u>
Exhibit A:	[Proposed] Order Preliminarily Approving Settlement and Providing for Notice
Exhibit A-1:	Notice of Pendency and Proposed Settlement of Class Action
Exhibit A-2:	Proof of Claim and Release
Exhibit A-3:	Summary Notice of Proposed Settlement of Class Action
Exhibit B:	[Proposed] Order and Final Judgment

DATED: April 26, 2021

ROBBINS GELLER RUDMAN  
& DOWD LLP

s/ Ellen Gusikoff Stewart

---

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*Lead Counsel for Lead Plaintiffs*

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*Local Counsel*

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KEVIN L. DOUGHERTY, Individually )	Civ. No. 2:16-cv-10089-AJT-RSW
and on Behalf of All Others Similarly )	
Situated, )	<u>CLASS ACTION</u>
Plaintiff, )	[PROPOSED] ORDER
vs. )	PRELIMINARILY APPROVING
ESPERION THERAPEUTICS, INC., et )	SETTLEMENT AND PROVIDING
al., )	FOR NOTICE
Defendants. )	EXHIBIT A
_____ )	

WHEREAS, an action pending before this Court is styled *Dougherty v. Esperion Therapeutics, Inc., et al.*, Civ. No. 2:16-cv-10089-AJT-RSW (E.D. Mich.) (the “Litigation”);

WHEREAS, Class Representatives having made a motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in accordance with a Stipulation of Settlement, dated April 26, 2021 (the “Stipulation”), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Litigation between the Settling Parties and for dismissal of the Litigation against the Released Defendants Parties with prejudice upon the terms and conditions set forth therein; and the Court having read and considered (1) the motion for preliminary approval of the Settlement, and the papers filed and arguments made in connection therewith, and (2) the Stipulation and the Exhibits annexed thereto;

WHEREAS, the Settling Parties having consented to the entry of this Order;

WHEREAS, the Court preliminarily finds that:

(a) the Settlement resulted from informed, extensive arm’s-length negotiations between experienced counsel following mediation under the direction of an experienced mediator, Hon. Gerald E. Rosen (Ret.);

(b) the proposed Settlement eliminates risks to the Settling Parties of continued litigation;

(c) the Settlement does not provide undue preferential treatment to the Class Representatives or to segments of the Class;

(d) the Settlement does not provide excessive compensation to Class Counsel; and

(e) the Settlement appears to fall within the range of possible approval and is therefore sufficiently fair, reasonable, and adequate to warrant providing notice of the Settlement to the Class; and

WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed the Stipulation and does hereby preliminarily approve the Settlement set forth therein as fair, reasonable and adequate, subject to further consideration at the Final Approval Hearing described below.

2. The Court preliminarily finds that the proposed Settlement should be approved as: (i) it is the result of serious, extensive arm's-length and non-collusive negotiations; (ii) falling within a range of reasonableness warranting final approval; (iii) having no obvious deficiencies; and (iv) warranting notice of the proposed Settlement to Class Members and further consideration of the Settlement at the fairness hearing described below.

3. A hearing shall be held before this Court on \_\_\_\_\_, 2021, at \_\_\_\_\_.m. [a date that is approximately one hundred (100) calendar days from the date

of this Order] (the “Final Approval Hearing”), at the Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226 or at such other location or via telephonic or video conference as determined by the Court to: (1) determine whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Class and should be approved by the Court; (2) determine whether an Order and Final Judgment as provided in ¶1.14 of the Stipulation should be entered dismissing the Litigation with prejudice against Defendants; (3) determine whether the proposed Plan of Allocation should be approved; (4) determine the amount of attorneys’ fees and expenses that should be awarded to Class Counsel; (5) determine any award to the Class Representatives pursuant to 15 U.S.C. §78u-4(a)(4); (6) hear any objections by Class Members to: (i) the Settlement or Plan of Allocation; (ii) the award of attorneys’ fees and expenses to Class Counsel; and (iii) the award to the Class Representatives pursuant to 15 U.S.C. §78u-4(a)(4); and to (7) consider such other matters the Court deems appropriate. The Court may decide to hold the Final Approval Hearing by video or telephonically without further notice to the Class, and may approve the proposed Settlement with such modifications as the Settling Parties may agree to, if appropriate, without further notice to the Class.

4. The Court approves the form, substance, and requirements of the Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and Proof of Claim

and Release form (“Proof of Claim”), substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively.

5. The Court approves the form of the Summary Notice of Proposed Settlement of Class Action (“Summary Notice”), substantially in the form annexed hereto as Exhibit A-3.

6. The firm of Gilardi & Co. LLC (“Claims Administrator”) is hereby appointed to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below.

7. Esperion shall provide to the Claims Administrator, at no cost to the Class Representatives or the Class, within ten (10) business days after entry of this Order, reasonably available transfer records in electronic searchable form, such as Excel, containing the names and addresses of Persons who purchased or otherwise acquired Esperion common stock during the Class Period.

8. Not later than \_\_\_\_\_, 2021 [a date twenty-one (21) business days after the Court signs and enters this Order] (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice and Proof of Claim, substantially in the forms annexed hereto, to be mailed by First-Class Mail to all Class Members who can be identified with reasonable effort and to be posted on its website at [www.EsperionSecuritiesSettlement.com](http://www.EsperionSecuritiesSettlement.com).



9. Not later than \_\_\_\_\_, 2021 [a date seven (7) calendar days after the Notice Date], the Claims Administrator shall cause the Summary Notice to be published once in *Investor's Business Daily*, and once over a national newswire service.

10. At least seven (7) calendar days prior to the Final Approval Hearing, Class Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

11. Nominees who purchased or otherwise acquired Esperion common stock between August 18, 2015 and September 28, 2015, inclusive, for the benefit of another Person during such time period shall be requested to send the Notice and Proof of Claim to such beneficial owners of Esperion common stock within ten (10) business days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) business days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim to such beneficial owners.

12. The form and content of the notice program described herein and the methods set forth herein for notifying the Class of the Settlement and its terms and conditions, the Fee and Expense Application, and the Plan of Allocation meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 and due process, constitute the best notice practicable

under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

13. All fees, costs, and expenses incurred in identifying and notifying Members of the Class shall be paid from the Settlement Fund and in no event shall any of the Released Defendants Parties bear any responsibility for such fees, costs, or expenses.

14. All Class Members (except Persons who request exclusion pursuant to ¶17 below) shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim or any similar document, any distribution from the Settlement Fund or the Net Settlement Fund.

15. Class Members who wish to participate in the Settlement shall complete and submit a Proof of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked or submitted electronically no later than \_\_\_\_\_, 2021 [a date one hundred-twenty (120) calendar days from the Notice Date]. Any Class Member who does not submit a Proof of Claim within the time provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by

the Court, but shall nevertheless be bound by any final judgment entered by the Court. Notwithstanding the foregoing, Class Counsel shall have the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. No person shall have any claim against the Class Representatives, Lead Plaintiffs' Counsel or the Claims Administrator by reason of the decision to exercise such discretion whether to accept late-submitted claims.

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

17. Any Person falling within the definition of the Class may, upon request, be excluded or "opt out" from the Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), by First-Class Mail, received no later than \_\_\_\_\_, 2021 [a date twenty-one (21) calendar days prior to the Final Approval Hearing]. A Request for Exclusion must be signed and state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) all of the Person's purchases or acquisitions of Esperion common stock during the Class Period, including the number of shares of Esperion common stock purchased or acquired, the dates and the number of those shares sold, and the price received for each such sale; and (c) that the Person wishes to be excluded from the Class. All

Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment. The Request for Exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

18. The Claims Administrator shall cause to be provided simultaneously to Class Counsel and Defendants' Counsel copies of all Requests for Exclusion, and any written revocation of Requests for Exclusion, as expeditiously as possible, and certainly no later than five (5) calendar days after receiving any Request for Exclusion or fifteen (15) calendar days prior to the Final Approval Hearing, whichever is earlier.

19. Any Member of the Class may appear at the Final Approval Hearing and object if he, she, or it has any reason why: (1) the proposed Settlement of the Litigation should not be approved as fair, reasonable and adequate; (2) a judgment should not be entered thereon; (3) why the Plan of Allocation should not be approved; or (4) fees, costs, and expenses should not be awarded to Class Counsel or the Class Representatives; provided, however, that no Class Member or any other Person shall be heard at the Final Approval Hearing or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, or any fees

and expenses to be awarded to Class Counsel or the Class Representatives, unless the Person objecting has filed said written objections and copies of any papers and briefs with the Clerk of the United States District Court for the Eastern District of Michigan and mailed copies thereof by First-Class Mail to: (1) Robbins Geller Rudman & Dowd LLP, Ellen Gusikoff Stewart, 655 West Broadway, Suite 1900, San Diego, CA 92101; (2) Kahn Swick & Foti, LLC, Ramzi Abadou, 912 Cole Street, #251, San Francisco, CA 94117; and (3) Goodwin Procter LLP, Deborah S. Birnbach, and Katherine G. McKenney, 100 Northern Avenue, Boston, MA 02210, no later than \_\_\_\_\_, 2021 [a date twenty-one (21) calendar days prior to the Final Approval Hearing]. Any Member of the Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of the proposed Settlement as incorporated in the Stipulation, to the Plan of Allocation, or to the award of fees, costs and expenses to Class Counsel or the Class Representatives, unless otherwise ordered by the Court. Attendance at the Final Approval Hearing is not necessary. However, Persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of fees, costs, and expenses are required to indicate in their written objection their intention to appear at the hearing. Class Members do not need

to appear at the Final Approval Hearing or take any other action to indicate their approval.

20. The passage of title and ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and obligations of the Stipulation is approved. No person who is not a Class Member or Lead Plaintiffs' Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation. As provided in the Stipulation, prior to the Effective Date, Class Counsel may pay the Claims Administrator fees and costs associated with giving notice to the Class and the review of claims and administration of the Settlement out of the Settlement Fund not to exceed \$250,000 without further approval from Defendants and without further order of the Court. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither the Class Representatives nor Lead Plaintiffs' Counsel nor the Claims Administrator shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to ¶¶2.10 or 2.12 of the Stipulation. 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 the Stipulation and/or further order(s) of the Court.

21. All papers in support of the Settlement, Plan of Allocation, and any application by Class Counsel for attorneys' fees and expenses and the Class Representatives' awards shall be filed and served no later than \_\_\_\_\_, 2021 [a date thirty-five (35) calendar days prior to the Final Approval Hearing], and any reply papers shall be filed and served no later than \_\_\_\_\_, 2021 [a date seven (7) calendar days prior to the Final Approval Hearing].

22. The Released Defendants Parties shall have no responsibility for the Plan of Allocation or any application for attorneys' fees or expenses submitted by Class Counsel or the Class Representatives, and such matters will be considered by the Court separately from the fairness, reasonableness, and adequacy of the Settlement.

23. At or after the Final Approval Hearing, the Court shall determine whether the Plan of Allocation proposed by Class Counsel, and any application for attorneys' fees and expenses, should be approved. The Court reserves the right to enter the Order and Final Judgment approving the Settlement regardless of whether it has approved the Plan or Allocation or awarded attorneys' fees and/or expenses.

24. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations, discussions, proceedings connected with it, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement may be construed as an admission or concession by the Defendants or any other Released Defendants Parties of the truth of any of the allegations in the Litigation, or

of any liability, fault, or wrongdoing of any kind, or offered or received in evidence, or otherwise used by any person in the Litigation, or in any other action or proceeding, whether civil, criminal, or administrative, in any court, administrative agency, or other tribunal, except in connection with any proceeding to enforce the terms of the Stipulation. The Released Defendant Parties, the Class Representatives, Class Members, and each of their counsel may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

25. All proceedings in the Litigation are stayed until further order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation. Pending final determination of whether the Settlement should be approved, neither the Class Representatives nor any Class Member, either directly, representatively, or in any other capacity shall commence or prosecute against any of the Released Defendants Parties any action or proceeding in any court or tribunal asserting any of the Released Claims.

26. The Court reserves the right to alter the time or the date of the Final Approval Hearing without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed



Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

27. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Settling Parties, and they shall be deemed to have reverted to their respective litigation positions as of March 12, 2021.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE ARTHUR J. TARNOW  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT A-1**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KEVIN L. DOUGHERTY, Individually )	Civ. No. 2:16-cv-10089-AJT-RSW
and on Behalf of All Others Similarly )	
Situated, )	<u>CLASS ACTION</u>
Plaintiff, )	NOTICE OF PENDENCY AND
vs. )	PROPOSED SETTLEMENT OF
ESPERION THERAPEUTICS, INC., et )	CLASS ACTION
al., )	EXHIBIT A-1
Defendants. )	
_____ )	

**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 \_\_\_\_\_, 2021.**

This Notice of Pendency and Proposed Settlement of Class Action (“Notice”)<sup>1</sup> 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.

---

<sup>1</sup> 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](http://www.EsperionSecuritiesSettlement.com).

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b>	The only way to be eligible to receive a payment from the Settlement. <b>Proofs of Claim must be postmarked or submitted online on or before _____, 2021.</b>
<b>EXCLUDE YOURSELF</b>	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. <b>Exclusions must be received on or before _____, 2021.</b>
<b>OBJECT</b>	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. <b>Objections must be received by the Court and counsel on or before _____, 2021. If you submit a written objection, you may (but do not have to) attend the hearing.</b>
<b>GO TO THE HEARING ON _____, 2021</b>	Ask to speak in Court about the fairness of the Settlement. <b>Requests to speak must be received by the Court and counsel on or before _____, 2021.</b>
<b>DO NOTHING</b>	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 \_\_\_ 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, 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](http://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](http://www.rgrdlaw.com), or Alexander Burns, Esq., Kahn Swick & Foti, LLC, 1100 Poydras Street, Suite 3200, New Orleans, LA 70163, 1-504-455-1400, [www.ksfcounsel.com](http://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**

<b>1. Why did I get this Notice package?</b>
----------------------------------------------

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.*, Case 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 \_\_\_\_\_, 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](http://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 \_\_\_\_\_, 2021**. The Proof of Claim may be submitted online at [www.EsperionSecuritiesSettlement.com](http://www.EsperionSecuritiesSettlement.com).

### **9. When would I get my payment?**

**The Court will hold a Settlement Hearing on \_\_\_\_\_ 2021, at \_\_\_\_\_ .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).<sup>2</sup> 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):

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<sup>2</sup> 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](http://www.EsperionSecuritiesSettlement.com).

- “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 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*** \_\_\_\_\_, **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 \_\_\_\_\_, 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* \_\_\_\_\_, 2021:

COURT	CLASS COUNSEL	DEFENDANTS' COUNSEL
CLERK OF THE COURT UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN Theodore Levin U.S. Courthouse 231 W. Lafayette Blvd., Detroit, MI 48226	ROBBINS GELLER RUDMAN & DOWD LLP ELLEN GUSIKOFF STEWART 655 West Broadway, Suite 1900 San Diego, CA 92101  KAHN SWICK & FOTI, LLC RAMZI ABADOU 912 Cole Street, #251 San Francisco, CA	GOODWIN PROCTER LLP DEBORAH BIRNBACH KATHERINE McKENNEY 100 Northern Avenue Boston, MA 02210

94117

**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 \_\_\_\_\_.m., on \_\_\_\_\_, 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* \_\_\_\_\_, 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](http://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](http://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 \$18,250,000.00 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](http://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**

<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price between September 29, 2015 and Date Shown</b>	<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price between September 29, 2015 and Date Shown</b>
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.<sup>3</sup> If a claimant suffered an

<sup>3</sup> 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

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.

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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.



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.

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:

*Esperion Securities Settlement*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 43390  
Providence, RI 02940-3390  
[www.EsperionSecuritiesSettlement.com](http://www.EsperionSecuritiesSettlement.com)

DATED: \_\_\_\_\_

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

# **EXHIBIT A-2**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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

## I. GENERAL INSTRUCTIONS

1. To recover as a Member of the Class based on your claims in the action entitled *Dougherty v. Esperion Therapeutics, Inc., et al.*, Civ. No. 2:16-cv-10089-AJT-RSW (E.D. Mich.) (the “Litigation”), you must complete and, on page \_\_\_ hereof, sign this Proof of Claim and Release form (“Proof of Claim”). If you fail to submit a timely and properly addressed (as set forth in paragraph 3 below) Proof of Claim, your claim may be rejected and you may not receive any recovery from the Net Settlement Fund created in connection with the proposed Settlement.

2. Submission of this Proof of Claim, however, does not assure that you will share in the proceeds of the Settlement of the Litigation.

3. **YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED PROOF OF CLAIM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN \_\_\_\_\_, 2021, ADDRESSED AS FOLLOWS:**

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

Online Submissions: [www.EsperionSecuritiesSettlement.com](http://www.EsperionSecuritiesSettlement.com)

4. If you are NOT a Member of the Class, as defined in the Notice of Pendency and Proposed Settlement of Class Action (“Notice”), or if you requested exclusion from the Class, DO NOT submit a Proof of Claim or direct a third party to file one on your behalf.

5. If you did not timely request exclusion and are a Class Member, you will be bound by the terms of any judgment entered in the Litigation, including the releases provided therein, **WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM.**

## **II. CLAIMANT IDENTIFICATION**

If you purchased or acquired Esperion Therapeutics, Inc. (“Esperion”) common stock and held the certificate(s) in your name, you are the beneficial purchaser or acquirer as well as the record purchaser or acquirer. If, however, you purchased or acquired Esperion common stock and the certificate(s) were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser or acquirer and the third party is the record purchaser or acquirer.

Use Part I of this form entitled “Claimant Identification” to identify each purchaser of record (“nominee”), if different from the beneficial purchaser or acquirer of the Esperion common stock, that forms the basis of this claim. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S) OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE ESPERION COMMON STOCK UPON WHICH THIS CLAIM IS BASED.**

All joint purchasers or acquirers must sign this claim. Executors, administrators, guardians, conservators, and trustees or others acting in a representative capacity on behalf of a Class Member must complete and sign this

claim on behalf of persons represented by them, and submit evidence of their current authority to act on behalf of that Class Member, including that your titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

### **III. CLAIM FORM**

Use Part II of this form entitled “Schedule of Transactions in Esperion Common Stock” to supply all required details of your transaction(s) in Esperion common stock. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to *all* of your purchases and acquisitions and *all* of your sales of Esperion common stock which took place during the period August 18, 2015 through and including December 24, 2015, whether such transactions resulted in a profit or a loss. You must also provide all of the requested information with respect to *all* of the Esperion common stock you held at the close of trading on August 17, 2015, September 28, 2015, and December 24, 2015. Failure to report all such transactions may result in the rejection of your claim.

List each transaction separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

The date of covering a “short sale” is deemed to be the date of purchase of Esperion common stock. The date of a “short sale” is deemed to be the date of sale of Esperion common stock.

For each transaction, copies of broker confirmations or other documentation of your transactions in Esperion common stock should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. This is different from the online submission process that is available at [www.EsperionSecuritiesSettlement.com](http://www.EsperionSecuritiesSettlement.com). All claimants *must* submit a manually signed paper Proof of Claim form whether or not they also submit electronic copies. If you have a large number of transactions and wish to file your claim electronically, you must contact the Claims Administrator at [edata@gilardi.com](mailto:edata@gilardi.com) to obtain the required file layout.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

*Dougherty v. Esperion Therapeutics, Inc., et al.*

No. 2:16-cv-10089-AJT-RSW

PROOF OF CLAIM AND RELEASE

**Must Be Postmarked or Received No Later Than:**

\_\_\_\_\_, 2021

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

\_\_\_\_\_  
Beneficial Owner's Name (First, Middle, Last)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State or Province

\_\_\_\_\_  
Zip Code or Postal Code

\_\_\_\_\_  
Country

\_\_\_\_\_  
Social Security Number or  
Taxpayer Identification Number

\_\_\_\_\_  
Individual  
Corporation/Other

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (work)

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (home)

\_\_\_\_\_  
Record Owner's Name (if different from beneficial owner listed above)

**PART II: SCHEDULE OF TRANSACTIONS IN ESPERION COMMON STOCK**

- A. Number of shares of Esperion common stock held at the close of trading on August 17, 2015: \_\_\_\_\_
- B. Purchases or acquisitions of Esperion common stock (August 18, 2015 – December 24, 2015, inclusive):

Trade Date Month Day Year	Number of Shares Purchased or Acquired	Total Purchase or Acquisition Price
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____

**IMPORTANT:** (i) If any purchase listed covered a “short sale,” please mark Yes.  Yes

(ii) If you received shares through an acquisition or merger, please identify the date, the share amount, and the company acquired:

//

MM DD YYYY \_\_\_\_\_  
Merger Shares Company

- C. Sales of Esperion common stock (August 18, 2015 – December 24, 2015, inclusive):

Trade Date Month Day Year	Number of Shares Sold	Total Sales Price
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____

D. Number of shares of Esperion common stock held at the close of trading on September 28, 2015: \_\_\_\_\_

E. Number of shares of Esperion common stock held at the close of trading on December 24, 2015: \_\_\_\_\_

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

**IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

On behalf of myself (ourselves) and each of my (our) heirs, agents, executors, trustees, administrators, predecessors, successors and assigns, I (we) submit this Proof of Claim under the terms of the Stipulation of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Eastern District of Michigan with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I

am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator to support this claim (including transactions in other Esperion securities) if requested to do so. I (We) have not submitted any other claim covering the same purchases, acquisitions or sales of Esperion common stock during the Class Period and know of no other person having done so on my (our) behalf.

## **V. RELEASE**

1. Upon the Effective Date of the Settlement, I (we) acknowledge full and complete satisfaction of, and fully, finally, and forever settle, release, and discharge from the Released Claims each and all of the “Released Defendants Parties,” defined as 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. “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.

2. “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 the 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.

3. “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 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, legal theories or authorities 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.

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

5. I (We) hereby warrant and represent that I (we) have included the information requested about all of my (our) transactions in Esperion common stock which are the subject of this claim, which occurred during the Class Period, as well as the opening and closing positions in such shares held by me (us) on the dates requested in this claim form.

I declare under penalty of perjury under the laws of the United States of America that all of the foregoing information supplied on this Proof of Claim by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_,  
(Month/Year) (City)

\_\_\_\_\_  
(State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)



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(Capacity of person(s) signing,  
*e.g.*, Beneficial Purchaser or Acquirer,  
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 acknowledgment.
2. If this claim is being made on behalf of Joint Claimants, then both must sign.
3. Remember to attach copies of supporting documentation, if available.
4. **Do not send** originals of certificates.
5. Keep a copy of your claim form and all supporting documentation for your records.
6. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.
7. If you move, please send your new address to the address below.
8. **Do not use red pen or highlighter** on the Proof of Claim or supporting documentation.

**THIS PROOF OF CLAIM MUST BE SUBMITTED ONLINE OR MAILED  
NO LATER THAN \_\_\_\_\_, 2021, ADDRESSED AS FOLLOWS:**

*Esperion Securities Litigation*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 43390  
Providence, RI 02940-3390  
[www.EsperionSecuritiesSettlement.com](http://www.EsperionSecuritiesSettlement.com)

**EXHIBIT A-3**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KEVIN L. DOUGHERTY, Individually )	Civ. No. 2:16-cv-10089-AJT-RSW
and on Behalf of All Others Similarly )	
Situated, )	<u>CLASS ACTION</u>
Plaintiff, )	SUMMARY NOTICE OF PROPOSED
vs. )	SETTLEMENT OF CLASS ACTION
ESPERION THERAPEUTICS, INC., et )	EXHIBIT A-3
al., )	
Defendants. )	
_____ )	

**TO: ALL PERSONS AND ENTITIES THAT PURCHASED OR OTHERWISE ACQUIRED ESPERION THERAPEUTICS, INC. (“ESPERION” OR THE “COMPANY”) COMMON STOCK FROM AUGUST 18, 2015 THROUGH SEPTEMBER 28, 2015, INCLUSIVE (“CLASS” OR “CLASS MEMBERS”), AND WERE ALLEGEDLY DAMAGED THEREBY**

**THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.**

YOU ARE HEREBY NOTIFIED that a hearing will be held on \_\_\_\_\_, 2021, at \_\_:\_\_.m., before the Honorable Arthur J. Tarnow at the Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226, or at such other location or via telephonic or video appearance as determined by the Court, to determine whether: (1) the proposed settlement (the “Settlement”) of the above-captioned action as set forth in the Stipulation of Settlement (“Stipulation”)<sup>1</sup> for \$18,250,000 should be approved by the Court as fair, reasonable and adequate; (2) the Judgment as provided under the Stipulation should be entered to dismiss the above-captioned action with prejudice; (3) to award Class Counsel attorneys’ fees and expenses out of the Settlement Fund (as defined in the Notice of Pendency and Proposed Settlement of Class Action (“Notice”), which is discussed below) and, if so, in what amounts; (4) the Class Representatives’ request for reimbursement in connection with their representation of the Class pursuant to 15 U.S.C. §78u-4(a)(4) should be approved

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<sup>1</sup> The Stipulation can be viewed and/or obtained at [www.EsperionSecuritiesSettlement.com](http://www.EsperionSecuritiesSettlement.com).

and, if so, in what amounts; and (5) the Plan of Allocation should be approved by the Court as fair, reasonable and adequate.

This Litigation is a securities class action brought on behalf of those Persons or entities who purchased or acquired Esperion common stock during the period between August 18, 2015 and September 28, 2015, inclusive, against Esperion and Tim Mayleben (collectively, “Defendants”) for, among other things, allegedly misstating and omitting material facts about information concerning the drug approval process for Esperion’s cholesterol-lowering drug. The Class Representatives allege that these purportedly false and misleading statements inflated the price of Esperion stock, resulting in damage to Class Members when the truth was revealed. Defendants deny all of the Class Representatives’ allegations.

IF YOU PURCHASED OR ACQUIRED ESPERION COMMON STOCK BETWEEN AUGUST 18, 2015 THROUGH AND INCLUDING SEPTEMBER 28, 2015, YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION.

To share in the distribution of the Settlement Fund, you must establish your rights by submitting a Proof of Claim and Release form (“Proof of Claim”) by mail **(postmarked no later than \_\_\_\_\_, 2021)** or electronically **(no later than \_\_\_\_\_, 2021)**. Your failure to submit your Proof of Claim by \_\_\_\_\_, 2021, will subject your claim to rejection and preclude your receiving any of the recovery in

connection with the Settlement of this Litigation. If you are a Member of the Class and do not request exclusion therefrom, you will be bound by the Settlement and any judgment and release entered in the Litigation, including, but not limited to, the Judgment, whether or not you submit a Proof of Claim.

If you have not received a copy of the Notice, which more completely describes the Settlement and your rights thereunder (including your right to object to the Settlement), and a Proof of Claim, you may obtain these documents, as well as a copy of the Stipulation (which, among other things, contains definitions for the defined terms used in this Summary Notice) and other Settlement documents, online at [www.EsperionSecuritiesSettlement.com](http://www.EsperionSecuritiesSettlement.com), or by writing to:

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

Inquiries should NOT be directed to Defendants, the Court, or the Clerk of the Court.

Inquiries, other than requests for the Notice or a Proof of Claim, may be made to Class Counsel:

ROBBINS GELLER RUDMAN & DOWD LLP

Ellen Gusikoff Stewart  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 800/449-4900

KAHN SWICK & FOTI, LLC

ALEXANDER BURNS  
1100 Poydras Street, Suite 3200  
New Orleans, LA 70163  
Toll Free: (866) 467-1400

IF YOU DESIRE TO BE EXCLUDED FROM THE CLASS, YOU MUST SUBMIT A REQUEST FOR EXCLUSION SUCH THAT IT IS **RECEIVED BY** \_\_\_\_\_, **2021**, IN THE MANNER AND FORM EXPLAINED IN THE NOTICE. CLASS MEMBERS WHO HAVE NOT REQUESTED EXCLUSION FROM THE CLASS WILL BE BOUND BY THE SETTLEMENT EVEN IF THEY DO NOT SUBMIT A TIMELY PROOF OF CLAIM.

IF YOU ARE A CLASS MEMBER, YOU HAVE THE RIGHT TO OBJECT TO THE SETTLEMENT, THE PLAN OF ALLOCATION, THE REQUEST BY CLASS COUNSEL FOR AN AWARD OF ATTORNEYS' FEES NOT TO EXCEED 32.5% OF THE \$18,250,000 SETTLEMENT AMOUNT AND EXPENSES NOT TO EXCEED \$1,000,000 INCLUDING THE PAYMENT TO THE CLASS REPRESENTATIVES IN CONNECTION WITH THEIR REPRESENTATION OF THE CLASS NOT TO EXCEED \$15,000 IN THE AGGREGATE. ANY OBJECTIONS MUST BE FILED WITH THE COURT AND SENT TO CLASS

COUNSEL AND DEFENDANTS' COUNSEL **BY** \_\_\_\_\_, **2021**, IN THE  
MANNER AND FORM EXPLAINED IN THE NOTICE.

DATED: \_\_\_\_\_

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



# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KEVIN L. DOUGHERTY, Individually )	Civ. No. 2:16-cv-10089-AJT-RSW
and on Behalf of All Others Similarly )	
Situated, )	<u>CLASS ACTION</u>
Plaintiff, )	[PROPOSED] ORDER AND FINAL
vs. )	JUDGMENT
ESPERION THERAPEUTICS, INC., et )	EXHIBIT B
al., )	
Defendants. )	
_____ )	

On the \_\_\_\_ day of \_\_\_\_\_, 2021, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation of Settlement dated April 26, 2021 (the “Stipulation”), are fair, reasonable and adequate for the settlement of all claims asserted by the Class against the Defendants in the complaint now pending in this Court under the above caption (the “Litigation”), including the release of the Released Defendants Parties, and should be approved; (2) whether judgment should be entered dismissing the complaint on the merits and with prejudice in favor of the Defendants herein and as against the Releasing Plaintiffs Parties; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the Members of the Class; (4) whether and in what amount to award Class Counsel fees and expenses; and (5) whether and in what amount to award reimbursement to the Class Representatives in connection with their representation of the Class. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was provided to all individuals and entities, reasonably identifiable, who purchased or otherwise acquired Esperion Therapeutics, Inc. (“Esperion”) common stock between August 18, 2015 and September 28, 2015, inclusive (“Class”), as shown by the records compiled by the Claims Administrator in connection with its providing of the Notice, at the respective addresses set forth in such records, and that a summary notice of the hearing,

substantially in the form approved by the Court, was published pursuant to the Order Preliminarily Approving Settlement and Providing for Notice as set forth in the Declaration of \_\_\_\_\_, and the Supplemental Declaration of \_\_\_\_\_; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested by Class Counsel and the request for an award to the Class Representatives in connection with their representation of the Class pursuant to 15 U.S.C. §78u-4(a)(4); and all capitalized terms used herein having the meanings set forth and defined in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this Litigation, the Class Representatives, all Class Members, and Defendants.
2. Excluded from the Class are those Class Members listed on Exhibit 1 hereto, whose requests for exclusion from the Class are hereby accepted by the Court.
3. Notice of the pendency of this Litigation as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the pendency of this Litigation as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all individuals and entities entitled thereto.

4. The Settlement is approved as fair, reasonable and adequate, and in the best interests of the Class. Subject to the terms and provisions of the Stipulation and the conditions therein being satisfied, the parties are directed to consummate the Settlement.

5. The Litigation is hereby dismissed in its entirety with prejudice.

6. The releases as set forth in ¶¶4.1-4.4 of the Stipulation (the “Releases”), together with the definitions contained in ¶¶1.1-1.35 relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date.

7. Upon the Effective Date, the Releasing Plaintiffs Parties are hereby permanently barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement against Defendants or any Released Defendants Parties in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all Released Claims (including Unknown Claims), as well as any other claims arising out of, relating to, or in connection with, the defense, settlement, or resolution of the Litigation or the Released Claims.

8. Upon the Effective Date, the Releasing Plaintiffs Parties shall, and each of the Class Members shall be deemed to have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Defendants Parties. The Releasing Plaintiffs Parties and each Class Member are bound by this Judgment, including, without limitation, the release of claims as set forth in the Stipulation. The Released Claims are hereby compromised, settled, released, discharged, and dismissed as against the Released Defendants Parties on the merits

and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

9. Upon the Effective Date, each of the Released Defendants Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Class Representatives, each and all of the Class Members, and Lead Plaintiffs' Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Defendants' Claims.

10. Defendants have denied, and continue to deny, any and all allegations and claims asserted in the Litigation, and Defendants have represented that they entered into the Settlement solely in order to eliminate the burden, expense, and uncertainties of further litigation. Neither this Order and Final Judgment, the Stipulation, nor any of its terms and provisions, nor any of the negotiations, discussions, or proceedings connected with it, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement, nor any of the documents or statements referred to therein, nor any payment or consideration provided for therein, shall be:

(a) offered or received against any of the Released Defendants Parties as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Released Defendants Parties with respect to the truth of any fact alleged by the Class Representatives or the validity of any claim that has been or could have been asserted against any of the Released Defendants Parties in the

Litigation or any litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation or any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind by any of the Released Defendants Parties;

(b) offered or received against any of the Released Defendants Parties as evidence of, or construed as evidence of, any presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Released Defendants Parties, or against the Class Representatives or any Member of the Class as evidence of, or construed as evidence of, any infirmity of the claims alleged by the Class Representatives;

(c) offered or received against the Released Defendants Parties, the Class Representatives, or any Member of the Class as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Released Defendants Parties, the Class Representatives, or any Member of the Class with respect to any liability, negligence, fault, or wrongdoing as against any of the Released Defendants Parties, the Class Representatives, or any Member of the Class in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that the Released Defendants Parties, Lead Plaintiffs, and any Member of the Class may refer to it to effectuate the liability protection granted them hereunder;

(d) offered or received against any of the Released Defendants Parties as evidence of, or construed as evidence of, any presumption, concession, or

admission by any of the Released Defendants Parties that the Settlement Amount represents the amount which could or would have been recovered after trial; or

(e) offered or received against the Class Representatives or any Member of the Class as evidence of, or construed as evidence of, any presumption, concession, or admission by the Class Representatives or any Member of the Class that any of their claims are without merit, or that any defenses asserted by the Defendants in the Litigation have any merit, or that damages recoverable in the Litigation would not have exceeded the Settlement Fund.

11. Notwithstanding the provisions of the preceding paragraph, the Released Defendants Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense, claim, or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12. The Court finds that Esperion has satisfied its financial obligations under the Stipulation by causing the \$18,250,000 Settlement Fund to be paid.

13. The Court finds and concludes that the Class Representatives, Lead Plaintiffs' Counsel, Defendants and Defendants' Counsel have complied with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, dispositive motion, or other filing.

14. Any Plan of Allocation submitted by Class Counsel or any order entered regarding any attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment. Separate orders



shall be entered regarding approval of a plan of allocation and Class Counsel's application for an award of attorneys' fees and expenses.

15. The Settling Parties are hereby authorized, without further approval of the Court, to unanimously agree to and adopt in writing such amendments, modifications, and expansions of the Stipulation, provided that such amendments, modifications, and expansions of the Stipulation are not materially inconsistent with this Judgment, and do not materially limit the rights of the Members of the Class under the Stipulation.

16. Any appeal or any challenge affecting the approval of (a) the Plan of Allocation submitted by Class Counsel and/or (b) this Court's approval regarding any attorneys' fee and expense applications shall in no way disturb or affect the finality of the other provisions of this Order and Final Judgment nor the Effective Date of the Settlement.

17. Jurisdiction is hereby retained over Defendants, the Class Representatives and the Class Members for all matters relating to the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the Members of the Class.

18. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or is terminated pursuant to ¶7.3 of the Stipulation, ¶¶7.5-7.7 of the Stipulation shall apply and this Order and Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and may not be introduced as evidence or reflected in

any action or proceeding by any person or entity, and each party shall be restored to his, her or its respective position as it existed prior to March 12, 2021.

19. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

20. Defendants have provided notification to all appropriate federal and state officials regarding the Settlement as required by 28 U.S.C. §1715.

21. This Litigation and all Released Claims are dismissed with prejudice. The parties are to bear their own costs, except as otherwise provided in the Stipulation or this Order and Final Judgment.

22. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed.

DATED:

\_\_\_\_\_

\_\_\_\_\_  
HONORABLE ARTHUR J. TARNOW  
UNITED STATES DISTRICT JUDGE