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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF ARIZONA

12 In re:
13 Arizona THERANOS, INC. Litigation,

No. 2:16-cv-2138- DGC

(Consolidated with)
No. 2:16-cv-2373- HRH
No. 2:16-cv-2660- HRH
No. 2:16-cv-2775- DGC
-and-
No. 2:16-cv-3599- DGC

PLAN OF ALLOCATION

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19 1. **Definitions.** Unless otherwise defined, terms in this Plan of Allocation have
20 the same meaning as in the Settlement Agreement. In addition, the following terms and
21 phrases shall have the following meanings within this Plan of Allocation, whether used in
22 the singular or plural or in the possessive or non-possessive:

23 A. “Base Payment” means \$10, which shall be the minimum amount of
24 each Class Member Payment and shall be included within each Class Member
25 Payment independent of the amounts of any Unadjusted Class Member Payment,
26 Offset, or Walgreens Edison Subclass Member Payment.

27 B. “Class Member Payment” means the payment made to a Class
28 Member from the Net Settlement Fund. Except as provided in paragraph 4, the Class

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Member Payment allocated to a Class Member shall be equal to the Base Payment, plus:

- i. The Unadjusted Class Member Payment, minus his or her Offset, or
- ii. if the Class Data List does not show a Class Member's Theranos Testing Costs, then the average Unadjusted Class Member Payment for all Class Members for whom the Class Data List does show Theranos Testing Costs, minus his or her Offset.

C. "Offset" means the total value of any refund checks negotiated by such Class Member and issued pursuant to the April 17, 2017 Consent Decree between Theranos and the Attorney General of Arizona, reflected in the Class Data List.

D. "Theranos Testing Costs" means the total costs for the Class Member's Theranos testing services (whether paid out-of-pocket, through insurance, or from another source) reflected in the Class Data List.

E. "Unadjusted Class Member Payment" means two times the Theranos Testing Costs of such Class Member.

F. "Walgreens Edison Subclass Member Payment" means the payment made to a Walgreens Edison Subclass Member from the Net Settlement Fund. Except as provided below in paragraph 4 the Walgreens Edison Subclass Member Payment shall be equal to \$1,000.

G. For the avoidance of doubt, Walgreens Edison Subclass Members are also Class Members and are entitled to both a Class Member Payment and a Walgreens Edison Subclass Member Payment.

2. Walgreens has had, and will have, no involvement in or responsibility for the terms or application of this Plan of Allocation.

1 3. **General rule of allocation.** Except as provided by paragraph 4 Class
2 Member Payments shall be allocated according to subparagraph 1(B) and Walgreens
3 Edison Subclass Member Payments according to subparagraph 1(F).

4 4. **Special rules of allocation.**

5 A. *Reduction.* If the sum of all Class Member Payments and all
6 Walgreens Edison Subclass Member Payments, when allocated pursuant to
7 paragraph 3 (“Payment Sum”), exceeds the Net Settlement Fund, then payments
8 shall be recalculated as follows: the Unadjusted Class Member Payments and
9 Walgreens Edison Subclass Member Payments shall be reduced by the proportion
10 necessary to make the Payment Sum equal to the Net Settlement Fund. Such
11 proportion shall be the same for all Unadjusted Class Member Payments and all
12 Walgreens Edison Subclass Member Payments.

13 B. *Increase.* If the Payment Sum is less than the Net Settlement Fund,
14 then payments shall be recalculated as follows: the Unadjusted Class Member
15 Payments and Walgreens Edison Subclass Member Payments shall be increased by
16 the proportion necessary to make the Payment Sum equal to the Net Settlement
17 Fund. Such proportion shall be the same for all Class Member Payments and all
18 Walgreens Edison Subclass Member Payments.

19 C. For the avoidance of doubt, the amounts of the Class Member Base
20 Payment and the Class Member Offset shall not be increased or decreased pursuant
21 to the special rules of allocation set forth in subparagraphs 4(A) and 3(B).

22 5. **Payments by check.** Within 30 days after the Effective Date (the “Payment
23 Date”), Class Member Payments and Walgreens Edison Subclass Member Payments shall
24 be sent by mailed check from the Settlement Administrator via first class U.S. Mail
25 (postage pre-paid). Walgreens Edison Subclass Members shall be mailed a single check
26 including both their Class Member Payment and Walgreens Edison Subclass Member
27 Payment.
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1 6. **Unclaimed payments.**

2 A. *Checks not negotiated.* Payments made by paper check shall have a
3 void date of at least 120 days from the date of issue (the “Void Date”). If, no later
4 than 30 days after the Void Date, a Class Member reasonably requests that a check
5 that has not been negotiated be reissued, the Settlement Administrator shall reissue
6 it with a void date of 30 days from the date of issue.

7 B. *Checks returned as undeliverable.* If a check to a Class Member is
8 returned as undeliverable, the Settlement Administrator shall attempt to obtain a
9 new mailing address for the Class Member and effect a second mailing. If, after a
10 second mailing, the check is again returned as undeliverable, or if the Settlement
11 Administrator, after reasonable efforts, is unable to determine a new mailing
12 address, there is no obligation to take further efforts to distribute the check to that
13 Class Member.

14 7. **Residual funds.** If there remain funds in the Settlement Account one year
15 after the Payment Date—consisting of payment checks that were successfully delivered
16 but not timely negotiated plus checks deemed undeliverable by the Settlement
17 Administrator (collectively, “Residual Funds”)—such Residual Funds shall be handled as
18 follows:

19 A. If practicable, given the amount of the Residual Funds and estimated
20 cost of such second distribution, the Residual Funds shall be distributed to Class
21 Members who negotiated their initial payment checks in amounts *pro rata* based on
22 the amount of their initial payment checks. The Settlement Administrator may
23 exclude from any such second distribution any Class Members whose second-round
24 payment check would be less than \$5.00.

25 B. If a second distribution is not practicable, or if there is a second
26 distribution and there are still remaining Residual Funds following that second
27 distribution, the remaining Residual Funds shall be treated as unclaimed property of
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1 the corresponding Class Members, subject to applicable state unclaimed property
2 procedures.

3 C. Any administrative costs of the Settlement Administrator in
4 connection with the distribution of the Residual Funds pursuant to paragraphs 7(A)
5 or 7(B) (i) shall be paid from the Residual Funds and shall not increase Walgreens'
6 contribution to the Settlement Fund or change any obligation by Walgreens under
7 the Settlement Agreement; and (ii) shall reduce *pro rata* the respective second
8 distribution and/or unclaimed property amounts distributed pursuant to this
9 paragraph 7. The Settlement Administrator shall be responsible for performing all
10 obligations that may be required by any state's unclaimed property laws and
11 procedures in connection with any Residual Funds.

12 8. **Distribution(s) to Class from Theranos Assignee:** In the event that funds
13 are disbursed for the benefit of the Class from Theranos (assignment for the benefit of
14 creditors), LLC ("Theranos ABC"), those funds ("Additional Class Funds") shall be
15 distributed as follows:

16 A. To the extent Additional Class Funds are disbursed by the Theranos
17 ABC at least 30 days before the deadline to send the initial Class Member Payments
18 pursuant to paragraph 5 herein, those funds shall be added to the Net Settlement
19 Fund and allocated and distributed to Class Members as part of the Class Member
20 Payments in accordance with paragraphs 1-7 of this Plan of Allocation.

21 B. To the extent that Additional Class Funds are disbursed by the
22 Theranos Assignee later than 30 days before the deadline to send the initial Class
23 Member Payments pursuant to paragraph 5 herein, but before commencement of the
24 disposition of Residual Funds pursuant to paragraph 7 herein, those funds will be
25 added to the Residual Funds and be distributed pursuant to paragraph 7 herein.

26 C. To the extent that Additional Class Funds are distributed by the
27 Theranos Assignee after commencement of the disposition of Residual Funds
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pursuant to paragraph 7 herein, Class Counsel will make a proposal to the Court regarding the disposition of Additional Class Funds.