IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

IN RE ENDOCHOICE HOLDINGS, INC. SECURITIES LITIGATION	Civil Action File No. 2016 CV 277772 (Consolidated with Civil Action No. 2016 CV 281193) CLASS ACTION

AFFIDAVIT OF WILLIAM C. FREDERICKS IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, William C. Fredericks, hereby state as follows under penalty of perjury:

1. I am more than 21 years of age and am a partner at the law firm of Scott + Scott, Attorneys at Law, LLP ("Scott+Scott"), one of the two Court-appointed co-Class Counsel firms for the previously certified Class[1] and for the Court-appointed co-Class Representative, Jesse L. Bauer. I make this affidavit in support of Plaintiffs' Unopposed Motion for Entry of Preliminary Approval of the Proposed Class Action Settlement.

2. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

3. Lead Plaintiffs brought this class action under the federal Securities Act on behalf of those who purchased EndoChoice common stock pursuant or traceable to the Offering Materials for EndoChoice's June 5, 2015 IPO. Lead Plaintiffs allege that the Offering Materials materially misrepresented the purported strength of EndoChoice's highly touted FUSE business, which

[1] All capitalized terms used herein that are not otherwise defined have the same meaning as given to them in the Parties' Stipulation of Settlement, dated January 30, 2020, which is attached hereto as Exhibit 1 (together with Exhibits A, A-1, A-2, A-3 and B to the Stipulation).

manufactured and sold FUSE endoscopy systems (consisting of colonoscopes and associated electronics and imagining monitors for use by gastrointestinal physicians). In particular, Lead Plaintiffs allege that Offering Materials failed to disclose material adverse facts concerning: (1) the quality and reliability of FUSE, specifically its undisclosed manufacturing and design defects; (2) the inexperience and limited capabilities of EndoChoice's FUSE sales force; and (3) EndoChoice's lack of sufficient "demo" FUSE units (which were essential in order to generate increased FUSE sales and adequately train the Company's sales force).

4. In the June 2015 IPO, Defendants offered 7,302,500 EndoChoice common shares at $15.00 per share to the investing public. By early November 2015, however, the Complaint alleges that the price of those shares had fallen to $8.01, and would fall below $5.00 in 2016, as the truth concerning the serious nature and extent of the problems with the Company's FUSE business was gradually disclosed.

5. On November 14, 2016, the Court (a) consolidated the respective actions originally brought by Mr. Bauer and Mr. Raczewski, (b) appointed them as "lead plaintiffs" in the resulting consolidated Action (the "Action"); and (c) appointed their respective counsel, Scott+Scott Attorneys at Law LLP and Levi & Korsinsky, LLP as co-lead counsel in the Action. Lead Plaintiffs filed their Consolidated Complaint against all Defendants on December 2, 2016. The Action was transferred to the Business Division of the Court on February 14, 2017.

6. The litigation of this Action has been hard-fought and conducted at arm's-length since its inception, as confirmed by, among other things, the following illustrative examples:

(a) **The Contested Motions to Dismiss**: On January 17, 2017, the EndoChoice Defendants and the Underwriter Defendants filed separate motions to dismiss and accompanying papers in support thereof. Lead Plaintiffs filed their papers in opposition to

the Defendants' motions to dismiss on February 24, 2017, and the Defendants filed reply papers in further support of their motions to dismiss on March 24, 2017. Counsel for respective Parties thereafter presented oral argument on April 18, 2017. On May 2, 2017, the Court issued a 16-page Order that denied the respective motions to dismiss (while finding that certain alleged misstatements were not actionable);

(b) **The Contested Motion for Class Certification and Adversarial Class Discovery**: On May 26, 2017, Lead Plaintiffs filed their Motion for Class Certification. Pursuant to Stipulation, all Parties thereafter conducted discovery relating to class certification over the course of the following four months. As part of this discovery, Defendants served (and each Lead Plaintiff separately responded to) multiple Requests for Production of Documents and Interrogatories. In addition, the Defendants separately deposed both of the Lead Plaintiffs for a near full-day deposition (with both Lead Plaintiffs flying in from out-of-state to be deposed, at Defendants' request, in Atlanta). Thereafter, on November 2, 2017 the EndoChoice and Underwriter Defendants both filed papers in opposition to Plaintiffs' motion for class certification, and Lead Plaintiffs filed reply papers in further support of class certification on December 22, 2017. Shortly after hearing oral argument on the class certification motion on January 24, 2018, on February 14, 2018 the Court issued a 20-page Order (the "February 2018 Order") that granted Plaintiffs' motion for class certification (except that it narrowed the certified Class to include only those who purchased EndoChoice common stock through August 3, 2016).

(c) **The Contested Appeal of the Court's Class Certification Order.** On March 12, 2018, all Defendants filed a Notice of Appeal (the "Appeal") to the Georgia Court of Appeals of the Court's February 2018 Order granting class certification. The

EndoChoice and Underwriter Defendants both filed briefs in support of their Appeal on August 29, 2018; Lead Plaintiffs filed their papers in opposition to the Defendants' Appeal on September 25, 2018; and Defendants filed reply papers in further support of their Appeal on October 15, 2018. Following oral argument on the appeal on December 12, 2018, on June 28, 2019 the Georgia Court of Appeals affirmed this Court's February 2018 Order granting class certification in a published opinion. *See EndoChoice Holdings, Inc. v. Raczewski*, 830 S.E.2d 597 (Ga. Ct. App. 2019).

(d) **Merits Discovery and Related Adversarial Litigation and Discovery Disputes**: After the remittiturs from the Georgia Court of Appeals were docketed with the Court on July 31, 2019 (thereby lifting the automatic stay of non-class certification related discovery that had previously been in effect in the Action pursuant to O.C.G.A. §9-11-23(f)(2) & (g)), in August 2019 Lead Plaintiffs commenced formal merits discovery by serving the EndoChoice Defendants with their First Set of Requests for Production of Documents (consisting of 64 separate requests) and First Set of Interrogatories (consisting of 11 separate Interrogatories. Lead Plaintiffs also served the Underwriter Defendants with their own separate sets of customized Document Requests and Interrogatories.

(e) Following negotiation among the Parties, the Court entered a stipulated Case Management Order (CMO) on September 24, 2019, which (among other things) established the following deadlines (a) substantial completion of document production by January 17, 2020; (b) completion of all fact discovery (including depositions) by June 2, 2020; and (c) completion of all expert discovery by August 28, 2020. The Parties were also ultimately able to reach agreement on a 6-page, single-spaced list of electronic search terms to be used to help identify relevant emails and other electronic documents ("ESI") in

EndoChoice's possession -- but the discovery process remained hard fought. Indeed, the Parties' vigorous litigation of disputed discovery matters included (i) the exchange of literally dozens of emails and letters, plus multiple telephonic "meet and confers", relating to Plaintiffs' discovery demands and Defendants' objections thereto, as well as (ii) the submission of certain unresolved discovery disputes to the Court relating to whether (and to what extent) the Court should impose certain restrictions on the use of confidential materials and on Plaintiffs' ability to retain any of Defendants' competitors as experts in this Action. The latter dispute ultimately required the Parties to submit further briefing to the Court, with the Court ultimately resolving the disputed matters in Plaintiffs' favor when it entered Plaintiffs' (instead of Defendants') proposed form of Confidentiality Order on November 4, 2019.

7. **The Arms'-Length Negotiations and Role of the Independent Mediator in the Settlement Process**. Similarly, although the Parties were ultimately successful in reaching the proposed Settlement (more than three years after the Action was commenced), the negotiation process was also conducted at arms'-length throughout, as confirmed by the summary below:

(a) Shortly after Lead Plaintiffs had served their first set of discovery requests in late August 22, 2019, counsel for the EndoChoice Defendants and Class Counsel engaged in discussions as to whether it might be productive to engage a mediator to explore the possibility of reaching a negotiated settlement of the claims at issue. The Parties thereafter agreed in October 2019 to try to reach a mediated resolution of the claims at issue under the auspices of an independent mediator. However, reflecting Class Counsel's skepticism that a Settlement could be reached, Plaintiffs insisted that merits discovery under the terms of the CMO continue to proceed, and that the CMO's litigation deadlines

remain in place, during the pendency of any mediation process that might be agreed to.

(b) Plaintiffs further respectfully submit that the Parties' decision to ultimately mediate under the auspices of Robert M. Meyer, Esq., of the JAMS dispute resolution firm, further confirms that the mediation process that the Parties engaged in was conducted at arms'-length. In this regard, it should be noted that Mr. Meyer is nationally recognized for his work in successfully mediating securities class actions and other complex commercial disputes. A summary of Mr. Meyer's extensive credentials and experience can be found at www.jamsadr.com/meyer. I also note that my own quick Westlaw research identifies roughly 20 cases across the country in which a trial court has issued an opinion or order that has cited Mr. Meyer's role in mediating the disputes at issue. There can therefore be no serious doubt as to Mr. Meyer's independence, integrity and experience.

(c) That Mr. Meyer's mediation process here allowed both sides to put forward their most vigorous arguments for their respective clients' positions also cannot be disputed. Indeed, even as discovery and related negotiations proceeded, during the late fall of 2019 both Plaintiffs and the EndoChoice Defendants, by their counsel, prepared detailed mediation submissions and related sets of exhibits for the Mediator, and exchanged information concerning their respective experts' positions on damages and causation-related issues. In total, Lead Plaintiffs submitted three separate sets of mediation briefs (one of which was devoted exclusively to damages and causation issues), and Defendants submitted two sets of mediation papers. Exclusive of exhibits, these combined mediation submissions totaled roughly 100 pages of briefing.

(d) On December 6, 2019, all Parties participated in a full day, arms'-length and face-to-face private mediation session at JAMS's offices in New York under the

auspices of the Mediator, Mr. Meyer. Despite their best good faith efforts, the Parties were unable to reach an agreement at that mediation session. However, at the end of this day-long mediation, the Mediator made a "mediator's proposal" to settle all securities claims that were or could have been asserted in the Action for $8.5 million in cash. After further post-mediation communications with the Mediator, both Parties agreed to accept the Mediator's proposal, and on December 11, 2019 the Parties entered into a Memorandum of Understanding setting forth the material terms of the proposed $8.5 Settlement (subject to Court approval).

(e) Plaintiffs respectfully submit that the Mediator played a crucial role in enabling the Parties to bridge the differences between their respective positions and to reach a Settlement. The Settlement reflected in the Stipulation reflects, and is fully consistent, with the terms of the $8.5 million "mediator's proposal" that the independent mediator, Mr. Meyer, proposed.

8. A true and correct copy of the Parties' Stipulation of Settlement, together with all the exhibits thereto, is attached hereto as Exhibit 1.

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of January, 2020, at New York, New York.

William C. Fredericks

Subscribed and sworn to before me on 1/31, 2020, by William C. Fredericks, who is personally known to me.

Notary Public

ANN E. SLAUGHTER
Notary Public - State of New York
No. 01SL6183108
Qualified in Bronx County
My Commission Expires March 10, 2020