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Transaction ID 75439715
Case No. 2022-0807-MTZ



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PAUL WITMER,

Plaintiff,

v.

C.A. No. 2022-0807-MTZ

ARMISTICE CAPITAL LLC,
ARMISTICE CAPITAL MASTER
FUND LTD., STEVEN BOYD,
JOSHUA DISBROW, GARY
CANTRELL, JOHN DONOFRIO,
JR., CARL DOCKERY, and KETAN
B. MEHTA,

Defendants,

and

AYTU BIOPHARMA, INC.,

Nominal Defendant.

[PROPOSED] ORDER AND FINAL JUDGMENT

WHEREAS, a shareholder derivative lawsuit is pending in this Court captioned *Witmer v. Armistice Capital LLC, et al.*, C.A. No. 2022-0807-MTZ (the “Action”);

WHEREAS, (i) Plaintiff Paul Witmer (“Plaintiff”) and (ii) Defendants Joshua Disbrow, Gary Cantrell, John Donofrio, Jr., Carl Dockery, and Ketan B. Mehta (the “D&O Defendants”); and (iii) Aytu BioPharma, Inc. (“Aytu” or the

“Company,” and together with the D&O Defendants, the “Aytu Defendants”) (Plaintiff and the Aytu Defendants together, the “Settling Parties”) have determined to settle all claims asserted against the D&O Defendants in the Action on the terms and conditions set forth in the Stipulation and Agreement of Settlement, Compromise, and Release dated March 13, 2024 (the “Stipulation”), subject to the approval of this Court (the “Settlement”);

WHEREAS, by Order dated November 12, 2024 (the “Scheduling Order”), this Court (i) ordered that notice of the proposed Settlement be provided to current Aytu shareholders; (ii) provided current Aytu shareholders with the opportunity to object to the proposed Settlement, and/or Plaintiff’s application for an award of attorneys’ fees and litigation expenses and a service award to Plaintiff (the “Fee and Expense Application”); and (iii) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a hearing on January 13, 2025 (the “Settlement Hearing”) to consider, among other things: (i) whether the Settlement, on the terms and conditions provided for in the Agreement, is fair, reasonable, and adequate and in the best interests of Aytu and its shareholders; (ii) whether the Court should finally approve the Settlement and enter a judgment dismissing the claims against the D&O Defendants with prejudice and extinguishing and releasing the claims against the D&O Defendants as set forth therein; (iii) any objections to the

Settlement; and (iv) Plaintiff's application for an award of attorneys' fees and expenses and for a service award to Plaintiff; and

WHEREAS, due notice of the hearing has been given in accordance with the Scheduling Order; the Settling Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons or entities requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to Aytu shareholders was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this __ day of _____, 2025, as follows:

1. **Definitions**: Unless otherwise defined herein, capitalized terms used herein shall have the same meanings given to them in the Stipulation.
2. **Jurisdiction**: The Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement.
3. **Notice**: The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (i) were implemented in accordance with the Scheduling Order, except for an immaterial delay of which the Parties previously advised the Court; (ii) constituted the best notice practicable under the

circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise current Aytu shareholders of: the pendency of the Action; the effect of the proposed Settlement and the Fee and Expense Application; their right to object to any aspect of the Settlement and/or the Fee and Expense Application; and their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Court of Chancery Rule 23.1 and all other applicable law and rules.

4. **Final Settlement Approval and Dismissal of Claims:** This Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects and finds that the Settlement is, in all respects, fair, reasonable, and adequate to Plaintiff and the Aytu Defendants and in their best interests. The Settling Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation, which this Judgment incorporates and makes a part hereof.

5. All of the claims asserted in the Action against the D&O Defendants are hereby dismissed with prejudice. The Parties shall bear their own fees, costs, and expenses, except as otherwise provided in the Stipulation and this Judgment.

6. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on the Settling Parties, as well as their respective successors and assigns.

7. **Releases:** The Releases set forth in the Stipulation are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Upon the Effective Date of the Settlement, Plaintiff, by operation of the Judgment and to the fullest extent permitted by law, shall completely, fully, finally, and forever release, relinquish, settle, and discharge Plaintiff's Released Claims as against the D&O Defendants, and shall forever be barred and enjoined from commencing, instigating, or prosecuting the Released Plaintiff's Claims against the Released D&O Defendants' Persons.

(b) Upon the Effective Date of the Settlement, the Aytu Defendants, on behalf of themselves and their respective heirs, executors, administrators, predecessors, successors, representatives, trustees, estates, transferees, and assigns, in their capacities as such, and any other person or entity purporting to claim through or on behalf of them in such capacity, by operation of the Judgment and to the fullest extent permitted by law, shall completely, fully, finally, and forever release, relinquish, settle, and discharge the Aytu Defendants' Released Claims as against the Plaintiff and his attorneys, and shall forever be barred and enjoined from

commencing, instigating, or prosecuting the Released Aytu Defendants' Claims against the Released Plaintiff's Person.

(c) Notwithstanding the foregoing Releases, nothing in the Stipulation or in this Judgment shall in any way impair or restrict the rights of the Parties to enforce the terms of the Settlement pursuant to the Stipulation.

8. **Award of Attorneys' Fees and Expenses:** Plaintiff's Counsel are hereby awarded attorneys' fees and expenses in the amount of \$250,000 ("Fee and Expense Award"), which sum the Court finds to be fair and reasonable. The Fee and Expense Award shall be paid to Plaintiff's Counsel by Aytu or its insurers. The Court defers ruling on Plaintiff's request for a service award pending the ultimate resolution of this Action. No proceedings or court order with respect to the Fee and Expense Award to Plaintiff's Counsel shall in any way affect or delay the finality of this Judgment (or otherwise preclude this Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.

9. **Modification of the Stipulation:** Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any Exhibits attached thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of current Aytu shareholders in connection with the

Settlement. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Settlement.

10. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation; this Judgment shall be without prejudice to the rights of the Settling Parties; and Plaintiff and Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of the Stipulation.

11. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and all other matters relating to the Action and the Settlement.

12. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment in the Action as to the D&O Defendants. Accordingly, the Register in Chancery is expressly directed to immediately enter this final Judgment in the Action as to the D&O Defendants.

Vice Chancellor Morgan T. Zurn

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Morgan Zurn

File & Serve

Transaction ID: 75436676

Current Date: Jan 15, 2025

Case Number: 2022-0807-MTZ

Case Name: CONF ORD/Def. Brief/ Opposit/& Related papers for MTD - AMEND COMPLAINT - Paul Witmer v. Armistice Capital LLC, et al.

Court Authorizer: Morgan Zurn

/s/ Judge Morgan Zurn