

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE ROCKWELL MEDICAL, INC.
STOCKHOLDER DERIVATIVE
LITIGATION

This Document Relates To:

ALL ACTIONS.

Lead Case No. 1:19-cv-02373-ARR-RER

(Consolidated with Case No. 1:19-cv-
02774-ARR-RER)

Hon. Ramon E. Reyes, Jr.

**PRELIMINARY APPROVAL
ORDER**

WHEREAS, the Settling Parties having made application, pursuant to Federal Rule of Civil Procedure 23.1(c), for an order preliminarily approving the Settlement of the Litigation, in accordance with a Stipulation of Settlement, dated May 18, 2020 (the "Stipulation"), which, together with the exhibits annexed to it, states the terms and conditions for a proposed Settlement of the Litigation among the Settling Parties and for dismissal of the Litigation against the Defendants and their Related Persons with prejudice upon the terms and conditions stated in the Stipulation; and the Court having read and considered the Stipulation and the Exhibits annexed to it,

NOW, THEREFORE, IT IS ORDERED this 2nd day of June, 2020, that:

1. Except for any terms defined in this order (the "Order"), the Court adopts and incorporates the definitions in the Stipulation for the purposes of this Order.

2. The Settlement Hearing shall be held on August 11, 2020 (a date that is at least sixty (60) calendar days from the date of this Order) at 10:30 a.m., in the United States Federal District Court of the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY, Courtroom N2E, to:

- a) determine whether the Settlement should be approved by the Court as adequate, fair, and reasonable;
- b) determine whether Judgment should be entered pursuant to the Stipulation;
- c) consider Plaintiffs' Counsel's attorneys' fees and expenses and incentive awards for Plaintiffs; and
- d) rule on such other matters as the Court may deem appropriate.

3. The Court reserves the right to adjourn the Settlement Hearing or any subsequently scheduled hearing, including the consideration of Plaintiffs' Counsel's attorneys' fees and expenses, without further notice of any kind other than oral announcement at the Settlement Hearing or any subsequently scheduled hearing, and the Court retains jurisdiction with respect to implementation and enforcement of the terms of the Stipulation and the Judgment to be entered in the Litigation and to consider any matters or disputes arising out of or relating to the Settlement.

4. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification(s) to the Stipulation as may be consented to by the Settling Parties and without further notice to Rockwell's current shareholders.

5. Within fifteen (15) business days after the date of this Order, Rockwell shall make a good faith effort to provide notice to Rockwell's stockholders in the following manner: (i) filing of the Notice and Stipulation with the SEC in a Form 8-K or other appropriate filing; (ii) publishing of the summary form of the Notice once in *Investor's Business Daily*; and (iii) including the Notice on an Internet page that Rockwell shall create for this purpose, which shall be accessible via a link on the "Investors" page of the Company's website, the address of which shall be contained in the Notice and Summary Notice. Rockwell shall have sole discretion for selecting the method of dissemination pursuant to subsection (i) of this paragraph. If any form

of Notice referenced above cannot be effected within fifteen (15) business days after the date of this Order, including for example publication in *Investor's Business Daily*, then Rockwell shall complete notice as soon thereafter as practicable.

6. The form and method of notice herein is the best notice practicable under the circumstances, constitutes due and sufficient notice of the Settlement Hearing to all persons entitled to receive such notice, and meets the requirements of Rule 23.1 of the Federal Rules of Civil Procedure, due process, and all other applicable laws. Counsel for Rockwell, at least seven (7) business days before the Settlement Hearing, shall file with the Court an appropriate proof of Notice and compliance with the other Notice procedures set forth in this Order, or, if Notice and compliance with the Notice procedures set forth in this Order have not been completed for reasons outside Rockwell's control, including but not limited to complications arising from the COVID-19 pandemic, resulting government orders, and limits on notice- and service-providers on which Rockwell would otherwise rely to effect service, Rockwell shall apprise the Court and, if necessary to ensure that Notice is sufficient, request that the Settlement Hearing be continued and rescheduled for a date certain that is mutually agreeable for the Settling Parties and the Court.

7. All proceedings in the Litigation, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court. Except as provided in the Stipulation, pending the final determination of whether the Settlement should be approved by the Court, none of the Settling Parties shall institute, commence, prosecute, continue, or in any way participate in, whether directly, representatively, individually, derivatively on behalf of Rockwell, or in any other capacity, any action or other proceeding asserting any Released Claims.

8. Any person who objects to the Settlement, the Judgment to be entered in the Litigation, and/or Plaintiffs' Counsel's attorneys' fees and expenses or incentive awards for Plaintiffs, or who otherwise wishes to be heard, may appear in person or by counsel at the Settlement Hearing and request leave of the Court to present evidence or argument that may be proper and relevant; provided, however, that, except by order of the Court for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be considered by the Court unless not later than fourteen (14) calendar days prior to the Settlement Hearing such person files with the Court and serves upon counsel listed below: (a) a written notice of intention to appear; (b) proof of current ownership of Rockwell stock, as well as documentary evidence of when such stock ownership was acquired; (c) a statement of such person's objections to any matters before the Court, including the Settlement, the proposed Judgment, or Plaintiffs' Counsel's attorneys' fees and expenses and/or the incentive awards for Plaintiffs; (d) the grounds for such objections and the reasons that such person desires to appear and be heard, as well as all documents or writings such person desires the Court to consider; (e) a description of any case, providing the name, court, and docket number, in which such person or his or her attorney, if any, has objected to a settlement in the last three years; and (f) a proof of service signed under penalty of perjury. Such filings shall be served electronically via the Court's ECF filing system, by hand, or by overnight mail upon the following counsel:

Plaintiffs' Counsel:
Shane P. Sanders
Robbins LLP
5040 Shoreham Place
San Diego, CA 92122

Defendants' Counsel:

Brian M. Lutz
Gibson, Dunn & Crutcher LLP
200 Park Avenue, 47th Floor
New York, NY 10166

-and-

Daniel Roeser
Goodwin Procter LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018

9. Unless the Court otherwise directs, no person shall be entitled to object to the approval of the Settlement, any judgment entered thereon, any award of attorneys' fees and expenses or incentive awards for Plaintiffs, or otherwise be heard, except by serving and filing a written objection and supporting papers and documents as prescribed above. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action or proceeding. If the Court approves the Settlement provided for in the Stipulation following the Settlement Hearing, Judgment shall be entered substantially in the form attached as Exhibit B to the Stipulation.

10. Plaintiffs shall file and serve their opening brief and papers in support of final approval of the Settlement and their attorneys' fees and expenses and incentive awards for Plaintiffs no later than twenty-eight (28) calendar days before the Settlement Hearing. Any Party's objection to Plaintiffs' Counsel's motion for final approval of the Settlement and Plaintiffs' Counsel's attorneys' fees and expenses and incentive awards for Plaintiffs shall be filed and served no later than fourteen (14) calendar days before the Settlement Hearing. Any briefs in response to any objection(s) to either the Settlement or Plaintiff's Counsel's attorneys' fees and expenses and incentive awards for Plaintiffs shall be filed and served no later than seven (7) calendar days before

the Settlement Hearing.

11. In the event that the Settlement is vacated or modified on appeal, or if the Judgment is not entered by the Court or does not become Final, or if any other condition necessary for the Settlement to become effective fails to occur, then any of the Settling Parties may terminate the Stipulation and withdraw from the Settlement by providing written notice of such action to counsel for all of the other Settling Parties within thirty (30) calendar days after the failure of such condition, in which case the Stipulation shall be voided. In the event that the Settlement is terminated as provided herein (and pursuant to Paragraph 7.2 of the Stipulation), the Settlement and any actions taken in connection therewith shall become null and void for all purposes, and all negotiations, transactions, and proceedings connected with it: (i) shall be without prejudice to the rights and position of any Party, with respect to the Litigation or any other litigation or judicial proceedings; (ii) shall not entitle any Party to recover any costs or expenses incurred in connection with the implementation of the Stipulation; (iii) shall not be deemed to be or construed as evidence of, or an admission by any Party of, any fact, matter or thing; and (iv) shall be subject to Rule 408 of the Federal Rules of Evidence and any similar rule of evidence in any state or other jurisdiction prohibiting the admission of settlements, compromises, or offers of compromise to prove either liability or invalidity of a claim or amount of damages, and any conduct or statements made during settlement negotiations, such that the contents of the Stipulation shall not be admissible in evidence or be referred to or otherwise used for any purpose in any subsequent proceedings in the Litigation or any other litigation or proceeding. In the event that the Settlement is terminated as provided herein (and pursuant to Paragraph 7.2 of the Stipulation), the Settling Parties shall be deemed to have reverted to their respective statuses in the Litigation as of the date and time immediately prior to the execution of the Stipulation, and, except as otherwise expressly provided, the Settling Parties

shall proceed in all respects as if the Stipulation and any related orders had not been executed and/or entered. In the event the Stipulation is terminated as provided herein (and pursuant to Paragraph 7.2 of the Stipulation), Paragraphs 4.4, 7.3 and 9.3 of the Stipulation shall survive.

12. Neither the Stipulation, including the exhibits thereto; the Settlement; the acts performed or negotiations, discussions and drafts leading to the execution of the Stipulation or the Settlement; nor any proceedings pursuant to or in connection with the Stipulation or the approval of the Settlement (including any arguments proffered or statements made in connection therewith):

- a) shall be offered against any of the Released Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Persons with respect to the truth of any allegation by Plaintiffs in this Litigation, the validity of any claim that was or could have been asserted against the Released Persons in this Litigation, the deficiency of any defense that has been or could have been asserted in this Litigation or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Persons, or in any way referred to for any other reason as against any of the Released Persons in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;
- b) shall be offered against any of Plaintiffs or Rockwell, as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Plaintiffs or Rockwell that any of their claims are

without merit, that any of the Released Persons had meritorious defenses, or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs or Rockwell, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or;

- c) shall be construed against any Released Persons, Plaintiffs, or Rockwell as an admission, concession, or presumption that the consideration to be given hereunder represents the consideration that could be or would have been recovered after trial; *provided, however*, that if the Stipulation is approved by the Court, the Released Persons, Plaintiffs, or Rockwell and their respective counsel may refer to it to effectuate the protections from liability granted pursuant to the Stipulation and the Judgment to be entered in the Litigation or otherwise to enforce the terms of the Settlement.

IT IS SO ORDERED.

DATED: June 2, 2020

RER

/s/ 

HON. RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE