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Pomerantz Named Lead Counsel In \$121M ConforMIS IPO Suit

By **Maya Rajamani**

Law360, New York (November 12, 2015, 2:29 PM ET) -- A Massachusetts federal judge on Tuesday approved Pomerantz LLP as lead counsel and Block & Leviton LLP as liaison counsel for a putative investor class accusing artificial-joint maker ConforMIS Inc. of hiding problems with its knee joint replacement systems ahead of its \$121 million initial public offering.

In an order, U.S. District Judge George A. O'Toole Jr. also appointed an investor group comprising William M. Cody, Thomas S. Nelson and James Schaefer as the lead plaintiff in the suit.

"We are pleased with the decision and will work diligently on behalf of the putative class," Jason M. Leviton of Block & Leviton told Law360 on Thursday.

Shareholder Henry J. Klein **filed suit** against the company and two executives in Massachusetts federal court at the beginning of September, claiming they didn't tell investors about issues with the manufacturing process for some of its knee joint replacements before the company's **July 1 IPO**, sending stock prices tumbling more than 19 percent after almost 1,000 of the products were recalled at the end of August.

"Had plaintiff and the other members of the class and the marketplace known the truth regarding the company's flawed manufacturing processes, which was not disclosed by defendants, plaintiff and other members of the class would not have purchased or otherwise acquired their ConforMIS securities," the complaint stated.

In the registration statement for its 10.35 million-share IPO, the Bedford, Massachusetts-based company — which uses 3-D printing to customize artificial joints — detailed a quality-control process consisting of manual and automated checks, as well as periodic audits of its suppliers.

Two of ConforMIS' manufacturing sites are registered with the U.S. Food and Drug Administration and the company is in the process of registering a third, the statement said.

ConforMIS continued to make SEC filings throughout the summer with no mention of manufacturing concerns, the complaint said.

On Aug. 31, the company voluntarily recalled about 950 custom knee-replacement instruments after receiving complaints about moisture on the products. The company said it believed the instruments held extra water before they underwent sterilization, leaving behind a residue.

About 650 of the instrument sets had been used in surgeries, while about 300 were shipped but

not yet used, ConforMIS said. They were made and distributed between July 18 and Aug. 28.

Manufacturing was likely going to be “substantially reduced” in September and possibly October while ConforMIS investigated the problem, the company said, lowering its expected yearly revenue by \$8 million.

At the news, the company’s share price dropped \$3.78 — about 19 percent — to close at \$16 on Aug. 31. Stock prices closed at \$14.19 per share Friday.

The proposed class consists of all ConforMIS shareholders who purchased stock in connection with the company’s IPO or at any time between July 1 and Aug. 28. The suit seeks compensatory damages and legal fees for violations of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Representatives from Pomerantz did not immediately respond to a request for comment Thursday. ConforMIS Inc. did not immediately respond to a request for comment.

The plaintiffs are represented by Jason M. Leviton and Joel A. Fleming of Block & Leviton LLP, and Jeremy A. Lieberman, J. Alexander Hood II, Patrick V. Dahlstrom and Marc Gorrie of Pomerantz LLP.

Counsel information for the defendants was not available Thursday.

The case is Klein v. ConforMIS Inc. et al., case number 1:15-cv-13295, in the U.S. District Court for the District of Massachusetts, Eastern Division.

--Additional reporting by Benjamin Horney and Shayna Posses. Editing by Mark Lebetkin.

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