

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:12-CV-00023-D**

PHILLIP J. SINGER, Individually and on Behalf of All  
Other Persons Similarly Situated,

Plaintiff,

v.

TRANS1 INC., KENNETH REALI, JOSEPH P.  
SLATTERY, RICHARD RANDALL, and MICHAEL  
LUETKEMEYER,

Defendants.

**PROOF OF CLAIM AND RELEASE FORM**

1. You are urged to read carefully the accompanying Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Expenses, and Settlement Fairness Hearing (the "Notice").
2. To file a claim and recover under the Settlement of this Action, you must submit this Proof of Claim and Release Form (the "Proof of Claim"). However, such filing is not a guarantee that you will share in the proceeds of the Settlement in the Action.
3. **You must mail your completed and signed Proof of Claim postmarked on or before January 2, 2019, addressed to the Claims Administrator at:**

*Singer v. Trans1, Inc., et al.*  
Claims Administrator  
P.O. Box 5270  
Portland, OR 97208-5270

4. If you are a member of the Settlement Class and you do not timely request exclusion, you will be bound by the terms of any judgment entered in the Action.
5. If you are **not** a member of the Settlement Class, **do not** submit a Proof of Claim.
6. **For help completing this Proof of Claim, please contact the Claims Administrator.**

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## **PART I – INSTRUCTIONS FOR FILLING OUT THE PROOF OF CLAIM**

**Important additional information regarding the Settlement and this Proof of Claim is contained in the accompanying Notice. Please refer to the Plan of Allocation set forth in the accompanying Notice for a detailed explanation of how a Claimant's Recognized Loss will be calculated.**

1. In order to be eligible to participate in the distribution of the Net Settlement Fund, a claimant ("Claimant") must have purchased or acquired securities of Baxano Surgical, Inc. f/k/a TranS1, Inc.<sup>1</sup> ("TranS1") (including through the exercise of warrants or options) between February 23, 2009 and October 17, 2011, both dates inclusive (the "Class Period"), who were allegedly damaged thereby.
2. The submission of a Proof of Claim does not ensure that your claim will be upheld or that you will share in any recovery. All claims are subject to verification and investigation. You may be requested to provide further information.
3. All claims must be made by persons or entities who were beneficial owners (as opposed to record holders or nominees) of TranS1 securities. (Brokerage firms, banks and other nominees are requested to transmit copies of the Notice and Proof of Claim to their present or former customers who were such beneficial owners.) If TranS1 securities were owned jointly, all joint owners must complete and sign the Proof of Claim.
4. Executors, administrators, guardians, conservators and trustees may complete and sign the Proof of Claim on behalf of persons or entities represented by them, but they must identify such persons or entities and provide proof of their authority (e.g., powers of attorney or currently effective letters testamentary or letters of administration) to do so.
5. You must file a separate Proof of Claim for each differently named account or ownership, such as an individual account, an IRA account, a joint account, or a custodial account, etc. Joint tenants, co-owners, or UGMA custodial accounts should file a single claim. Claimants who file one or more claims (e.g., one in Claimant's name and one for an IRA or joint ownership) must identify the other claims filed.
6. The date of purchase, acquisition, and/or sale of TranS1 securities is the "trade" date and not the "settlement" date.
7. The first-in, first-out basis ("FIFO") will be applied to both purchases and sales.
8. Exercise of option contracts will be considered to be purchases or sales of securities. Option premiums will be incorporated into the purchase/sale price of the common stock accordingly.
9. The date of covering a "short sale" is deemed to be the date of purchase of TranS1 securities, and the date of a "share sale" is deemed to be the date of sale of TranS1 securities. Securities originally sold short will have a Recognized Loss of zero.
10. No cash payment will be made on a claim where the potential distribution is less than ten dollars (\$10.00).
11. You must attach to your Proof of Claim **copies** of brokerage confirmations, monthly statements or other documentation of your transactions in TranS1 securities in order for your claim to be valid. If such documents are not available, a complete list of acceptable supporting documentation can be found on the Claims Administrator's website, [www.TranS1SecuritiesSettlement.com](http://www.TranS1SecuritiesSettlement.com). Failure to provide this documentation could delay verification of your claim or could result in rejection of your claim.
12. If your trading activity during the Class Period exceeds 50 transactions, you must provide all purchase and sale information required in the Schedule of Transactions in an electronic file. For a copy of instructions and the parameters concerning an electronic submission, contact the Claims Administrator by phone at 855-880-9209, or via the website, [www.TranS1SecuritiesSettlement.com](http://www.TranS1SecuritiesSettlement.com).
13. If you have questions or need additional Proofs of Claim, contact the Claims Administrator via the information in the preceding paragraph. You may make photocopies of this form.

<sup>1</sup> On November 12, 2014, Baxano Surgical, Inc. petitioned for bankruptcy relief in the United States Bankruptcy Court for the District of Delaware. On July 24, 2015, the bankruptcy court confirmed Baxano's bankruptcy plan, which provided for the dissolution of Baxano upon the effective date of the plan. The plan went into effect on August 10, 2015.

***Singer v. TransI, Inc., et al.***  
**PROOF OF CLAIM**

***The Claims Administrator must receive this form postmarked no later than January 2, 2019.***

**PART II – CLAIMANT IDENTIFICATION (Please Type or Print)**

Beneficial Owner's First Name	MI	Beneficial Owner's Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Joint Beneficial Owner's First Name	MI	Joint Beneficial Owner's Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Entity Name (if Beneficial Owner is not an individual)

Representative or Custodian Name (if different from Beneficial Owner(s) listed above)

Address 1 (street name and number)

Address 2 (apartment, unit or box number)

City	State	ZIP Code
<input type="text"/>	<input type="text"/>	<input type="text"/> - <input type="text"/>

Foreign Country (only if not USA)

Last Four Digits of Social Security Number or Taxpayer Identification Number

Telephone Number (home)	Telephone Number (work)
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>

Email Address

Account Number (where securities were traded)

Claimant Account Type (check appropriate box):

- |                                                                     |                                       |                                |
|---------------------------------------------------------------------|---------------------------------------|--------------------------------|
| <input type="checkbox"/> Individual (includes joint owner accounts) | <input type="checkbox"/> Pension Plan | <input type="checkbox"/> Trust |
| <input type="checkbox"/> Corporation                                | <input type="checkbox"/> Estate       |                                |
| <input type="checkbox"/> IRA/401K                                   | <input type="checkbox"/> Other _____  | (please specify)               |



**PART IV – SCHEDULE OF TRANSACTIONS IN TRANS1 CALL OPTIONS**

**1. HOLDINGS AS OF AS OF FEBRUARY 23, 2009** – State the total number of TranS1 Call Option contracts held as of the opening of trading on February 23, 2009. (Must be documented.) If none, write “Zero” or “0.”

**IF NONE,  
CHECK HERE**

Strike Price of Call Option Contract	Expiration Date of Call Option Contract (MMDDYY)	Number of Call Option Contracts in Which You Had an Open Interest
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**2. PURCHASES/ACQUISITIONS FROM FEBRUARY 23, 2009, THROUGH AND INCLUDING JANUARY 13, 2012** – Separately list each and every purchase/acquisition (including free receipts) of TranS1 Call Option contracts from after the opening of trading on February 23, 2009, through and including the close of trading on January 13, 2012. (Must be documented.)<sup>3</sup>

Date of Purchase (List Chronologically) (MMDDYY)	Strike Price of Call Option Contract	Expiration Date of Call Option Contract (MMDDYY)	Number of Call Option Contracts Purchased	Purchase Price Per Call Option Contract	Total Purchase Price (Excluding Taxes, Commissions, and Fees)	Insert an “E” if Exercised	Insert an “X” if Expired	Exercise Date (MMDDYY)
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<sup>3</sup> **Please note:** Information requested with respect to your purchases/acquisitions of TranS1 Call Options from after the opening of trading on October 18, 2011, through and including the close of trading on January 13, 2012, is needed in order to balance your claim; purchases during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Loss pursuant to the Plan of Allocation.

**3. SALES FROM FEBRUARY 23, 2009, THROUGH AND INCLUDING JANUARY 13, 2012** – Separately list each and every sale/disposition (including free deliveries) of TranS1 Call Option contracts from after the opening of trading on February 23, 2009, through and including the close of trading on January 13, 2012. (Must be documented.)

**IF NONE,  
CHECK HERE**

Date of Sale (List Chronologically) (MMDDYY)	Strike Price of Call Option Contract	Expiration Date of Call Option Contract (MMDDYY)	Number of Call Option Contracts Sold	Sale Price Per Call Option Contract	Total Sale Price (Excluding Taxes, Commissions, and Fees)
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**4. HOLDINGS AS OF JANUARY 13, 2012** – State the total number of TranS1 Call Option contracts held as of the close of trading on January 13, 2012. (Must be documented.) If none, write “Zero” or “0.”

**IF NONE,  
CHECK HERE**

Strike Price of Call Option Contract	Expiration Date of Call Option Contract (MMDDYY)	Number of Call Option Contracts in Which You Had an Open Interest
□□.□□	□□□□□□	□□□□□□
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**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, YOU MUST  
PHOTOCOPY THIS PAGE AND CHECK THIS BOX   
IF YOU DO NOT CHECK THIS BOX, THESE ADDITIONAL PAGES WILL NOT BE REVIEWED.**

**PART V – SCHEDULE OF TRANSACTIONS IN TRANSl PUT OPTIONS**

**1. HOLDINGS AS OF FEBRUARY 23, 2009** – State the total number of TranSl Put Option contracts held as of the opening of trading on February 23, 2009. (Must be documented.) If none, write “Zero” or “0.”

**IF NONE,  
CHECK HERE**

Strike Price of Put Option Contract	Expiration Date of Put Option Contract (MMDDYY)	Number of Put Option Contracts in Which You Had an Open Interest
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**2. SALES FROM FEBRUARY 23, 2009, THROUGH AND INCLUDING JANUARY 13, 2012** – Separately list each and every sale (including free receipts) of TranSl Put Option contracts from after the opening of trading on February 23, 2009, through and including the close of trading on January 13, 2012. (Must be documented.)<sup>4</sup>

Date of Sale (Writing) (List Chronologically) (MMDDYY)	Strike Price of Put Option Contract	Expiration Date of Put Option Contract (MMDDYY)	Number of Put Option Contracts Sold (Written)	Sale Price Per Put Option Contract	Total Sale Price (Excluding Taxes, Commissions, and Fees)	Insert an “E” if Exercised Insert an “X” if Expired	Exercise Date (MMDDYY)
□□□□□□	□□.□□	□□□□□□	□□□□	□□□□.□□	□□□□□□.□□	□	□□□□□□
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<sup>4</sup> **Please note:** Information requested with respect to your sales of TranSl Put Options from after the opening of trading on October 18, 2009, through and including the close of trading on January 13, 2012, is needed in order to balance your claim; sales during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Loss pursuant to the Plan of Allocation.

**3. PURCHASES FROM FEBRUARY 23, 2009, THROUGH AND INCLUDING JANUARY 13, 2012** – Separately list each and every purchase (including free deliveries) of TranS1 Put Option contracts from after the opening of trading on February 23, 2009, through and including the close of trading on January 13, 2012. (Must be documented.)

**IF NONE,  
CHECK HERE**

Date of Purchase (List Chronologically) (MMDDYY)	Strike Price of Put Option Contract	Expiration Date of Put Option Contract (MMDDYY)	Number of Put Option Contracts Purchased	Purchase Price Per Put Option Contract	Total Purchase Price (Excluding Taxes, Commissions, and Fees)
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**4. HOLDINGS AS OF JANUARY 13, 2012** – State the total number of TranS1 Put Option contracts held as of the close of trading on January 13, 2012. (Must be documented.) If none, write “Zero” or “0.”

**IF NONE,  
CHECK HERE**

Strike Price of Put Option Contract	Expiration Date of Put Option Contract (MMDDYY)	Number of Put Option Contracts in Which You Had an Open Interest
□□.□□	□□□□□□	□□□□□□
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**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS, YOU MUST  
PHOTOCOPY THIS PAGE AND CHECK THIS BOX   
IF YOU DO NOT CHECK THIS BOX, THESE ADDITIONAL PAGES WILL NOT BE REVIEWED.**

**YOU MUST ALSO READ THE RELEASE AND SIGN THE CERTIFICATION  
OR THE W-8 CERTIFICATION BELOW.**

**PART VI – SUBMISSION TO JURISDICTION OF THE COURT**

By submitting this Proof of Claim, I/we, and every Settlement Class Member I/we represent, submit to the jurisdiction of the United States District Court for the Eastern District of North Carolina for purposes of this Action and the Settlement of the Action, as reflected in the Stipulation and Agreement of Settlement dated May 18, 2018 (the “Stipulation”). I/We further agree to be bound by the orders of the Court, agree that this Proof of Claim, my/our status or the status of the Settlement Class member I/we represent as a Claimant, and the allowable amount of this claim will be subject to review and further inquiry, and that I/we will furnish such additional documentation with respect to this Proof of Claim as may be required.

**PART VII – RELEASE**

1. By signing this Proof of Claim, I/we hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever waive, release, relinquish, discharge, and dismiss from the Settlement Class Claims each and all of the “Released Defendant Parties” defined as Defendants and each of their respective past or present subsidiaries, parents, general or limited partnerships, limited liability companies, affiliates, divisions, principals, accountants, advisors, successors and predecessors, assigns, officers, directors, shareholders, trustees, partners, agents, attorneys, fiduciaries, contractors, employees, attorneys, including Defendants’ counsel, auditors, insurers, co-insurers, or re-insurers; the spouses, members of the immediate families, representatives, and heirs of the Individual Defendants, as well as any trust of which any Individual Defendant is the settlor or which is for the benefit of any of their immediate family members; any firm, trust, corporation, or entity in which any Defendant has a controlling interest; and any of the legal representatives, heirs, successors in interest or assigns of the Defendants.

2. “Settlement Class Claims” means any and all claims, debts, demands, controversies, obligations, losses, rights or causes of action or liabilities of every nature and description, including both known claims and Unknown Claims (defined below), whether arising under federal, state, common or foreign law, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, that Plaintiff or any Settlement Class Member (i) asserted in the Action or (ii) that could have been asserted in the Action, or any other action, or in any forum, that arise out of, relate to or are based upon the facts, matters, allegations, transactions, events, disclosures, representations, statements, acts, or omissions or failures to act that were alleged or that could have been alleged in the Action, relating to the purchase or sale of TranS1 securities during the Class Period. The Settlement Class Claims further include all claims and causes of action of every nature and description, including both known claims and Unknown Claims (as defined below), whether arising under federal, state, common or foreign law, or any other law, that could have been asserted against the Released Defendant Parties that arise out of or relate in any way to the litigation, defense, or settlement of the claims in the Action. For the avoidance of doubt, Settlement Class Claims do not include claims relating to the enforcement of the Settlement.

3. “Unknown Claims” means any and all Settlement Class Claims that Plaintiff or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendant Parties, and any and all Released Defendants’ Claims that any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Settlement Class. With respect to any and all Settlement Class Claims and Released Defendants’ Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiff and the Defendants shall expressly, and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Plaintiff, Settlement Class Members, or the Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Settlement Class Claims and the Released Defendants’ Claims, but Plaintiff and the Defendants shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment shall have settled and released,

fully, finally, and forever, any and all Settlement Class Claims and Released Defendants' Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Plaintiff and the Defendants acknowledge, and Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settlement Class Claims and Released Defendants' Claims was separately bargained for and was a material element of the Settlement.

### **PART VIII – REPRESENTATIONS**

I/We acknowledge that I/we have read the Notice, and that pursuant thereto I/we file this claim to participate in the Settlement.

I/We hereby warrant and represent that neither I/we, nor any person I/we represent, is a Defendant (as defined in the Notice) with respect to any of the claims asserted in the Action, or anyone excluded from the Settlement Class as it is defined in the Stipulation, or a person or entity who has requested exclusion from the Settlement Class.

I/We hereby warrant and represent that I am/we are authorized to execute and deliver this Proof of Claim and Release Form.

I/We hereby warrant and represent that I/we have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any rights or claims released pursuant to this release or any other part or portion thereof.

I/We hereby warrant and represent that I/we have included information about all of my/our transactions in TranS1 securities which are the subject of this claim, and which occurred during the Class Period.

I/We have not submitted any other claim covering the same purchases, acquisitions, or sales of TranS1 securities during the Class Period and know of no other person having done so on my/our behalf.

**PART IX – CERTIFICATION**

I/We certify that I am/we are not subject to backup withholding. **(If you have been notified by the IRS that you are subject to backup withholding, strike out the previous sentence.)**

**I/We certify that I/we purchased TranS1 securities listed in the above Schedule during the period between February 23, 2009 through October 17, 2011, both dates inclusive.**

I/We declare and affirm under penalties of perjury that the foregoing information and the documents attached hereto, including the Social Security or Taxpayer Identification Number shown on this Proof of Claim, are true, correct and complete to the best of my/our knowledge, information and belief, and that this Proof of Claim was executed on the date listed below:

Signature of Claimant

Date   –   –    
MM DD YY

Print your name here

Signature of Joint Claimant, if any

Date   –   –    
MM DD YY

Print your name here

***If the Claimant is an entity other than an individual, or is not the person completing this form, the following also must be provided:***

Signature of person signing on behalf of Claimant

Date   –   –    
MM DD YY

Print your name here

Capacity of person signing on behalf of Claimant, if other than an individual, e.g., executor, president, trustee, or custodian. (Must provide evidence of authority to act on behalf of Claimant)



**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT  
AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.**

**Reminder Checklist:**

1. Remember to sign the above Release and Certification (or W-8 Certification).
2. Remember to attach only **copies** of acceptable supporting documentation, a complete list of which can be found on the Settlement website at [www.Trans1SecuritiesSettlement.com](http://www.Trans1SecuritiesSettlement.com).
3. Do not send originals of securities certificates.
4. Keep copies of the completed Proof of Claim and documentation for your own records.
5. If you desire an acknowledgment of receipt of your Proof of Claim, please send it Certified Mail, Return Receipt Requested, or its equivalent. **You will bear all risks of delay or non-delivery of your claim.**
6. If your address changes in the future, or if these documents were sent to an old or incorrect address, please send us **written** notification of your new address.

If you have questions or concerns regarding your claim, please contact the Claims Administrator by phone at 855-880-9209, or at the following address:

*Singer v. Trans1, Inc., et al.*  
Claims Administrator  
P.O. Box 5270  
Portland, OR 97208-5270