

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE GALENA BIOPHARMA, INC.     )  
  ) C.A. No. 2017-0423-JTL  
  )

**STIPULATION AND AGREEMENT OF  
COMPROMISE AND SETTLEMENT**

This Stipulation and Agreement of Compromise and Settlement (the “Stipulation”), dated December 6, 2017, is entered into by and among the following Parties in the Action: (i) Suhas Patel (“Plaintiff”), on behalf of himself and all other members of the Class, and (ii) Defendants Galena Biopharma, Inc. (“Galena” or the “Company”), William L. Ashton, Rudolph Nisi, Richard Chin, Irving Einhorn, Stephen Galliker, Sanford Hillsberg, Mary Ann Gray, Mark W. Schwartz and Stephen F. Ghiglieri (collectively, the “Defendants”). This Stipulation sets forth all of the terms of the settlement and resolution of this matter and is intended by Plaintiff and Defendants to fully and finally release, resolve, remise, compromise, settle and discharge the Released Plaintiff’s Claims against the Released Defendant Persons and the Released Defendants’ Claims against the Releasing Plaintiff Persons, subject to the approval of the Court of Chancery of the State of Delaware (the “Court”), without any admission or concession as to the merits of any claim or defense by the Parties. All terms herein with initial capitalization shall, unless defined elsewhere in this Stipulation, have the meanings ascribed to them in Paragraph 1 below.

**WHEREAS:**

A. On May 31, 2011, Galena issued its definitive proxy statement for the 2011 annual meeting.

B. The proxy statement for the 2011 annual meeting identified a number of proposals to be voted on, including Proposal 4: “Approval of Amendment to Amended and Restated Certificate of Incorporation” to increase the number of authorized shares of Galena common stock.

C. The proxy statement for the 2011 annual meeting further disclosed that nominees/brokers would not be permitted to vote on Proposal 4 without instruction from beneficial owners.

D. At the 2011 annual meeting, votes cast by nominees/brokers on Proposal 4 without instruction from the beneficial owners of certain of the Company’s outstanding shares were counted on Proposal 4.

E. On July 19, 2011, the Company disclosed on Form 8-K that Proposal 4 at the 2011 annual meeting was approved by a majority of the shares outstanding and entitled to vote at the meeting.

F. On July 26, 2011, the Company filed a certificate of amendment with the Secretary of State of the State of Delaware (the “Secretary of State”) implementing the increase in the number of authorized shares of Galena common stock.

G. On April 29, 2013, Galena issued its definitive proxy statement for the 2013 annual meeting.

H. The proxy statement for the 2013 annual meeting identified a number of proposals to be voted on, including Proposal 2: “Approval of Amendment to Amended and Restated Certificate of Incorporation” to increase the number of authorized shares of Galena common stock.

I. The proxy statement for the 2013 annual meeting further disclosed that nominees/brokers would not be permitted to vote on Proposal 2 without instruction from beneficial owners.

J. At the 2013 annual meeting, votes cast by nominees/brokers on Proposal 2 without instruction from the beneficial owners of certain of the Company’s outstanding shares were counted on Proposal 2.

K. On June 28, 2013, the Company filed a certificate of amendment with the Secretary of State implementing the increase in the number of authorized shares of Galena common stock.

L. On July 3, 2013, the Company disclosed on Form 8-K that Proposal 2 at the 2013 annual meeting was approved by a majority of the shares outstanding and entitled to vote at the meeting.

M. On April 30, 2015, Galena issued its definitive proxy statement for the 2015 annual meeting.

N. The proxy statement for the 2015 annual meeting identified a number of proposals to be voted on, including Proposal 2: “Approval of Amendment to Amended and Restated Certificate of Incorporation” to increase the number of authorized shares of Galena common stock.

O. The proxy statement for the 2015 annual meeting further disclosed that nominees/brokers would not be permitted to vote on Proposal 2 without instruction from beneficial owners.

P. At the 2015 annual meeting, votes cast by nominees/brokers on Proposal 2 without instruction from the beneficial owners of certain of the Company’s outstanding shares were counted on Proposal 2.

Q. On June 19, 2015, the Company filed a certificate of amendment with the Secretary of State implementing the increase in the number of authorized shares of Galena common stock.

R. On June 24, 2015, the Company disclosed on Form 8-K that Proposal 2 at the 2015 annual meeting was approved by a majority of the shares outstanding and entitled to vote at the meeting.

S. On June 3, 2016, Galena issued its definitive proxy statement for the 2016 annual meeting (the “2016 Annual Meeting”).

T. The proxy statement for the 2016 Annual Meeting identified a number of proposals to be voted on, including Proposal 2: “Approval of

Amendment to Amended and Restated Certificate of Incorporation” to increase the number of authorized shares of Galena common stock.

U. The proxy statement for the 2016 Annual Meeting further disclosed that nominees/brokers would not be permitted to vote on Proposal 2 without instruction from beneficial owners.

V. At the 2016 Annual Meeting, votes cast by nominees/brokers on Proposal 2 without instruction from the beneficial owners of certain of the Company’s outstanding shares were counted on Proposal 2.

W. On July 18, 2016, the Company disclosed on Form 8-K that Proposal 2 at the 2016 Annual Meeting was approved by a majority of the shares outstanding and entitled to vote at the meeting.

X. On September 21, 2016, Galena issued its definitive proxy statement for an October 21, 2016 special meeting (the “2016 Special Meeting”).

Y. The proxy statement for the 2016 Special Meeting listed a number of proposals for stockholders to vote on, including Proposal 1, to approve an amendment to the Company’s Amended and Restated Certificate of Incorporation to effect a reverse stock split of the outstanding shares of the Company’s common stock.

Z. The proxy statement for the 2016 Special Meeting further disclosed that nominees/brokers would not be permitted to vote on Proposal 1 without

instruction from beneficial owners.

AA. On October 17, 2016, the Company filed a certificate of amendment with the Secretary of State implementing the increase in the number of authorized shares of Galena common stock approved at the 2016 Annual Meeting.

BB. On October 21, 2016, at the 2016 Special Meeting, votes cast by nominees/brokers on Proposal 1 without instruction from the beneficial owners of certain of the Company's outstanding shares were counted on Proposal 1.

CC. On October 26, 2016, the Company disclosed on Form 8-K that the reverse stock split was approved by a majority of the shares outstanding and entitled to vote at the meeting.

DD. The certificate amendment providing for the reverse stock split was signed on November 1, 2016, and filed with the Secretary of State on November 2, 2016.

EE. On April 27, 2017, Plaintiff, a Galena stockholder, filed a Verified Stockholder Class Action Complaint in *Patel v. Galena Biopharma, Inc.*, C.A. No. 2017-0325-JTL, challenging, among other things, the results of the votes on Proposal 2 at the 2016 Annual Meeting and Proposal 1 at the 2016 Special Meeting.

FF. On June 2, 2017, Plaintiff filed a Verified Stockholder Class Action Amended and Supplemented Complaint and a motion for expedited proceedings

in C.A. No. 2017-0325-JTL.

GG. On June 5, 2017, the Company filed a Verified Petition for Relief Pursuant to 8 *Del. C.* § 205 and a motion for expedited proceedings in *In re Galena Biopharma, Inc.*, C.A. No. 2017-0423-JTL.

HH. On June 8, 2017, the Court denied Plaintiff's request to schedule a hearing on a motion for preliminary injunction in C.A. No. 2017-0325-JTL, but ordered a prompt trial to be held to resolve the claims asserted in C.A. No. 2017-0325-JTL and C.A. No. 2017-0423-JTL.

II. On June 8, 2017, Galena issued its definitive proxy statement for a 2017 special meeting (the "2017 Special Meeting").

JJ. The proxy statement for the 2017 Special Meeting listed a number of proposals to be voted on, including ratification of the filing and effectiveness of the certificates of amendment to Galena's certificate of incorporation filed with the Secretary of State on July 26, 2011; June 28, 2013; June 19, 2015; October 17, 2016; and November 2, 2016.

KK. On June 20, 2017, the Court consolidated C.A. No. 2017-0325-JTL and C.A. No. 2017-0423-JTL.

LL. On July 6, 2017, a special meeting of stockholders of the Company was held.

MM. At the 2017 Special Meeting, pursuant to 8 *Del. C.* § 204, a majority

of the Company's shares outstanding voted to ratify the filing and effectiveness of the certificates of amendment to Galena's certificate of incorporation filed with the Secretary of State on July 26, 2011; June 28, 2013; June 19, 2015; October 17, 2016; and November 2, 2016.

NN. On July 10, 2017, the Court granted a Stipulation and Order Governing Case Schedule, which scheduled, among other things, a three-day trial for August 28, 30, and 31, 2017.

OO. Between May 12, 2017, and July 20, 2017, the Company produced over 36,000 pages of documents to Plaintiff. Plaintiff's Counsel also reviewed documents produced by four third parties. Plaintiff also produced 1,402 pages of documents to Defendants.

PP. On July 24, 2017, the Parties executed a term sheet concerning the agreement to fully and finally settle the claims asserted in the Action. The term sheet contemplated that the Parties would negotiate and execute definitive settlement documents with customary terms for settlements before this Court.

QQ. This Stipulation is intended fully, finally and forever to resolve, discharge and settle the Released Plaintiff's Claims and the Released Defendants' Claims with prejudice. It is the intention of the Parties that the Settlement will release all Released Plaintiff's Claims and all Released Defendants' Claims.

RR. The entry by Plaintiff and the Defendants into this Stipulation is not,

and shall not be construed as or deemed to be evidence of, an admission as to the merit or lack of merit of any claims or defenses asserted in the Action.

SS. Plaintiff's Counsel investigated and pursued discovery relating to the claims and the underlying events alleged in the Action. Plaintiff's Counsel have analyzed the evidence adduced during their investigation and through discovery, and have researched the applicable law with respect to Plaintiff and the Class. In negotiating and evaluating the terms of this Stipulation, Plaintiff's Counsel considered the significant legal and factual defenses to Plaintiff's claims, including Defendants' intention to rely on 8 *Del. C.* §§ 204 and 205 to ratify certain actions. Plaintiff's Counsel have received sufficient information to evaluate the merits of this Settlement. Based on their evaluation, Plaintiff's Counsel believed in executing the settlement term sheet that the provisions in the term sheet that were subsequently incorporated in this Stipulation were fair, reasonable and adequate and in the best interests of all Class Members and that they conferred substantial benefits upon Class Members.

TT. The Defendants deny any and all allegations of wrongdoing, fault, liability or damage whatsoever; deny that they engaged in, committed or aided or abetted the commission of any breach of duty, wrongdoing or violation of law; deny that Plaintiff or any of the other Class Members suffered any damage whatsoever; deny that they acted improperly in any way; believe that they acted

properly at all times; maintain that the Individual Defendants complied with their fiduciary duties; maintain that they have complied with federal and state laws; and maintain that they have committed no disclosure violations or any other breach of duty or wrongdoing whatsoever.

UU. The Defendants enter into this Stipulation solely because they consider it desirable that the Action be settled and dismissed with prejudice in order to, among other things, eliminate the uncertainties, burden and expense of further litigation and finally put to rest and terminate all of the claims which were or could have been asserted against the Parties in the Action. Nothing in this Stipulation shall be construed as any admission by the Defendants of wrongdoing, fault, liability, or damages whatsoever.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by Plaintiff, for himself and on behalf of the Class, and the Defendants that, subject to the approval of the Court and pursuant to Chancery Court Rule 23, for the good and valuable consideration set forth herein and conferred on Plaintiff and the Class, the Action against the Defendants shall be finally and fully settled, compromised and dismissed, on the merits and with prejudice, and that the Released Plaintiff's Claims shall be finally and fully compromised, settled, released, discharged and dismissed with prejudice as against the Released Defendant Persons, and that the Released Defendants'

Claims shall be finally and fully compromised, settled, released, discharged and dismissed with prejudice as against the Released Plaintiff Persons, in the manner set forth herein.

**A. Definitions**

1. In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms, used in this Stipulation, shall have the meanings specified below:

- a. “Action” means the Consolidated Action pending in the Court, styled *In re Galena Biopharma, Inc.*, C.A. No. 2017-0423-JTL.
- b. “Claims” mean any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, diminutions in value, costs, debts, expenses, interest, penalties, fines, sanctions, fees, attorneys’ fees, expert or consulting fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, which now exist, or heretofore or previously existed, whether direct, derivative, individual, class, representative, legal, equitable or of any

other type, or in any other capacity.

- c. “Claims Administrator” means the firm of Garden City Group, retained by Plaintiff to disseminate the settlement notice, oversee the administration of the Settlement and distribution of the Settlement Amount, and such other administrative functions as are required under the Settlement.
- d. “Class” means Galena common stockholders who were entitled to vote at Galena’s 2016 Annual Meeting, Galena’s 2016 Special Meeting, and/or Galena’s 2017 Special Meeting, excluding the Released Defendant Persons.
- e. “Class Member” means a member of the Class.
- f. “Defendants” means Galena, William L. Ashton, Rudolph Nisi, Richard Chin, Irving Einhorn, Stephen Galliker, Sanford Hillsberg, Mary Ann Gray, Mark W. Schwartz, and Stephen F. Ghiglieri.
- g. “Defendants’ Counsel” means the law firm of Richards, Layton & Finger, P.A.
- h. “Effective Date” means the first business day following the date the Judgment becomes Final.
- i. “Fee and Expense Awards” mean the 205 Fee Award and the Class Fee Award.

- j. “Final,” when referring to the Judgment, means (1) entry of the Judgment or (2) if there is an objection to the Settlement, the expiration of any time for appeal or review of the Judgment, or, if any appeal is filed and not dismissed or withdrawn, issuance of a decision upholding the Judgment on appeal in all material respects, which is no longer subject to review upon appeal or other review, and the expiration of the time for the filing of any petition for reargument, appeal or review of the Judgment or any order affirming the Judgment; provided, however, that any disputes or appeals relating solely to the amount, payment or allocation of attorneys’ fees and expenses shall have no effect on finality for purposes of determining the date on which the Judgment becomes Final and shall not otherwise prevent, limit or otherwise affect the Judgment, or prevent, limit, delay or hinder entry of the Judgment.
- k. “Immediate Families” means an individual’s children, stepchildren, and spouse. In this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic partnership or civil union.
- l. “Individual Defendants” means William L. Ashton, Rudolph Nisi, Richard Chin, Irving Einhorn, Stephen Galliker, Sanford Hillsberg, Mary Ann Gray, Mark W. Schwartz, and Stephen F. Ghiglieri.
- m. “Judgment” means the Order and Final Judgment to be entered in the

Action in all material respects in the form attached as Exhibit D hereto, including a determination that the terms and conditions of the issuance of the Settlement Stock is fair to the Class Members.

- n. “Net Settlement Amount” means the Settlement Amount as defined herein less any Fee and Expense Awards, Notice Costs, and costs for the administration and distribution of the Settlement Amount.
- o. “Party” means any one of, and “Parties” means all of, the parties to this Stipulation, namely, the Defendants and Plaintiff, on behalf of himself and the Class.
- p. “Plaintiff’s Counsel” means the law firm of Prickett, Jones & Elliott, P.A.
- q. “Released Defendant Persons” means Defendants and all entities owned or controlled by them, their parents, subsidiaries, divisions, joint ventures, all current and former Galena directors, officers and employees, and each of their and Defendants’ respective employees, members, insurers, Defendants’ Counsel, successors, heirs, assigns, executors, personal representatives, marital communities and Immediate Families, or any trust of which any Defendant is the settlor or which is for the benefit of any Defendant or member(s) of his or her Immediate Family, and such other persons that are specifically identified in the

Settlement.

- r. “Released Defendants’ Claims” means any Claims that could have been asserted in the Action by the Individual Defendants or Galena against any of the Released Plaintiff Persons, which arise out of the institution, prosecution, settlement or dismissal of the Action, provided, however, that (i) the Released Defendants’ Claims shall not include claims to enforce the Settlement and (ii) nothing herein shall release or otherwise affect any rights between or among Defendants and/or their insurance carriers, including indemnification and contribution.
- s. “Released Plaintiff Persons” means Plaintiff and the Class and their heirs, estates, executors, trustees, successors and assigns, and Plaintiff’s Counsel.
- t. “Releasing Plaintiff Persons” means Plaintiff and all members of the Class.
- u. “Released Plaintiff’s Claims” means any Claims arising from or in any way relating to the matters or occurrences that were alleged in the Action or the structure of the Settlement, including the use of Company funds or Settlement Stock to pay the Settlement Amount. Released Plaintiff’s Claims include any claim that shares of Galena common stock are invalid on the grounds that the certificates of amendment to

Galena's certificate of incorporation filed with the Secretary of State on July 26, 2011; June 28, 2013; June 19, 2015; October 17, 2016; and November 2, 2016, were invalid or otherwise did not comply with Delaware law. For the avoidance of doubt, Released Plaintiff's Claims shall not include any current or future claims under federal law, including the claims asserted in *Miller v. Galena Biopharma, Inc.*, Docket No. 2:17-cv-00929 (D.N.J. Feb. 13, 2017); *Kattuah v Galena Biopharma, Inc.*, Docket No. 2:17-cv-01039 (D.N.J. Feb. 15, 2017); *Keller v. Ashton*, Docket No. 2:17-cv-01777 (D.N.J. Mar. 16, 2017); and *Jacob v. Schwartz*, Case No. C17-01222 (CA Super. Ct. Contra Costa County July 3, 2017). Released Plaintiff's Claims shall not include claims to enforce the Settlement.

- v. "Settlement" means the settlement contemplated by this Stipulation.
- w. "Settlement Amount" means the Settlement Stock, together with \$50,000 in cash. Nothing in this Stipulation shall have an effect on the respective rights and obligations between or among Defendants or their respective insurance carriers, or upon any separate agreements concerning the claims, defenses, debts, obligations or payments between or among Defendants.
- x. "Settlement Fund" means a fund created for the benefit of the Class that

contains the monies deposited into the Settlement Fund, the Settlement Stock issued in accordance with Paragraph 2 hereof, any residual monies held in the Settlement Fund, and any interest or income earned thereon.

- y. “Settlement Hearing” means the hearing to be held by the Court to determine whether the proposed Settlement should be approved as fair, reasonable and adequate, including regarding the issuance of the Settlement Stock under the exemption provided for in Section 3(a)(10) of the Securities Act of 1933, as amended (“Section 3(a)(10)”); whether Plaintiff and Plaintiff’s Counsel have adequately represented the Class; whether any objections to the Settlement should be overruled; whether the Action should be dismissed with prejudice as against the Defendants; whether to fully, finally and forever, release, settle and discharge the Released Defendant Persons from and with respect to every one of the Released Plaintiff’s Claims; whether a Judgment approving the Settlement should be entered in accordance with the terms of this Stipulation; and whether and in what amount any award of attorneys’ fees and expenses should be paid to Plaintiff’s Counsel.
- z. “Settlement Stock” means \$1,250,000 of unrestricted Galena Common Stock, determined as set forth in Paragraph 2(d).

## **B. Settlement Consideration**

2. In consideration for the full and final release, settlement and discharge of any and all Released Plaintiff's Claims against the Released Defendant Persons, the Defendants agree (a) to pay and/or cause their D&O insurers to pay \$50,000 in cash and (b) to pay \$1,250,000 of unrestricted Galena Common Stock, as follows:

- a. Within ten business days after execution of this Stipulation, the Defendants shall pay and/or cause their D&O insurers to pay an amount in cash equal to the Claims Administrator's estimate for the cost of notice of the Settlement (the "Notice Cost")—but in no event more than \$50,000—into the Settlement Fund. If the Court does not approve the Settlement or the Judgment does not become Final for any reason, the Released Plaintiff Persons shall not be responsible for repaying any Notice Costs to Defendants.
- b. Within ten business days after the Court enters the Judgment, the Defendants shall pay and/or cause their D&O insurers to pay into the Settlement Fund cash equal to the difference (if any) between \$50,000 and the Notice Cost previously paid.
- c. Within ten business days after the Court enters the Judgment, the Defendants shall transfer the Settlement Stock to the Settlement Fund.

- d. The number of shares constituting the Settlement Stock shall be determined and transferred as follows:
- i. The valuation of the Settlement Stock will be based on the volume-weighted average closing price (“VWAP”) for the 20 trading days immediately preceding the day before the Settlement Stock is transferred to the Settlement Fund.
  - ii. Should Plaintiff’s Counsel decide after the transfer of the Settlement Stock into the Settlement Fund to sell any of the Settlement Stock, the Class will limit daily trading of Settlement Stock to 10% of the daily volume as averaged over the previous 10 trading days.
  - iii. The Settlement Stock shall be duly and validly issued, uncertificated, fully paid, non-assessable and free from all liens and encumbrances, and the Parties stipulate the Settlement Stock has been issued under an exemption from registration provided by Section 3(a)(10). Galena shall issue the Settlement Stock without any restrictive legend, and the Settlement Stock shall be freely and publicly tradeable without the need to obtain any opinions of counsel or permission of Galena that the stock is

unrestricted. Further, Galena shall obtain a no-action letter from the Staff of the Securities and Exchange Commission where the Staff confirms that it will take no action if Galena relies on Section 3(a)(10) to exempt the registration of the Settlement Stock. Defendants will advise the Court that Galena will rely on the Section 3(a)(10) exemption based on the Court's approval of the Settlement.

3. Following the Effective Date, the Net Settlement Amount will be disbursed by the Claims Administrator according to the Plan of Allocation (Ex. C), provided it is approved by the Court. Defendants shall not object to the Plan of Allocation and shall have no input, responsibility or liability for any claims, payments or determinations by the Claims Administrator in respect of Class Member claims for payment under this Settlement, or any other use of the Settlement Fund, including for Taxes, Tax Expenses, and the Fee and Expense Awards. Thereafter, any balance which still remains in the Net Settlement Fund shall escheat to the State of Delaware. Defendants shall provide information to Plaintiff concerning the number of shares held by Released Defendant Persons and where and how the shares were held to ensure no Released Defendant Person is paid any of the Settlement Amount.

4. The Notice Cost will be borne by the Class and funded out of the

Settlement Fund. Galena shall cooperate with Plaintiff in providing the Notice, including, but not limited to, providing contact and shareholding information of Class members to the extent available to Galena.

5. Expenses of the Claims Administrator, and any other cost of administration and distribution of the Settlement Amount (including the costs, if any, associated with escheat) shall be paid out of the Settlement Fund.

6. The funds in the Settlement Fund may be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or if the yield on such instruments is negative, in an account fully insured by the United States Government or an agency thereof. The Settlement Fund shall bear all risks related to investment of funds in the Settlement Fund.

7. The Settlement Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

### **C. Scope of the Settlement**

8. Upon the entry of the Judgment, the Action shall be dismissed with prejudice, on the merits and without costs (except as provided herein).

9. Upon the Effective Date, the Releasing Plaintiff Persons shall

thereupon fully, finally and forever, release, settle and discharge the Released Defendant Persons from and with respect to every one of the Released Plaintiff's Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Released Plaintiff's Claims against any of the Released Defendant Persons.

10. Upon the Effective Date, each of the Defendants shall thereupon fully, finally and forever, release, settle and discharge the Released Plaintiff Persons from and with respect to every one of the Released Defendants' Claims, and shall thereupon be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims against any of the Released Plaintiff Persons.

11. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action, the Released Plaintiff's Claims and the Released Defendants' Claims. It is the intention of the Parties that the Settlement eliminate all further risk and liability relating to the Released Plaintiff's Claims and the Released Defendants' Claims, and that the Settlement shall be a final and complete resolution of all disputes asserted or which could be or could have been asserted with respect to the Released Plaintiff's Claims and the Released Defendants' Claims; provided, however, that nothing herein shall release or otherwise affect any claims for indemnity or contribution between Defendants

and their insurance carriers.

**D. Submission of the Settlement to the Court for Approval**

12. As soon as practicable after this Stipulation has been executed, Plaintiff and the Defendants shall (1) jointly apply to the Court for entry of an Order in the form attached hereto as Exhibit A (the “Scheduling Order”), providing for, among other things: (a) the dissemination of the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”), substantially in the form attached hereto as Exhibit B, which includes the Plan of Allocation set forth in Exhibit C; and (b) the scheduling of the Settlement Hearing to consider: (i) the proposed Settlement, (ii) the joint request of the Parties that the Judgment be entered in all material respects in the form attached hereto as Exhibit D, (iii) Plaintiff’s Counsel’s Fee Applications, and (iv) any objections to any of the foregoing; and (2) take all reasonable and appropriate steps to seek and obtain entry of the Scheduling Order. The Parties shall jointly request at the Settlement Hearing that the Judgment be entered, and the Parties shall take all reasonable and appropriate steps to obtain Final entry of the Judgment in all material respects in the form attached hereto as Exhibit D.

**E. Conditions of Settlement**

13. This Settlement shall be subject to the following conditions, which the Parties shall use their best efforts to achieve:

(a) the Court enters the Validity Order in all material respects as submitted by Galena pursuant to Paragraph 19;

(b) the Court enters the Scheduling Order in all material respects in the form attached hereto as Exhibit A;

(c) the Court enters the Judgment in all material respects in the form attached hereto as Exhibit D. For the avoidance of doubt, the scope of the Released Plaintiff's Claims and the Released Defendants' Claims are material terms of this Stipulation;

(d) the Effective Date shall have occurred; and

(e) the Parties have complied with their obligations set forth herein.

**F. Attorneys' Fees and Expenses**

14. Plaintiff's Counsel will apply (the "205 Fee Application") for an award of attorneys' fees and expenses (the "205 Fee Award") of no of more than \$250,000.00 for any benefit the Court finds was conferred by the Action concerning 8 *Del. C.* §§ 204 and 205. Defendants may oppose the 205 Fee Application but agree to pay and/or cause to be paid by their D&O carriers any amount awarded by the Court in cash to Plaintiff's Counsel, in addition to the Settlement Amount, five business days after the Effective Date.

15. If the Settlement is vacated, or any 205 Fee Award is vacated or

reduced on appeal, Plaintiffs' Counsel will refund the Settlement Amount (subject to Paragraph 2(a)) or the 205 Fee Award (or any overpayment of the 205 Fee Award), as appropriate, to Galena within five business days of such judgment.

16. Plaintiff's Counsel may also petition the Court (the "Class Fee Application" and, together with the 205 Fee Application, the "Fee Applications") for an award of attorneys' fees and expenses (the "Class Fee Award") to Plaintiff's Counsel for the benefit to the Class of the Settlement Fund, which Class Fee Award shall be paid solely from the Settlement Fund no earlier than 15 days after entry by the Court of the Judgment and approval of the Class Fee Award, notwithstanding any appeals

17. The disposition of the Fee Applications is not a material term of this Stipulation, and it is not a condition of this Stipulation that such applications be granted. The Fee Applications may be considered separately from the proposed Settlement. Any disapproval or modification of the Fee Applications by the Court or on appeal shall not affect or delay the enforceability of this Stipulation, provide any of the Parties with the right to terminate the Settlement, or affect or delay the binding effect or finality of the Judgment and the release of the Released Plaintiff's Claims. Final resolution of the Fee Applications shall not be a condition to the dismissal, with prejudice, of the Action or effectiveness of the

releases of the Released Plaintiff's Claims. The payment of any Fee and Expense Awards shall be made without waiver of the right of any Defendant to pursue claims against insurance carriers for such sum.

18. Plaintiff's Counsel warrant that no portion of the Fee and Expense Awards shall be paid to Plaintiff or any Class Member, except as approved by the Court. The Defendants and the Released Defendant Persons shall have no input into or responsibility or liability for the allocation by Plaintiff's Counsel of any Fee and Expense Awards.

**G. The Validity Order and Stay of Other Proceedings**

19. Within five business days of execution of this Stipulation, Plaintiff will consent to entry of an order declaring valid Galena's (a) certificate of amendment to its certificate of incorporation filed with the Secretary of State on July 26, 2011; (b) certificate of amendment to its certificate of incorporation filed with the Secretary of State on June 28, 2013; (c) certificate of amendment to its certificate of incorporation filed with the Secretary of State on June 19, 2015; (d) certificate of amendment to its certificate of incorporation filed with the Secretary of State on October 17, 2016; and (e) certificate of amendment to its certificate of incorporation filed with the Secretary of State on November 2, 2016 (the "Validity Order").

- a. The Validity Order shall provide that, if the Settlement is not approved by the Court or the Judgment does not become Final for any reason, then neither the Settlement nor the Validity Order may be raised in any way as a defense to Plaintiff's fiduciary duty claims and/or any relief sought with respect to such claims.
- b. Galena shall file a motion for entry of the Validity Order and/or a brief in support that provides the Court with an adequate record for approval of the Validity Order, which may include documents and affidavits.

20. Except for proceedings related to the Validity Order, Plaintiff and Defendants agree to stay the proceedings against the Defendants in the Action and to stay and not to initiate any other proceedings against the Defendants other than those incident to the Settlement itself and the Validity Order pending the occurrence of the Effective Date. The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Class Member in, any other proceedings against any of the Released Defendant Persons that challenges the Settlement or otherwise asserts or involves, directly or indirectly, a Released Plaintiff's Claim.

#### **H. Taxes**

21. The Parties agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. In

addition, the Claims Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Section H, including, if necessary, the “relation-back election” (as defined in Treas. Reg. § 1.468B-10)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under § 1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

22. For the purpose of § 1.468B of the Code and the Treasury regulations thereunder, the Claims Administrator shall be designated as the “administrator” of the Settlement Fund. The Claims Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in Paragraph 21) shall be consistent with this Section H and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

23. All: (a) taxes (including any estimated taxes, interest or penalties)

arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or Released Defendant Persons with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”); and (b) expenses and costs incurred in connection with the operation and implementation of this Section H (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Section H) (“Tax Expenses”), shall be paid out of the Settlement Fund. In no event shall Defendants or Released Defendant Persons have any responsibility for or liability with respect to the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by Plaintiff’s Counsel out of the Settlement Fund without further consent of the Defendants, or prior order from the Court, and Plaintiff’s Counsel shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Class Members any funds necessary to pay such amount, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendants nor the Released Defendant Persons are

responsible therefor nor shall they have any liability with respect thereto.

**I. Termination of Settlement; Effect of Termination**

24. The Parties shall each have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so to the other Parties within ten business days of (a) the Court's declining to enter the Validity Order in any material respect; (b) the Court's declining to enter the Scheduling Order in any material respect; (c) the Court's declining to enter the Judgment in any material respect; (d) modification or reversal of the Judgment in any material respect on or following appellate review, remand, collateral attack or other proceedings; or (e) failure to satisfy any of the other conditions of Section E (other than the occurrence of the Effective Date). Neither a modification nor a reversal on appeal of the Fee and Expense Awards shall be deemed a material modification of the Judgment or this Stipulation.

25. Notwithstanding anything to the contrary set forth above, in the event that the Court approves the Stipulation and enters the Judgment, but Defendants (and/or their respective insurers) fail to deposit the Settlement Stock and/or Cash Payment in accordance with this Stipulation, nothing herein shall be construed to limit or prejudice in any way any of Plaintiff's rights to seek enforcement of the terms of the Settlement against any Defendant which fails to make the required deposit, including specifically, rights to sue for breach of

contract and for specific performance and/or to seek appropriate legal and/or equitable relief from the Court to enforce the Settlement against a party or parties who have breached their obligations under this Stipulation.

26. If the Effective Date does not occur, or if this Stipulation is disapproved, canceled or terminated pursuant to its terms, or the Settlement otherwise does not become Final for any reason, except as set forth in Paragraph 19(a), Plaintiff and the Defendants shall be deemed to have reverted to their respective litigation status immediately prior to July 24, 2017; they shall negotiate a new trial schedule on Plaintiff's fiduciary duty claims in good faith; and they shall proceed on Plaintiff's fiduciary duty claims as if the Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to Plaintiff's fiduciary duty claims shall be preserved without prejudice.

**J. Effect of Settlement**

27. The Defendants deny any and all allegations of wrongdoing, fault, liability or damage in the Action.

28. Plaintiff and the Defendants covenant and agree that neither this Stipulation, nor the fact or any terms of the Settlement, or any communications relating thereto, is evidence, or an admission or concession by Plaintiff or the Defendants or their counsel, any Class Member, nor any other Released

Defendant Persons or Released Plaintiff Persons, of any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, or as to the validity or merit of any of the claims or defenses alleged or asserted in any such action or proceeding.

29. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by Plaintiff, the Defendants, any Class Member or other Released Defendant Persons or Released Plaintiff Persons, or any damages or injury to Plaintiff, the Defendants, any Class Member or other Released Defendant Party or Released Plaintiff Persons.

30. Neither this Stipulation, nor any of the terms and provisions of this Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, (a) shall (i) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any of the Released Defendant Persons or Released Plaintiff Persons, or of any infirmity of any defense, or of any damage to Plaintiff or any other

Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Persons or Released Plaintiff Persons concerning any fact or any purported liability, fault, or wrongdoing of the Released Defendant Persons or Released Plaintiff Persons or any injury or damages to any person or entity, or (b) shall otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Stipulation and Judgment may be introduced in any proceeding subject to Rule 408 of the Federal Rules of Evidence and any and all other state law corollaries thereto, whether in the Court or otherwise, as may be necessary to argue and establish that the Stipulation and Judgment have res judicata, collateral estoppel or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and Judgment or to secure any insurance rights or proceeds of any of the Released Defendant Persons or Released Plaintiff Persons or as otherwise required by law.

**K. Miscellaneous Provisions**

31. All of the Exhibits attached hereto are material and integral parts hereof and shall be incorporated by reference as though fully set forth herein.

32. This Stipulation may not be amended or modified, nor may any of its provisions be waived, except by a written instrument signed by counsel for Plaintiff and the Defendants or their successors-in-interest.

33. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

34. Plaintiff and the Defendants represent and agree that the terms of the settlement reached between Plaintiff and the Defendants were negotiated at arm's-length and in good faith by Plaintiff and the Defendants, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

35. The consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court.

36. Without further order of the Court, Plaintiff and the Defendants may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation.

37. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of documents or information shall survive this Stipulation.

38. The waiver by Plaintiff or the Defendants of any breach of this Stipulation shall not be deemed a waiver of any other prior or subsequent breach of any provision of this Stipulation.

39. This Stipulation and the Exhibits constitute the entire agreement between Plaintiff, on the one hand, and any Defendants, on the other hand, and

supersede any prior agreements among the Plaintiff, on the one hand, and any Defendants, on the other hand, with respect to the Settlement. No representations, warranties or inducements have been made to or relied upon by any Party concerning this Stipulation or its Exhibits, other than the representations, warranties and covenants expressly set forth in such documents.

40. This Stipulation may be executed in one or more counterparts, including by facsimile and electronic mail.

41. The Parties agree that they will use their reasonable best efforts to obtain all necessary approvals of the Court required by this Stipulation (including, but not limited to, using their reasonable best efforts to resolve any objections raised to the Settlement), and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

42. Plaintiff and Plaintiff's Counsel represent and warrant that Plaintiff is a member of the Class and that none of Plaintiff's claims or causes of action referred to in this Stipulation have been assigned, encumbered, or otherwise transferred in any manner in whole or in part.

43. Each counsel signing this Stipulation represents and warrants that such counsel has been duly empowered and authorized to sign this Stipulation on behalf of his or her clients.

44. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties, and all Parties have contributed substantially and materially to the preparation of this Stipulation.

45. This Stipulation is and shall be binding upon and shall inure to the benefit of the Released Defendant Persons and the Released Plaintiff Persons (including the Class Members) and the respective legal representatives, heirs, executors, administrators, transferees, successors and assigns of all such foregoing persons and entities and upon any corporation, partnership, or other entity into or with which any party may merge, consolidate or reorganize.

46. This Stipulation, the Settlement, and any and all disputes arising out of or relating in any way to this Stipulation or Settlement, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflicts of law principles. Any action or proceeding to enforce any of the terms of the Stipulation or Settlement, or any other action or proceeding among the Parties arising out of or relating in any way to this Stipulation or the Settlement, shall (i) be brought, heard and determined exclusively in the Court (provided that, in the event that subject matter jurisdiction is unavailable in the Court, then any such action or proceeding

shall be brought, heard and determined exclusively in any other state or federal court sitting in Wilmington, Delaware) and (ii) shall not be litigated or otherwise pursued in any forum or venue other than the Court (or, if subject matter jurisdiction is unavailable in the Court, then in any forum or venue other than any other state or federal court sitting in Wilmington, Delaware). Each Party hereto (1) consents to personal jurisdiction in any such action (but in no other action) brought in this Court; (2) consents to service of process by registered mail on such Party and/or such Party's agent; (3) waives any objection to venue in this Court and any claim that Delaware or this Court is an inconvenient forum; and (4) EXPRESSLY WAIVES ANY RIGHT TO DEMAND A JURY TRIAL AS TO ANY DISPUTE DESCRIBED IN THIS PARAGRAPH.

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Dated: December 6, 2017