

May 30, 2018

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Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
Mail Stop 4561
100 F Street, N.E.
Washington, D.C. 20459

Securities Act of 1933, as amended
Section 3(a)(10) and Rule 144(a)(3)

Re: SELLAS Life Sciences Group, Inc.

Dear Ladies and Gentlemen:

This firm is counsel to SELLAS Life Sciences Group, Inc. (formerly known as Galena Biopharma, Inc.) (“**SELLAS**” or the “**Company**”), a Delaware corporation. On behalf of the Company and its stockholders, we respectfully request that the Staff of the Division of Corporation Finance (the “**Staff**”) of the Securities and Exchange Commission (“**SEC**”) advise us that it will not recommend that the SEC take any enforcement action with respect to each of the following actions:

- i. The issuance by the Company, at the direction of Suhas Patel (“**Plaintiff**”) as representative of the Class (as defined below), without registration under, and in reliance upon the exemption provided in Section 3(a)(10) (“**Section 3(a)(10)**”) of the Securities Act of 1933, as amended (the “**Securities Act**”), of \$1,250,000 of shares (the “**Settlement Stock**”) of the Company’s common stock, par value \$0.0001 (“**Common Stock**”), to a custodial account in the name of Galena Biopharma Stockholder Settlement Fund (the “**Settlement Fund**”) for the benefit of the Class (as defined below), which issuance is a part of a settlement of a putative stockholder class action (the “**Action**”). Such Settlement Stock will be sold by the Settlement Fund, the proceeds of which will then be distributed to the Class Members and counsel to the Class upon a final judgment of the Delaware court in the Action.
- ii. The Settlement Stock so issued will not be deemed “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act and will be freely transferable without regard to Rule 144 unless, prior to or after the issuance, the Settlement Fund is an “affiliate” of the Company within the meaning of Rule 144(a)(1) under the Securities Act.

The Action being settled and the terms of the settlement (the “**Settlement**”) are described more fully below. The Stipulation and Agreement of Compromise and Settlement, dated December 6, 2017, encompassing the Settlement terms is attached as **Exhibit A** hereto (the “**Stipulation**”). Capitalized terms used and not otherwise defined in this letter have the meanings given to such terms in the Stipulation.

BACKGROUND

SELLAS is a clinical-stage biopharmaceutical company focused on novel cancer immunotherapies for a broad range of cancer indications. SELLAS’s lead product candidate, galinpepimut-S (“**GPS**”), is licensed from Memorial Sloan Kettering Cancer Center and targets the Wilms Tumor 1 protein, which is present in

May 30, 2018

Page 2

an array of tumor types. GPS has potential as a monotherapy or in combination to address a broad spectrum of hematologic malignancies and solid tumor indications. GPS has Phase 3 clinical trials planned (pending funding availability) for two indications, acute myeloid leukemia (“**AML**”) and malignant pleural mesothelioma (“**MPM**”). It is also in development as a potential treatment for multiple myeloma and ovarian cancer. SELLAS plans to study GPS in up to four additional indications. SELLAS recently received Orphan Drug designations from the U.S. Food & Drug Administration (“**FDA**”), as well as the European Medicines Agency, for GPS in AML and MPM; GPS also received Fast Track designation for AML and MPM from the FDA.

At the close of business on May 29, 2018, SELLAS had 6,775,405 outstanding shares of Common Stock. The Common Stock is traded on The NASDAQ Capital Market under the symbol “SLS”.

1. Class Action Litigation

On April 27, 2017, a putative stockholder class action was filed by Plaintiff against the Company and certain of its current and former officers and directors in the Court of Chancery of the State of Delaware (the “**Court**”) entitled *Patel v. Galena Biopharma, Inc. et. al*, C.A. No. 2017-0325-JTL. On June 2, 2017, an amended verified complaint was filed along with a motion to expedite the proceedings. On June 5, 2017, the Company filed a verified petition under Section 205 of the Delaware General Corporation Law (“**DGCL**”) and a motion to expedite the proceedings. On June 8, 2017, the Court denied a request by the Plaintiff to schedule a preliminary injunction motion and ordered a prompt trial on both the Plaintiff’s and the Company’s claims. On June 20, 2017, the Court consolidated the claims into *In re Galena Biopharma, Inc.*, C.A. No. 2017-0423-JTL. On July 10, 2017, the Court ordered that the trial of the claims be held on August 28, 30 and 31, 2017.

The Plaintiff sought relief under Section 225 of the DGCL and alleged breaches of fiduciary duties by the Company’s former Board of Directors and former Interim Chief Executive Officer and Chief Financial Officer regarding the voting results of authorized share and the reverse stock split proposals in the proxy statements for the July 2016 and October 2016 stockholder meetings, as well as regarding the Company’s attempt to ratify certain corporate actions. The complaint asserted, among other things, that certain shares of Common Stock are invalid on the grounds that the certificates of amendment to the Company’s certificate of incorporation filed with the Delaware Secretary of State on October 17, 2016 and November 2, 2016 (collectively, the “**Certificates of Amendments**”) were invalid or otherwise did not comply with Delaware law. The Plaintiff sought unspecified amounts of compensatory damages, interest and costs, including legal fees.

2. Proposed Settlement of Litigation

On July 24, 2017, the Company and the Plaintiff, on behalf of himself and certain other SELLAS common stockholders who were entitled to vote at the Company’s 2016 Annual Meeting of Stockholders, the Company’s 2016 Special Meeting of Stockholders and/or the Company’s 2017 Special Meeting of Stockholders, excluding the Released Defendant Persons (as defined below) (collectively, the “**Class**”), entered into the binding Term Sheet (the “**Term Sheet**”) that was intended to settle the litigation currently pending in the Court, captioned *In re Galena Biopharma, Inc.*, C.A. No. 2017-0423-JTL. The Settlement would resolve the putative stockholder class action claims against the Company and/or certain of its current and former officers and directors (the “**Defendants**”), as well as the Company’s petition to validate certain corporate actions. The Settlement will not become effective until approved by the Court. The Court enforced

May 30, 2018

Page 3

the Term Sheet on November 30, 2017, over the objection of the Plaintiff. The Stipulation was filed with the Court on December 6, 2017. On December 8, 2017, the Court set the hearing on the Settlement for March 15, 2018.

On March 15, 2018, the Court held a hearing regarding the proposed Settlement (the “**March 15th Hearing**”). As discussed below, the Stipulation requires that the Company obtain a no-action letter from the Staff confirming that it will take no action if the Company relies on Section 3(a)(10) to exempt the issuance of the Settlement Stock from the registration requirements of the Securities Act. However, as of the March 15th Hearing, the Company had not yet received such a no-action letter and was still working to obtain such a no-action letter from the Staff. As a result, at the March 15th Hearing, the Court determined to defer the hearing on the Settlement until June 14, 2018 (the “**Deferred Hearing**”) to allow the Company additional time to seek a no-action letter from the Staff.

Upon the effectiveness of the Settlement, the Defendants will be released from the claims that were asserted or could have been asserted in the Action by the Class Members participating in the Settlement.

Under the terms of the Settlement, the Settlement Amount is \$1.3 million, in addition to attorneys’ fees and reimbursements subject to Court approval pursuant to paragraphs 14 and 16 of the Stipulation. The Settlement Amount of \$1.3 million consists of \$50,000 in cash to be paid by the Defendants or their insurers and the Settlement Stock, which consists of \$1,250,000 in shares of Common Stock. As set forth in the Stipulation, the valuation of the Settlement Stock will be based on the volume-weighted average closing price for the 20 trading days immediately preceding the day before the transfer of the Settlement Stock to the Settlement Fund pursuant to the terms and conditions of the Settlement. The timing of the Settlement Amount is as follows:

- On December 20, 2017, within 10 (ten) business days after the parties executed the Stipulation, the Defendants paid \$30,136.90 in cash into the Settlement Fund, which is the amount equal to the estimated cost of notice of the settlement.
- Within 10 (ten) business days after the Court enters a final order dismissing the Action, the remainder of the \$50,000 in cash (i.e., \$19,863.10) is to be paid into the Settlement Fund.
- Within 10 (ten) business days after the Court enters a final order dismissing the Action, the Defendants are to transfer the Settlement Stock to the Settlement Fund.

As set forth in the Stipulation, the Plaintiff has retained the Garden City Group, Inc. (the “**Claims Administrator**”) to oversee the administration of the Settlement and distribution of the Settlement Amount. Any amounts awarded by the Court for attorneys’ fees and other expenses will be paid in part by the Settlement Fund and in part by the Company’s insurance carriers. The actual amount of the fees and expenses to be awarded to Plaintiff’s counsel and/or Plaintiff is committed to the discretion of the Court. We note, however, that, in Plaintiff’s Opening Brief in Support of the Settlement and Petition for Award of Attorneys’ Fees (Public Inspection Version) filed with the Court on February 22, 2018 (“**Plaintiff’s Brief**”), Plaintiff has requested that the Court award attorneys’ fees and other expenses as follows:

- 15% of the Settlement Fund (including 15% of the Settlement Stock) as an award of attorneys’ fees;
- \$250,000 in cash as an award of attorneys’ fees for the benefit conferred by the litigation in causing

May 30, 2018

Page 4

disclosure, a stockholder meeting and vote, and entry of the Validity Order (as defined below), which corrected Galena's capital structure, which amount would be paid in cash by the Company or its insurance carrier if approved; and

- an incentive fee award of \$13,000 to Plaintiff, which would be paid out of the Settlement Fund.

The costs of the notice of the settlement and of the administration and distribution of the Settlement Amount will be funded out of the Settlement Fund. If the Court does not approve the Settlement or the Settlement does not become final for any reason, the Class will not be responsible for repaying any costs of the notice of the Settlement to the Defendants.

After executing the Stipulation, the Plaintiff consented to entry of an order declaring valid, among other things, the Certificates of Amendments (the "**Validity Order**"). On December 11, 2017, the Court entered the Validity Order.

The recipients of the proceeds of the Settlement Stock will be the Class Members, which excludes the Released Defendant Persons, as set forth in the Term Sheet. "**Released Defendant Persons**" is defined herein as the Defendants and all entities owned or controlled by them, their parents, subsidiaries, divisions, joint ventures, all current and former Company directors, officers and employees, and each of their and the Defendants' respective employees, members, insurers, the Defendants' Delaware counsel in the Action, Richards, Layton & Finger P.A., 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 family, and such other persons that are specifically identified in the Stipulation.

DISCUSSION

1. Applicability of Section 3(a)(10) to the Proposed Settlement

Section 3(a)(10) provides an exemption from the registration requirements of the Securities Act for "any security which is issued in exchange for one or more bona fide . . . claims or property interests, or partly in such exchange and partly for cash" as long as "the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court . . ."

It is well established that the Section 3(a)(10) exemption is available for securities distributed in connection with settlements of class action litigation, provided that, among other things, the court approves the fairness of the terms and conditions of the exchange to those who will receive the securities. See Division of Corporation Finance: Staff Legal Bulletin No. 3A (CF) (hereinafter, the "**Staff Bulletin No. 3A**"); see, e.g., Hanover Compressor Company, SEC No-Action Letter (January 27, 2004); I.I.S. Intelligent Info. Sys. Ltd., SEC No-Action Letter (May 9, 2000); Sulcus Computer Corp., SEC No-Action Letter (June 19, 1996); The Score Board, Inc., SEC No-Action Letter (Nov. 3, 1995); Western Digital Corp., SEC No-Action Letter (May 5, 1994); Memory Metals, Inc., SEC No-Action Letter (Dec. 9, 1988); AES Tech. Sys., Inc., SEC No-Action Letter (June 22, 1984); Mattel, Inc., SEC No-Action Letter (Feb. 16, 1976). Specifically, the Staff has issued no-action letters in connection with the Section 3(a)(10) exemption in cases pending before the Court of Chancery of the State of Delaware. See, e.g., IMH Financial Corporation, SEC No-Action Letter (July 17, 2013); Alliance Capital Management Holding L.P. *et al.*, SEC No-Action Letter (August 1, 2002);

May 30, 2018
Page 5

Tele-Communications, Inc., SEC No-Action Letter (Oct. 1, 1997).

In the Staff Bulletin No. 3A, the Staff has taken the position that, before the issuer can rely on the Section 3(a)(10) exemption, the following conditions must be met:

- A. The securities must be issued in exchange for securities, claims, or property interests; they cannot be offered for cash.
- B. A court or authorized governmental entity must approve the fairness of the terms and conditions of the exchange.
- C. The reviewing court or authorized governmental entity must (a) find, before approving the transaction, that the terms and conditions of the exchange are fair to those to whom securities will be issued and (b) be advised before the hearing that the issuer will rely on the Section 3(a)(10) exemption based on the court's or authorized governmental entity's approval of the transaction.
- D. The court or authorized governmental entity must hold a hearing before approving the fairness of the terms and conditions of the transaction.
- E. A governmental entity must be expressly authorized by law to hold the hearing, although it is not necessary that the law require the hearing.
- F. The fairness hearing must be open to everyone to whom securities would be issued in the proposed exchange.
- G. Adequate notice must be given to all those persons.
- H. There cannot be any improper impediments to the appearance by those persons at the hearing.

The circumstances surrounding the issuance of the Settlement Stock in connection with the Settlement will satisfy all of the above requirements as further explained below:

The securities must be issued in exchange for securities, claims, or property interests; they cannot be offered for cash.

The Settlement Stock will be issued by the Company in exchange for release of the claims by the Plaintiff and the Class arising from or in any way relating to the matters alleged in the Action or structure of the Settlement, including any claim that certain shares of Common Stock are invalid on the grounds that the Certificates of Amendment were invalid or otherwise did not comply with Delaware law.

The no-action letters cited above involve the issuance of securities to class members in exchange for a release of claims asserted in a class action lawsuit. The Settlement here involves the issuance of the Settlement Stock in exchange for a release of the claims of the Class. Upon completion of the exchange, the Class bears the risk of loss of the Settlement Stock and, therefore, the Settlement

May 30, 2018
Page 6

Stock has come to rest for purposes of the Securities Act. We do not believe the fact that the Settlement Stock upon issuance will, at the direction of the Plaintiff, be delivered to a custodial account in the name of the Settlement Fund for the benefit of the Class renders the Section 3(a)(10) exemption unavailable.

The Settlement Fund is a fund created solely for the benefit of the Class that includes the monies deposited in the Settlement Fund and the Settlement Stock. As set forth in the Stipulation, the Claims Administrator was “retained by Plaintiff to disseminate the settlement notice, oversee the administration of the Settlement and distribution of the Settlement Amount [(including the Settlement Stock)], and such other administrative functions as are required under the Settlement.” The Company has no relationship to the Settlement Fund or the Claims Administrator.

The proposed Plan of Allocation attached as Exhibit C to the Stipulation requires, among other things, that:

4. Within ten business days after the Court enters the Judgment, [the Company] will transfer the Settlement Stock to a Settlement Fund established for this matter. . .

5. As soon as reasonably practicable after the Settlement Stock is deposited by Defendants into the Settlement Fund, all of the Settlement Stock shall be sold, so long as the sales comply with the Stipulation. The proceeds of the sales shall be placed in the Settlement Fund.

6. Each Eligible Class Member shall be paid an amount equal to their Eligible Class Shares divided by the total Eligible Class Shares times the Net Settlement Fund. The Net Settlement Fund will be distributed only to Eligible Class Members whose pro rata share of the Settlement Fund is equal to or greater than \$10.00. No distribution will be made to those Eligible Class Members whose pro rata share of the Settlement Fund is less than \$10.00.

These typical administrative settlement procedures support the availability of the Section 3(a)(10) exemption rather than undermine it. The Plaintiff has informed the Court that the Settlement Stock cannot be distributed directly to Class Members for numerous reasons, including that nominees (*i.e.*, the broker-dealers that hold shares in “street name”) will not accept stock on behalf of their numerous beneficial holders. Given the accommodations made to the Class in the Settlement structure, to address the potential trading market impact of the Plan of Allocation, the Stipulation provides that “[s]hould 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.”

We believe that the issuance, at the direction of the Plaintiff, of the Settlement Stock by the Company into a custodial account in the name of the Settlement Fund for the benefit of the Class is, for Securities Act policy purposes, effectively the same as the issuance of the Settlement Stock to the Class Members. The Company did not choose the method by which the Settlement Stock is to be issued to the Class. Indeed, the Stipulation provides that the Company “shall not object to the Plan of Allocation and shall have no input, responsibility or liability for any claims, payments or

May 30, 2018

Page 7

determinations by the Claims Administrator in respect of Class Member claims for payment under th[e] Settlement, or any other use of the Settlement Fund." It was the Class itself, acting through its representative, that determined to have the Settlement Stock once issued in the exchange to be subsequently sold over time, in such amounts as limited by the Stipulation, and the proceeds distributed to the Eligible Class Members. Accordingly, the Settlement Stock will come to rest with the Class Members upon its issuance for delivery to the Settlement Fund as directed by the Plaintiff for the benefit of the Class. As a result, the Claims Administrator should be able to freely sell the Settlement Stock on behalf of the Class Members in accordance with the Stipulation and the Plan of Allocation, unless the Settlement Fund is an affiliate of the Company.

A court or authorized governmental entity must approve the fairness of the terms and conditions of the exchange. The reviewing court or authorized governmental entity must (a) find, before approving the transaction, that the terms and conditions of the exchange are fair to those to whom securities will be issued; and (b) be advised before the hearing that the issuer will rely on the Section 3(a)(10) exemption based on the court's or authorized governmental entity's approval of the transaction.

The Settlement must be approved by the Court. Pursuant to Delaware Court of Chancery Rule 23(e) ("**Rule 23(e)**"), a class action cannot be dismissed or otherwise compromised without court approval, and thus, the Court must approve any class-based settlement. Rule 23(e) is designed to protect the due process rights of class members, ensure that the settlement represents a genuine bargain-for exchange and provide benefit to the members of the class (and not merely a promise to pay their attorneys' fees). See *In re Celera Corp. S'holder Litig.*, 59 A.3d 418,434 (Del. 2012).

The Court has also emphasized in previous cases that the Court, before approving a settlement, must find the terms and conditions of a settlement be fair to the recipient of the securities. See *Barkan v. Amsted Indus., Inc.*, 567 A.2d 1279, 1283 (Del. 1989) ("The Court of Chancery plays a special role when asked to approve the settlement of a class or derivative action. It must balance the policy preference for settlement against the need to insure that the interests of the class have been fairly represented."). Before a settlement is approved, the Court "must make an independent determination, through the exercise of its own business judgment, that the settlement is intrinsically fair and reasonable." See *Goodrich v. E.F. Hutton Grp., Inc., et al.*, 681 A.2d 1039, 1045 (Del. 1996). The Court will make its determination as to both the procedural and substantive fairness of the Settlement. See *Prezant v. De Angelis*, 636 A.2d 915, 921 (Del. 1994); see also *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986) (stating that, in examining a settlement, a court must "look to the facts and circumstances upon which the claim is based, the possible defenses thereto, and then exercise a form of business judgment to determine the overall reasonableness of the settlement"). The Court's scrutiny of the Settlement will be more than cursory. *Rome v. Archer*, 197 A.2d 49, 54 (Del. 1964). Given the fiduciary character of a class action and pursuant to Rule 23(e), the Court must conduct a substantive review of the Settlement to determine if the Settlement is intrinsically fair. *Id.* at 53; see also *De Angelis v. Salton/Maxim Housewares, Inc.*, 641 A.2d 834, 838 (Del. Ch. 1993), rev'd on other grounds, 636 A.2d 915 (Del. 1994) (stating that the terms of a proposed settlement must be carefully examined by a court); *In re Amsted Indus., Inc.*, 521 A.2d 1104, 1107 (Del. Ch. 1986) (stating that a court's review of a settlement involves substantive questions of whether the court has sufficient knowledge of the strengths and weaknesses of the claims and defenses to sensibly value the claims and whether the proposed settlement represents a fair judgment of the value of the claims). The Court's Order and Final Judgment will state that the Court

May 30, 2018

Page 8

has approved the terms and conditions of the Settlement and that it finds the Settlement is fair, reasonable, adequate and in the best interest of the Class.

The Company has advised the Court that it is relying on Section 3(a)(10). In this regard, we note the following:

- In Paragraph 2(d)(iii) of the Stipulation, the parties stipulate, among other things, that (i) the Settlement Stock is to be issued under an exemption from registration pursuant to Section 3(a)(10); (ii) the Settlement Stock will be issued without any restrictive legend and shall be freely and publicly tradeable and (iii) the Company shall obtain a no-action letter from the Staff confirming that it will take no action if the Company relies on Section 3(a)(10) to exempt the registration of the Settlement Stock.
- Similar language to that contained in Paragraph 2(d)(iii) of the Stipulation regarding the use of the exemption from registration provided by Section 3(a)(10) appears in Section III.d.iii. of the Notice (as defined below).
- Paragraph 5 (“Final Settlement Approval and Dismissal of Claims”) of the form of Order and Final Judgment attached as Exhibit D to the Stipulation (the “**Proposed Order and Final Judgment**”) states, “Galena Biopharma, Inc. will rely on the exemption from registration provided by Section 3(a)(10) of the Securities Act of 1933, as amended, in issuing the Settlement Stock.”

In light of the fact that the Stipulation and Notice will be reviewed by the Court and the Proposed Order and Final Judgment will have to be signed by Court, we respectfully submit the Court has been advised that the Company is relying on Section 3(a)(10). Moreover, the Court has been advised that, and the settlement hearing has been deferred because, the Company is in the process of requesting a no-action letter from the Staff of the SEC to, among other things, rely on Section 3(a)(10).

We have attached the current versions of the following documents, which includes the customary documentation the Court has an opportunity to review before determining the value of both the claims or interests to be surrendered and the Settlement Stock to be issued in the proposed Settlement:

- the Stipulation (Exhibit A hereto) (superseded exhibits have been omitted);
- the Plan of Allocation (Exhibit C to the Stipulation);
- form of Order and Final Judgment (Exhibit D to the Stipulation);
- the final Notice of Pendency and Proposed Settlement of Class Action filed with the Court on February 27, 2018 (Exhibit B hereto) (the “**Notice**”);
- Plaintiff’s Brief (Exhibit C hereto); and
- Defendant’s Brief in Opposition to Plaintiff’s Petition for an Award of Attorneys’ Fees and

May 30, 2018
Page 9

Expenses (Exhibit D hereto).

On December 11, 2017, the Court entered the Validity Order. The Court was given information in support that provides the Court with adequate record for the approval of the Validity Order and similarly, has been given adequate information for the approval of documentation evidencing releases of the Plaintiff's claims.

The court or authorized governmental entity must hold a hearing before approving the fairness of the terms and conditions of the transaction. A governmental entity must be expressly authorized by law to hold the hearing, although it is not necessary that the law require the hearing. The fairness hearing must be open to everyone to whom securities would be issued in the proposed exchange. Adequate notice must be given to all those persons.

As noted above, the Court held the March 15th Hearing at which no Class Member appeared and will hold the Deferred Hearing on June 14, 2018 before approving the fairness of the terms and conditions of the Settlement. In its previous decisions, the Court explained that “[a]pproval of a class action settlement involves a two-step process. First, the court makes a preliminary evaluation of the fairness of the settlement after reviewing the proposed terms. If the Court concludes that there are no grounds to doubt the fairness of the settlement, the Court must order that class members be given notice of a formal [f]airness [h]earing, at which time class members will have an opportunity to make presentations in support of or in opposition to the proposed settlement. Following the [f]airness [h]earing, the Court makes specific findings regarding the fairness, adequacy and reasonableness of the settlement. Only if the Court finds that the settlement meets these requirements will the Court render final approval of the settlement.” *Crowhorn v. Nationwide Mut. Ins. Co.*, 836 A2d 558, 562 (Del. Super. Ct. 2003).

In accordance with the Staff Bulletin No. 3A, the March 15th Hearing was open to everyone who is a beneficiary of the Settlement Stock to be issued in the proposed Settlement, and the Notice of the March 15th Hearing was provided to Class Members who could be identified through reasonable efforts and otherwise by publication in a timely manner. As required by Rule 23(e), notice by mail, publication or otherwise of the proposed Settlement was given to the Class Members. Plaintiff filed the Affidavit of Jennifer M. Bareither Regarding Mailing of Notice, dated February 27, 2018, indicating 44,216 Notices had been timely mailed as of February 25, 2018, with the Court on February 27, 2018. Further, in accordance with the Staff Bulletin No. 3A, the Notice (1) adequately advised those who are proposed to be the beneficiaries of the Settlement Stock in the Settlement of their right to attend the March 15th Hearing; and (2) gave them the information necessary to exercise that right. The Notice informed the Class of the March 15th Hearing, including its date, time and place, and of each Class member's right to appear at the March 15th Hearing. The Notice contains a description of the Settlement and specific instructions as to how any Class member could object to or support the proposed Settlement by filing a written statement or by appearing in person or by attorney at the March 15th Hearing. As of the March 15th Hearing, no Class Member had objected to the proposed Settlement, and no Class Member appeared at the March 15th Hearing. In light of this, the Court did not require the Plaintiff to provide a new notice regarding the Deferred Hearing. At the March 15th Hearing, the Court did, however, require Plaintiff to continue to provide copies of the Notice if any Class Member requested additional copies prior to the Deferred Hearing. The Court observed that, because it had not held the fairness hearing, someone could request a copy of the notice, look at the Court docket, see that the Court was going to hold the Deferred Hearing on June 14, 2018 and have the opportunity to object to the proposed Settlement.

May 30, 2018
Page 10

To our knowledge, no Class Member has objected to the proposed Settlement as of the date of this letter.

There cannot be any improper impediments to the appearance by those persons at the hearing.

The Company represents to the Staff that there were no improper impediments to Class Members who wished to appear at the March 15th Hearing. The Company notes that, as discussed with the Staff, there is a discrepancy in the settlement documents concerning the deadline for objections to the Settlement. Due to a scrivener's error, the Notice incorrectly states that objections were due 21 calendar days before the March 15th Hearing. This is inconsistent with the final Scheduling Order (the "**Scheduling Order**") issued by the Court on December 8, 2017, which provides that objections were due 14 calendar days before the March 15th Hearing. However, the Company does not believe this is an improper impediment to Class Members who wished to appear at the March 15th Hearing. Pursuant to the Scheduling Order, the Notice was required to be mailed by first-class mail to potential class members 60 days before the March 15th Hearing. Thus, even if the objections were due 21 calendar days before the March 15th Hearing, there would have been at least 39 calendar days for Class Members to consider their position before being required to give the 21-day appearance notice. The Staff has granted no-action requests where class members have had less than 39 calendar days. For example, in Alliance Capital Management Holding L.P. *et al.*, the notice of the hearing was required by court to be mailed by first-class mail no later than 45 calendar days prior to the settlement hearing and any objection and notice of intention to appear by a class member were due no later than 10 calendar days prior to such settlement hearing. Therefore, the class members in Alliance Capital Management Holding L.P., *et al.*, were given 35 calendar days to consider whether to object. In addition, the portion of the Claims Administrator's website relating to the Settlement (a link to which is provided in the Notice) lists March 1, 2018 as the "Objection Deadline" consistent with the Scheduling Order. The Court has been made aware of this discrepancy and has also been informed that no objections have been submitted regarding the Settlement. Accordingly, the Court may exercise its discretion to allow a member of the Class to be heard at the Deferred Hearing even if the member of the Class did not timely submit an objection pursuant to the Scheduling Order. In this regard and as discussed above, the Court has required the Plaintiff to continue to provide copies of the Notice subsequent to the March 15th Hearing to persons that request it to possibly provide an additional opportunity for Class Members to object to the Settlement.

For the reasons described above, it is our opinion that the requirements of Section 3(a)(10) will be met with respect to the Settlement Stock, which will be issued if the proposed Settlement is approved by the Court.

2. Resale of the Settlement Stock

The Staff has taken the position in numerous no-action letters that securities issued without registration in reliance upon Section 3(a)(10) are not deemed to be "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act. See Nabi Biopharmaceuticals, SEC No-Action Letter (June 20, 2012); Hanover Press Company, SEC No-Action Letter (Jan. 27, 2004); Aura Systems, Inc., SEC No-Action Letter (July 8, 1994); Medical Imaging Centers of America, Inc., SEC No-Action Letter (March 12, 1993); L.A. Gear, Inc., SEC No-Action Letter (Nov. 16, 1992); Newbridge Networks Corp., SEC No-Action Letter (July 27, 1992).

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May 30, 2018
Page 11

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In view of the foregoing, and assuming the Court approves the Settlement as fair and the procedures otherwise set forth above are followed, we respectfully request that the Staff issue a no-action letter advising us that it will not recommend enforcement action if the Settlement Stock is issued in accordance with the above without registration under the Securities Act in reliance on our opinion that no such registration is required for the issuance, offer and sale of such securities by virtue of the exemption from such registration provided by Section 3(a)(10). In addition, we respectfully request the written advice of the Staff that the Staff concurs with our opinion that the Settlement Stock so issued will not be deemed "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act and will be freely transferable without regard to Rule 144 unless the Settlement Fund is an "affiliate" of the Company within the meaning of Rule 144(a)(1) under the Securities Act.

We note that we understand that any no-action letter issued in response to this letter will be based upon the terms of the Settlement as described herein, and that any change to the terms of the Settlement could make the Staff's response inapplicable to the changed circumstances.

If you require any further information or would like to discuss this request, please call me at (415) 856-7047 or Keith D. Pisani, who is also with this firm, at (212) 318-6053. In the event that the Staff believes that it cannot concur in our views, we request the opportunity to discuss the same with you before any written response to this request.

Yours very truly,



Thomas R. Pollock
Paul Hastings LLP

cc: David Moser, SELLAS Life Sciences Group, Inc.
Keith D. Pisani, Paul Hastings LLP

EXHIBIT A



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

PRICKETT, JONES & ELLIOTT, P.A. RICHARDS, LAYTON & FINGER, P.A.

/s/ Eric J. Juray

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Dated: December 6, 2017

/s/ Blake Rohrbacher

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Attorneys for Defendant/Petitioner Galena Biopharma, Inc., and Individual Defendants William L. Ashton, Rudolph Nisi, Richard Chin, Irving M. Einhorn, Stephen Galliker, Sanford Hillsberg, Mary Ann Gray, Mark W. Schwartz, and Stephen F. Ghiglieri

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

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

PLAN OF ALLOCATION¹

1. “Eligible Class Members” means Galena common stockholders who held stock on the record date for Galena’s 2016 Special Meeting, excluding the Released Defendant Persons.
2. “Eligible Shares” means the shares of Galena common stock held by Eligible Class Members on the record date for Galena’s 2016 Special Meeting.
3. “Net Settlement Fund” means the balance of the Settlement Fund after payment of Court-approved attorneys’ fees and expenses, the costs to establish the Settlement Fund and sell the Settlement Stock, and the costs of claims administration, including the costs of printing and mailing Notice and checks to Eligible Class Members.
4. Within ten business days after the Court enters the Judgment, Galena will transfer the Settlement Stock to a Settlement Fund established for this matter. All costs, except for those of Galena’s transfer agent, incurred in issuing the Settlement Stock shall be borne by the Settlement Fund.

¹ Unless defined herein, capitalized terms have the meaning ascribed to them in the Stipulation and Agreement of Compromise and Settlement dated December ___, 2017 (the “Stipulation”).

5. As soon as reasonably practicable after the Settlement Stock is deposited by Defendants into the Settlement Fund, all of the Settlement Stock shall be sold, so long as the sales comply with the Stipulation. The proceeds of the sales shall be placed in the Settlement Fund.

6. Each Eligible Class Member shall be paid an amount equal to their Eligible Class Shares divided by the total Eligible Class Shares times the Net Settlement Fund. The Net Settlement Fund will be distributed only to Eligible Class Members whose pro rata share of the Settlement Fund is equal to or greater than \$10.00. No distribution will be made to those Eligible Class Members whose pro rata share of the Settlement Fund is less than \$10.00.

Exhibit D to the Stipulation

EFILED: Dec 06 2017 07:02PM EST

Transaction ID 61435598

Case No. 2017-0423-JTL



EXHIBIT

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

ORDER AND FINAL JUDGMENT

On this _____ day of _____, 2018, a hearing having been held before this Court to determine whether the terms and conditions of the Stipulation and Agreement of Compromise and Settlement dated December 6, 2017 (the “Stipulation”),¹ which is incorporated herein by reference, and the terms and conditions of the settlement proposed in the Stipulation (the “Settlement”), are fair, reasonable and adequate for the settlement of all Released Plaintiff’s Claims and all Released Defendants’ Claims that were or could have been asserted in the Action, and whether an order and final judgment should be entered in the Action; and the Court having considered all matters submitted to it at the hearing and otherwise for the reasons stated herein;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this _____ day of _____, 2018, as follows:

1. **Notice:** The Court finds that the dissemination of the Notice was implemented in accordance with the Scheduling Order entered on December ___,

¹ Capitalized terms that are not defined herein shall have the same meanings set forth in the Stipulation.

2017 (the “Scheduling Order”) and constituted the best notice practicable under the circumstances and satisfied the requirements of Chancery Court Rule 23, due process, and all other applicable law and rules.

2. **Final Class Certification for Settlement Purposes:** The Court hereby finally confirms certification of the Action as a non-opt out class action pursuant to Chancery Court Rules 23(a), 23(b)(1), and 23(b)(2), on behalf of a Class consisting of 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.

3. The Court hereby finally confirms, for settlement purposes, the appointment of Plaintiff as Class Representative and Plaintiff’s Counsel as counsel for the Class. Plaintiff and Plaintiff’s Counsel have fairly and adequately represented the Class both in terms of prosecuting the Action and for purposes of entering into and implementing the Settlement.

4. **Class Findings:** The Court confirms, for settlement purposes, that each element required for certification of the Class pursuant to Chancery Court Rules 23(a), 23(b)(1), and 23(b)(2) has been met in that: (a) the Class Members are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of Plaintiff are typical of the claims of the Class; (d) in connection with both the prosecution of

the Action as well as the Settlement, Plaintiff and Plaintiff's Counsel have and will fairly and adequately represent and protect the interests of the Class; (e) the prosecution of separate actions by individual Class Members would create a risk of inconsistent adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; (f) adjudications with respect to individual members of the Class would as a practical matter be dispositive of the interests of the other members of the Class who are not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and (g) Defendants have allegedly acted or refused to act on grounds generally applicable to the Class and Plaintiff sought injunctive and declaratory relief with respect to the Class as a whole.

5. **Final Settlement Approval and Dismissal of Claims:** The Settlement, including the Plan of Allocation, as provided for in the Stipulation and Exhibit C thereto, is fair, reasonable, adequate and in the best interest of the Class and it is hereby approved pursuant to, and in accordance with, Chancery Court Rule 23(e). Galena Biopharma, Inc. will rely on the exemption from registration provided by Section 3(a)(10) of the Securities Act of 1933, as amended, in issuing the Settlement Stock.

6. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions of the Stipulation, and the Register in Chancery is directed to enter and docket this Judgment.

7. The Action against the Defendants is hereby finally and fully settled, compromised and dismissed, on the merits and with prejudice; the Released Plaintiff's Claims are hereby finally and fully compromised, settled, released, discharged and dismissed with prejudice as against the Released Defendant Persons; and the Released Defendants' Claims are hereby finally and fully compromised, settled, released, discharged and dismissed with prejudice as against the Released Plaintiff Persons. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. The Claims Administrator shall make distributions to Class Members in the manner and subject to the conditions set forth in the Stipulation and the Plan of Allocation.

9. **Binding Effect:** This Judgment and the Stipulation are 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.

10. **Releases:** The Court orders that:

- a. "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.
- b. 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.

- i. "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.
- ii. "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.

- c. 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.

- i. “Released Plaintiff Persons” means Plaintiff and the Class and their heirs, estates, executors, trustees, successors and assigns, and Plaintiff’s Counsel.
- ii. “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.

11. **No Admissions:** Neither this Judgment, nor the Stipulation, nor the fact or any terms of the Settlement, nor any communications relating thereto, is evidence, or an admission or concession by Plaintiff or Defendants or their counsel, any Class Member, or 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 otherwise, 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. Neither this Judgment nor the

Stipulation is a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by Plaintiff, Defendants, any Class Member or other Released Defendant Persons or Released Plaintiff Persons, or any damages or injury to Plaintiff, Defendants, any Class Member or other Released Defendant Persons or Released Plaintiff Persons. Neither this Judgment, nor the Stipulation, nor any of the terms and provisions of the 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 has 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.

12. **Award of Attorneys' Fees and Litigation Expenses:** Plaintiff's Counsel are hereby awarded the 205 Fee Award of attorneys' fees and expenses in the amount of \$ _____ and the Class Fee Award of attorneys' fees and expenses in the amount of \$ _____, which amounts the Court finds to be fair and reasonable. Such sum shall be paid in accordance with the terms of the Stipulation. Plaintiff is hereby awarded a compensatory award in the amount of \$ _____, payable out of the Class Fee Award.

13. If the Effective Date does not occur, this Judgment shall be rendered null and void and shall be vacated and, in such event, (a) the Parties shall be returned to their respective litigation status immediately prior to July 24, 2017 (except that the Validity Order shall remain in effect), 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; (b) all of their respective claims and defenses as to Plaintiff's fiduciary duty claims shall be preserved without prejudice in any way; (e) the statements made in connection with the negotiations of the Stipulation (x) shall not be deemed to prejudice in any way the positions of any of the Parties with respect to the Action, or to constitute an admission of fact of wrongdoing by any Party, and (y) shall not be used or entitle any Party to recover any fees, costs, or expenses incurred in connection with the Action; and (d) neither the existence of the Stipulation nor its contents nor any statements made in connection with its negotiation or any settlement communications shall be admissible in evidence or shall be referred to for any purpose in the Action, or in any other litigation or judicial proceeding.

Vice Chancellor J. Travis Laster

EXHIBIT B

EFILED: Feb 27 2018 12:18PM EST

Transaction ID 61733560

Case No. 2017-0423-JTL



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GALENA BIOPHARMA, INC.

C.A. No. 2017-0423-JTL

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL GALENA COMMON STOCKHOLDERS WHO WERE ENTITLED TO VOTE AT GALENA'S 2016 ANNUAL MEETING HELD ON JULY 14, 2016; GALENA'S 2016 SPECIAL MEETING HELD ON OCTOBER 21, 2016; AND/OR GALENA'S 2017 SPECIAL MEETING HELD ON JULY 6, 2017.

PLEASE READ ALL OF THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS ACTION. THIS NOTICE RELATES TO THE PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT AND CONTAINS IMPORTANT INFORMATION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS OF THE PROPOSED SETTLEMENT OR PURSUING THE RELEASED PLAINTIFF'S CLAIMS (AS DEFINED BELOW).

IF YOU HELD THE COMMON STOCK OF GALENA FOR THE BENEFIT OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER.

I. THE PURPOSE OF THIS NOTICE

The purpose of this Notice is to inform you of this lawsuit, a proposed settlement of the lawsuit, and a hearing to be held by the Court of Chancery of the State of Delaware. The hearing will be held at the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, on March 15, 2018, at 2:00 p.m. (the "Settlement Hearing").

At the Settlement Hearing, the Court will be asked to:

- a. determine whether to certify the above-captioned action (the "Action") as a non-opt-out class action on behalf of the Class and appoint Plaintiff as Class Representative and Plaintiff's Counsel as counsel for the Class;
- b. determine whether the Settlement (as defined below), as provided for in the Stipulation and Agreement of Compromise and Settlement dated December 6, 2017 (the "Stipulation"), is fair, reasonable, adequate, and in the best interests of the Class, and should be approved by the Court;
- c. determine whether the requirements of the rules of the Court and due process have been satisfied in connection with this Notice;
- d. determine whether an Order and Final Judgment should be entered dismissing the Action and releasing the Released Plaintiff's Claims and Released Defendants' Claims;
- e. hear and rule on any objections to the Settlement;
- f. consider the application of Plaintiff's counsel for an award of attorneys' fees and reimbursement of expenses, and any objections thereto; and
- g. consider any other matters that may properly be brought before the Court in connection with the Stipulation.

This Notice describes the rights that Class Members have under the Settlement and what steps Class Members may, but are not required to, take in relation to the Settlement. If the Court approves the Settlement, the Parties will ask the Court at the Settlement Hearing to enter an Order and Final Judgment dismissing the Action with prejudice on the merits. If you are a Class Member, you will be bound by any judgment entered in the Action, whether or not you actually receive this Notice. You may not opt out of the Class.

II. BACKGROUND OF THE ACTION

THE FOLLOWING RECITAL DOES NOT CONSTITUTE FINDINGS OF THE COURT. IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

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

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.

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

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

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.

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.

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.

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"). The Term Sheet contemplated that the Parties would negotiate and execute definitive settlement documents with customary terms for settlements before this Court.

During negotiation of the Term Sheet, Plaintiff was unaware of negotiations of a business transaction between SELLAS Life Sciences Group Ltd. and Galena (the "Sellas Merger") and Galena's consideration of a 1-for-30 reverse split of Galena common stock (the "Reverse Split") that were announced on August 7, 2017.

On November 30, 2017, the Court entered an order finding that the Parties' Term Sheet was a binding and enforceable contract, requiring Plaintiff to exercise his best efforts to consummate the Settlement, and requiring the Parties to submit the Stipulation and its Exhibits by December 7, 2017.

On December 8, 2017, the Court entered a scheduling order providing for, among other things, a Settlement Hearing and the dissemination of this Notice to the Class.

On December 8, 2017, pursuant to the terms of the Stipulation, Galena filed an unopposed motion for 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").

On December 11, 2017, the Court entered the Validity Order.

THE SETTLEMENT OF THIS ACTION, IF APPROVED BY THE COURT ON THE TERMS AND CONDITIONS SET FORTH IN THE STIPULATION, WILL INCLUDE, BUT NOT BE LIMITED TO, A RELEASE OF ALL CLAIMS ASSERTED IN OR RELATED TO THE ACTION. THE COURT HAS NOT FINALLY DETERMINED THE MERITS OF THE CLAIMS MADE BY PLAINTIFF AGAINST, OR THE DEFENSES OF, THE DEFENDANTS. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW OR THAT RELIEF IN ANY FORM OR RECOVERY IN ANY AMOUNT COULD BE HAD IF THE ACTION WAS NOT SETTLED.

III. THE SETTLEMENT CONSIDERATION

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 agreed (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 the Stipulation, the Defendants paid and/or caused 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.

Following the Effective Date, the Net Settlement Amount will be disbursed by the Claims Administrator according to the Plan of Allocation, provided it is approved by the Court. Pursuant to the Plan of Allocation, the Settlement Stock will be sold in a manner that complies with the Stipulation. After the Settlement Stock is sold and administrative costs and attorneys’ fees are paid, the net cash proceeds in the Settlement Fund will be paid to Galena common stockholders, excluding Defendants, who held stock on the record date for Galena’s 2016 Special Meeting based on the number of shares they held on the record date for Galena’s 2016 Special Meeting. For more information on the Plan of Allocation, please see Exhibit C to the Stipulation.

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.

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.

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.

IV. DISMISSAL AND RELEASES

Subject to final approval of the Settlement by the Court, pursuant to Chancery Court Rule 23, the Released Plaintiff’s Claims (as defined below) will be finally and fully compromised, settled, released, discharged, and dismissed with prejudice as against the Released Defendant Persons (as defined below), and the Released Defendants’ Claims (as defined below) will be finally and fully compromised, settled, released, discharged, and dismissed with prejudice as against the Released Plaintiff Persons (as defined below).

“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.

“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.

“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.

"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.

"Released Plaintiff Persons" means Plaintiff and the Class and their heirs, estates, executors, trustees, successors and assigns, and Plaintiff's Counsel.

V. REASONS FOR THE SETTLEMENT

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 Term Sheet that the provisions in the Term Sheet that were subsequently incorporated into the Stipulation were fair, reasonable and adequate and in the best interests of all Class Members and that they conferred substantial benefits upon Class Members. Plaintiff's Counsel were not aware of the Sellas Merger and Reverse Split until after the transactions were announced on August 7, 2017. These transactions may affect the timing and amount of cash available for distribution to the Class after sale of the Settlement Stock. At the Settlement Hearing, the Court will determine whether the Settlement should be approved as fair, reasonable and adequate.

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. The Defendants entered into the 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.

VI. THE SETTLEMENT HEARING

The Court has scheduled a Settlement Hearing, which will be held on March 15, 2018, at 2:00 p.m., at the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, to review the proposed Settlement and consider the entry of an Order and Final Judgment proposed by the Parties. At the hearing, the Court will, among other things, (a) determine whether to certify the Action as a non-opt-out class action on behalf of the Class and appoint Plaintiff as Class Representative and Plaintiff's Counsel as counsel for the Class; (b) determine whether the Settlement, as provided for in the Stipulation, is fair, reasonable, adequate, and in the best interests of the Class, and should be approved by the Court; (c) determine whether the requirements of the rules of the Court and due process have been satisfied in connection with this Notice; (d) determine whether an Order and Final Judgment should be entered dismissing the Action and releasing the Released Plaintiff's Claims and Released Defendants' Claims; (e) hear and rule on any objections to the Settlement; (f) consider the application of Plaintiff's Counsel for an award of attorneys' fees and reimbursement of expenses, and any objections thereto; and (g) consider any other matters that may properly be brought before the Court in connection with the Stipulation.

The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the application for attorneys' fees and reimbursement of expenses, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof.

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

VII. RIGHT TO APPEAR AND OBJECT AT SETTLEMENT HEARING

Any Class Member who objects to the class action determination, the proposed Settlement, the Judgment to be entered in the Action and/or Plaintiff's Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses, or otherwise wishes to be heard, may appear personally or by counsel at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that no Class Member may be heard and no briefs, pleadings, or other documents submitted by or on behalf of any Class Member shall be considered by the Court, except by Order of the Court for good cause shown, unless not later than 21 calendar days before the Settlement Hearing, copies of (a) a written notice of intention to appear, identifying the name, address, and telephone number of the objector and, if represented, the objector's counsel; (b) proof of membership in the Class; (c) a written statement of such objector's objections and the reasons for such objector's desiring to appear and be heard; and (d) all documents and writings such objector desires the Court to consider, shall be filed with the Court of Chancery and, on or before such filing, served electronically via File & ServeXpress, by hand or overnight by mail upon the following counsel:

Counsel for Plaintiff

Ronald A. Brown, Jr., Esquire
Kevin H. Davenport, Esquire
Eric J. Juray, Esquire
Prickett, Jones & Elliott, P.A.
1310 North King Street
Wilmington, Delaware 19801

Counsel for Defendants

Blake Rohrbacher, Esquire
Kevin M. Gallagher, Esquire
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801

Unless the Court orders otherwise, no Class Member shall be entitled to object to the Settlement, the Judgment to be entered herein, the award of attorneys' fees and reimbursement of litigation expenses to Plaintiff's Counsel, or otherwise to be heard, except by serving and filing written objections as prescribed in the foregoing Paragraph. Any person who fails to object in the manner provided 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 Action or in any other action or proceeding.

VIII. APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

Plaintiff's Counsel will apply (the "205 Fee Application") for an award of attorneys' fees and expenses (the "205 Fee Award") of no 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.

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 the terms of the Stipulation) or the 205 Fee Award (or any overpayment of the 205 Fee Award), as appropriate, to Galena within five business days of such judgment.

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. Plaintiff's Counsel will not seek a fee of more than 15% of the net cash proceeds from the Settlement Stock sales and may seek a compensatory award for Plaintiff of up to \$13,000, which would be paid out of any amount the Court awards as the Class Fee Award. Defendants may oppose the Class Fee Award and any compensatory award for Plaintiff.

The disposition of the Fee Applications is not a material term of the Stipulation, and it is not a condition of the Stipulation or the Settlement 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.

IX. SCOPE OF THIS NOTICE AND FURTHER INFORMATION

The foregoing description of the Settlement Hearing, the Action, the terms of the proposed Settlement, and other matters described herein do not purport to be comprehensive. Accordingly, Class Members are referred to the documents filed with the Court in the Action, including the Stipulation, which are available for inspection at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, during regular business hours of each business day.

Inquiries or comments about the Settlement, other than requests for additional copies of this Notice, may be directed to the attention of Plaintiff's Counsel as follows:

Ronald A. Brown, Jr., Esquire
Kevin H. Davenport, Esquire
Eric J. Juray, Esquire
Prickett, Jones & Elliott, P.A.
1310 North King Street
Wilmington, Delaware 19801

X. NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS

Brokerage firms, banks, and/or other persons or entities that held shares of the common stock of Galena on behalf of a Class Member are requested to promptly send this Notice to all of their respective beneficial owners. If additional copies of the Notice are needed for forwarding to such beneficial owners, any requests for such copies may be made to:

Galena Biopharma Stockholder Settlement
c/o GCG
P.O. Box 35100
Seattle WA. 98124-1100
www.GalenaBiopharmaStockholderSettlement.com

DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE REGISTER IN CHANCERY REGARDING THIS NOTICE.

Dated: December 8, 2017

CERTIFIED
AS A TRUE COPY:
ATTEST:

REGISTER IN CHANCERY

By Lynne S. Len
11/5/2018

BY ORDER OF THE COURT
Register in Chancery

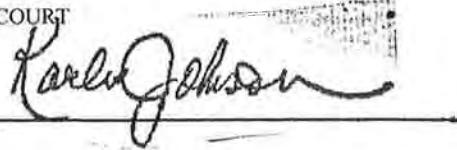


EXHIBIT C



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GALENA BIOPHARMA, INC.) C. A. No. 2017-0423-JTL
)
) PUBLIC INSPECTION VERSION
)
 FILED: February 22, 2018

**PLAINTIFF'S OPENING BRIEF IN SUPPORT OF THE SETTLEMENT
AND PETITION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES**

PRICKETT, JONES & ELLIOTT, P.A.
Ronald A. Brown, Jr. (DE Bar No. 2849)
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Dated: February 15, 2018

TABLE OF CONTENTS

	<u>Page No.</u>
NATURE AND STAGE OF THE PROCEEDINGS.....	1
STATEMENT OF FACTS	5
I. DEFENDANTS' HISTORY OF MISLEADING PROXY STATEMENT DISCLOSURES	5
A. The 2011 Annual Proxy	5
B. The 2013 Annual Meeting	6
C. The 2015 Annual Meeting	8
D. The 2016 Annual Meeting	11
E. The 2016 Special Meeting	15
II. PLAINTIFF CHALLENGES THE RESULTS OF THE 2016 MEETINGS AND THE UPCOMING 2017 SPECIAL MEETING	21
III. RESOLUTION OF THE LITIGATION AND GALENA'S 205 PETITION	23
IV. THE SELLAS MERGER AND REVERSE SPLIT.....	24
V. THE VALIDITY ORDER	24
ARGUMENT.....	26
I. THE CERTIFIED CLASS SHOULD BE CERTIFIED.....	26
A. Rule 23(a)'s Threshold Requirements for Class Certification Are Met Here	27
1. Numerosity	27
2. Commonality	27
3. Typicality.....	28
4. Adequacy.....	28
B. Class Certification Is Proper Under Court of Chancery Rules 23(b)(1) and (2).....	29
C. The Remaining Elements of Rule 23 Are Satisfied	29

II.	THE SETTLEMENT SHOULD BE APPROVED AS FAIR, REASONABLE AND ADEQUATE	30
A.	The Applicable Standard.....	30
B.	The Settlement Benefits	31
C.	The Difficulty and Uncertainty of Continuing the Litigation Supports the Settlement	34
1.	Arguments on Liability	35
2.	Argument on Damages	37
D.	The Release Is Narrow	39
III.	THE REQUEST FOR ATTORNEYS' FEES AND INCENTIVE FEE TO PLAINTIFF SHOULD BE GRANTED	41
A.	The Legal Standard	41
B.	The Requested Fee Award Is Reasonable.....	42
1.	The Settlement Fund Fee Award.....	42
2.	The 2017 Special Meeting and the Validity Order Benefits.....	44
C.	The Remaining <i>Sugarland</i> Factors Fully Support the Requested Fee Award	50
D.	The Request for an Incentive Award to Plaintiff is Appropriate	52

TABLE OF AUTHORITIES

	<u>Page No.</u>
CASES	
<i>Ams. Mining Corp. v. Theriault,</i> 51 A.3d 1213 (Del. 2012)	41
<i>In re Arthrocare Corp. Stockholder Litig.,</i> C.A. No. 9313 (Del. Ch. Nov. 6, 2014).....	43
<i>In re AXA Fin., Inc. S'holders Litig.,</i> 2002 WL 1283674 (Del. Ch. May 22, 2002).....	28
<i>Baupost Ltd. P'ship 1983 A-1 v. Providential Corp.,</i> 1993 WL 401866 (Del. Ch. Sept. 3, 1993).....	30
<i>In re Celera Corp. S'holder Litig.,</i> 59 A.3d 418 (Del. 2012)	29
<i>In re Cheniere Energy, Inc.,</i> C.A. No. 9710 (Del. Ch. Mar. 16, 2015)	34, 48
<i>In re Colfax Corp.,</i> C.A. No. 10447 (Del. Ch. Apr. 2, 2015).....	49, 50
<i>Concord Steel, Inc. v. Wilmington Steel Processing Co., Inc.,</i> 2009 WL 3161643 (Del. Ch. Sept. 30, 2009)	38
<i>In re Cox Radio, Inc. S'holders Litig.,</i> 2010 WL 1806616 (Del. Ch. May 6, 2010).....	29
<i>In re Del Monte Foods Co. S'holders Litig.,</i> 2011 WL 2535256 (Del. Ch. June 27, 2011).....	50
<i>Dow Jones & Co. v. Shields,</i> 1992 WL 44907 (Del. Ch. Jan. 10, 1992).....	42
<i>EMAK Worldwide, Inc. v. Kurz</i> 50 A.3d 429 (Del. 2012)	47

<i>In re Emerson Radio S'holder Derivative Litig.,</i> 2011 WL 1135006 (Del. Ch. Mar. 28, 2011).....	42, 43, 50
<i>In re First Interstate Bancorp Consol. S'holder Litig.,</i> 756 A.2d 353 (Del. Ch. 1999).....	51
<i>Forsythe v. ESC Fund Mgmt Co. (U.S.), Inc.,</i> 2012 WL 1655538 (Del. Ch. May 9, 2012).....	52
<i>In re Galena Biopharma, Inc.,</i> C.A. No. 2017-0423-JTL (Del. Ch. June 8, 2017).....	passim
<i>Kahn v. Sullivan,</i> 594 A.2d 48 (Del. 1991)	30
<i>In re Lawson Software, Inc.,</i> 2011 WL 2185613 (Del. Ch. May 27, 2011).....	28, 29
<i>Leon N. Weiner & Assoc., Inc. v. Krapf,</i> 584 A.2d 1220 (Del. 1991)	28
<i>In re Nat'l City Corp. S'holders Litig.,</i> 2009 WL 2425389 (Del. Ch. July 31, 2009)	47
<i>Nottingham Partners v. Dana,</i> 564 A.2d 1089 (Del. 1989)	26, 29
<i>Olson v. ev3, Inc.,</i> 2011 WL 704409 (Del. Ch. Feb. 21, 2011)	48, 49
<i>In re Orchard Enters. Inc. S'holder Litig.,</i> 2014 WL 4181912 (Del. Ch. Aug. 22, 2014)	52
<i>In re PAETEC Holding Corp. S'holders Litig.,</i> 2013 WL 1110811 (Del. Ch. Mar. 19, 2013).....	47
<i>Polk v. Good,</i> 507 A.2d 531 (Del. 1986)	30

<i>Prezant v. De Angelis</i> , 636 A.2d 915 (Del. 1994)	26
<i>Raider v. Sunderland</i> , 2006 WL 75310 (Del. Ch. Jan. 5, 2006).....	51, 52
<i>San Antonio Fire & Police Pension Fund v. Bradbury</i> , 2010 WL 4273171 (Del. Ch. Oct. 28, 2010)	47
<i>In re Sauer-Danfoss Inc. S'holders Litig.</i> , 65 A.3d 1116 (Del. Ch. 2011).....	46
<i>State of Wis. Inv. Bd. V. Peerless Sys. Corp.</i> , 2000 WL 1805376 (Del. Ch. Dec. 4, 2000).....	36
<i>Sugarland Indus., Inc. v. Thomas</i> , 420 A.2d 142 (Del. 1980)	41, 42, 50
<i>In re Talley Indus. Inc.</i> , 1998 WL 191939 (Del. Ch. Apr. 13, 1998).....	42
<i>In re Transkaryotic Therapies, Inc.</i> , 954 A.2d 346 (Del. Ch. 2008)	38
<i>In re Warner Commc'ns Sec. Litig.</i> , 618 F. Supp. 735 (S.D.N.Y. 1985)	51
<i>In re Xencor, Inc.</i> , C.A. No. 10742 (Del. Ch. Dec. 10, 2015)	50

RULES

Delaware Chancery Court Rule 23.....	26, 29
Delaware Chancery Court Rule 23(a)	26, 27, 28, 29
Delaware Chancery Court Rules 23(b)(1) and 23(b)(2).....	29
New York Stock Exchange Rule 452	6, 9, 22

STATUTES

8 <i>Del. C.</i> § 204.....	passim
8 <i>Del. C.</i> § 205.....	passim
8 <i>Del. C.</i> § 225.....	2

NATURE AND STAGE OF THE PROCEEDINGS

Plaintiff Suhas Patel (“Plaintiff”) submits this brief in support of (i) class certification, (ii) settlement of this consolidated class action, (iii) Plaintiff’s Counsel’s application for an award of (a) attorneys’ fees of 15% of the Settlement Fund (defined below) and (b) \$250,000 for benefits conferred through disclosure, a stockholder meeting and vote and an 8 *Del. C.* § 205 validity order entered by the Court for the Certificate Amendments (defined below) and (iv) Plaintiff’s application for an incentive fee of \$13,000.

Plaintiff’s April 27, 2017 complaint alleged that Defendants¹ breached their fiduciary duties by improperly counting broker non-votes as votes “For” (i) a certificate amendment to increase Galena Biopharma Inc.’s (“Galena” or the “Company”) shares outstanding at a July 14, 2016 annual meeting of stockholders (the “2016 Annual Meeting” and “2016 Annual Meeting Certificate Amendment”) and (ii) the certificate amendment to effect a reverse split of Galena common stock at an October 21, 2016 special meeting of stockholders (the “2016 Special Meeting” and “2016 Special Meeting Certificate Amendment”), when those votes should have

¹ “Defendants” means Galena and the following directors on its board: William L. Ashton, Rudolph Nisi, Richard Chin, Irving M. Einhorn, Stephen Galliker, Sanford Hillsberg, Mary Ann Gray, Mark W. Schwartz, and Stephen F. Ghiglieri.

been counted as “Against” the proposals. Plaintiff also alleged that the 2016 Special Meeting Certificate Amendment Galena filed with the Delaware Secretary of State was different than the certificate amendment voted on by stockholders at the meeting. Plaintiff also sought individual and class-wide relief under 8 Del. C. § 225.

Following the filing of the complaint, Defendants conceded that the disclosures in the proxy statements for the 2016 Annual Meeting (the “2016 Annual Proxy”) and 2016 Special Meeting (the “2016 Special Proxy”) were false. Specifically, Defendants contended that while the 2016 Annual and Special Proxies disclosed that brokers lacked discretionary authority to vote on the certificate amendments, brokers actually had discretionary authority to vote and exercised it to vote at the meetings on the certificate amendments. The same significant false disclosures were made in proxy statements for three other certificate amendments in 2011, 2013 and 2015 (together with the 2016 certificate amendments the “Certificate Amendments”). After Plaintiff refused to settle the case for non-monetary relief, Defendants sent stockholders a proxy statement on May 30, 2017 for a special meeting to vote to ratify the Certificate Amendments under 8 Del. C. § 204 (the “2017 Special Meeting” and “2017 Special Proxy”).

On June 2, 2017, Plaintiff filed the Verified Stockholder Class Action Amended and Supplemented Complaint (“Amended Complaint” or “Am. Compl.”),

which included a challenge of the effectiveness of the upcoming vote at the 2017 Special Meeting because, among other reasons, Defendants were permitting all Galena shares to be voted, including shares of putative stock issued under the invalid Certificate Amendments, which *8 Del. C.* § 204 prohibits. Galena then filed a petition under *8 Del. C.* § 205 (the “Section 205 Petition”). Defendants conceded that their material false disclosures cast doubt on the validity of the Certificate Amendments and a cloud over Galena’s capital structure, which threatened Galena’s survival. The Court subsequently ordered consolidation of Plaintiff’s fiduciary duty action and Galena’s Section 205 Petition and scheduled an expedited trial to begin on August 28, 2017.

During expedited discovery, the parties reached an agreement in principle to settle the case in a term sheet executed on July 24, 2017 (the “Settlement Term Sheet”). On November 30, 2017, the Court ruled the Settlement Term Sheet was a binding contract. The parties then executed a stipulation of settlement on December 6, 2017 (the “Stipulation”). Pursuant to the Settlement Term Sheet and Stipulation, Defendants agreed to pay \$50,000 in cash and \$1.25 million in Galena common stock into a settlement fund (the “Settlement Fund” and the “Settlement”). The Stipulation also required Defendants to file an order declaring the Certificate Amendments valid pursuant to Section 205 (the “Validity Order”). The Court

entered the Validity Order on December 11, 2017. The Settlement hearing is scheduled for March 15, 2018 at 2:00 p.m. in Wilmington, Delaware. This is Plaintiff's opening brief in support of the Settlement.

STATEMENT OF FACTS

I. DEFENDANTS' HISTORY OF MISLEADING PROXY STATEMENT DISCLOSURES

A. The 2011 Annual Proxy

On May 31, 2011, Galena issued its definitive proxy statement for an annual meeting (the “2011 Annual Proxy”).² The 2011 Annual Proxy included Proposal 4, which proposed to amend Galena’s certificate to increase its authorized shares from 50,000,000 to 125,000,000.³ The 2011 Annual Proxy stated that “[b]rokers will have [] discretionary voting authority on the proposals for the election of a director [Proposal 1] and the ratification of the selection of our independent registered public accounting firm for 2011 [Proposal 2], but not the other proposals.”⁴ Thus, the 2011 Annual Proxy disclosed that Proposal 4 was a non-routine matter, and therefore brokers lacked discretionary voting authority and could not vote “For” Proposal 4 without instructions from beneficial holders.

The 2011 Annual Meeting was held on July 15, 2011. Despite the disclosure that Proposal 4 was a “non-routine” matter, brokers voted on the proposal without

² Juray Aff. Ex. 1. Citations in the form “Juray Aff. Ex. __” refer to exhibits to the Affidavit of Eric J. Juray, Esq.

³ *Id.* at 35.

⁴ *Id.* at 2.

instruction and those votes were counted at the 2011 Annual Meeting. Proposal 4 passed.

B. The 2013 Annual Meeting

On April 29, 2013, Galena issued its definitive proxy statement for an annual meeting (the “2013 Annual Proxy”).⁵ The 2013 Annual Proxy included Proposal 2, which proposed a certificate amendment to increase Galena’s authorized shares from 125,000,000 to 200,000,000 shares.⁶ The 2013 Annual Proxy stated that “[b]rokers will have no . . . discretionary authority to vote on any of the proposals, because such proposals are not considered routine matters.”⁷ Thus, the 2013 Annual Proxy disclosed that Proposal 2 was a non-routine matter, and therefore brokers lacked discretionary voting authority and could not vote “For” Proposal 2 without instructions from beneficial holders.

In early June 2013, Defendant director Hillsberg was told that Proposal 2 was coded as a “non-routine” matter under NYSE Rule 452, which would prevent brokers from exercising discretionary voting authority over shares as to which

⁵ Juray Aff. Ex. 2.

⁶ *Id.* at 21.

⁷ *Id.* at p. iv.

beneficial owners had not provided specific voting instructions.⁸ Rather than work to secure the necessary vote consistent with the coding and disclosures, Galena instead directed an employee of Georgeson, Inc. to contact Broadridge to change the coding of Proposal 2.⁹ On June 4, 2013, the coding of Proposal 2 was changed to “routine,” which would allow brokers to vote with discretionary authority.¹⁰ Galena employees recognized the change was likely to be vote dispositive. Ryan Dunlap, Galena’s then-Director of Finance, recognized that “given [the] change to ‘routine’ for our increase to authorized vote, we are confident that the ISS report will trigger the votes we need to capture a majority of outstanding.”¹¹ The 2013 Annual Proxy was not amended to disclose the change.

⁸ See Juray Aff. Ex. 3 (noting that Broadridge ruled Galena’s increase to authorized proposal as non-routine).

⁹ Juray Aff. Ex. 4 at `854.

¹⁰ See *id.*; see also Juray Aff. Ex. 5.

¹¹ Juray Aff. Ex. 6; *see also* Juray Aff. Ex. 5 (Dunlap explaining to Defendant Hillsberg that Galena was “able to convince Broadridge to change their determination of our increase in authorized vote to ‘routine,’ significantly loosening up the brokerage vote”). Thus, as early as 2013, Galena was aware that brokers were voting on these proposals in their discretion. It was, not as Defendants claim, “unbeknownst to Galena.” Cf. *In re Galena Biopharma, Inc.*, C.A. No. 2017-0423-JTL, at 18 (Del. Ch. June 8, 2017) (TRANSCRIPT) (“Exp. Motion Tr.”); *see also id.* at 22 (arguing that this was just an issue in the “plumbing” of the Company).

The 2013 Annual Meeting was held on June 28, 2013. Because Proposal 2 was—by this time—coded as a “routine” matter in contravention of the 2013 Annual Proxy, brokers voted with discretionary authority on Proposal 2 and these votes were counted at the 2013 Annual meeting. Proposal 2 passed.

C. The 2015 Annual Meeting

Coding issues resurfaced in 2015. On April 30, 2015, Galena issued its definitive proxy statement for an annual meeting (the “2015 Annual Proxy”).¹² The 2015 Annual Proxy included Proposal 2, which proposed a certificate amendment to increase Galena’s authorized shares from 200,000,000 to 275,000,000.¹³ The 2015 Annual Proxy stated that “[b]rokers will have . . . discretionary authority to vote only on Proposal 5 regarding the ratification of the selection of our independent registered public accounting firm for 2015, but not on any of the other proposals.”¹⁴ Thus, the 2015 Annual Proxy disclosed that Proposal 2 was a non-routine matter, and therefore brokers lacked discretionary voting authority and could not vote “For” Proposal 2 without instructions from beneficial holders.

¹² Juray Aff. Ex. 7.

¹³ *Id.* at 22.

¹⁴ *Id.* at 50.

Proposal 2 was coded as a “non-routine” matter under NYSE Rule 452, preventing brokers from exercising discretionary voting authority over shares as to which the beneficial owner had not provided specific voting instructions.¹⁵ Galena again worked behind the scenes to change the coding without amending the proxy disclosures.

Georgeson first wrote to Broadridge on May 13, 2015, asking for a re-review of the coding for Proposal 2.¹⁶ Broadridge responded that because Proposal 2 was tied to the stock option plan, Proposal 2 was non-routine.¹⁷ Georgeson agreed that the language of Proposal 2 fell within a “grey zone.”¹⁸ Later that day, Dunlap forwarded the information to Galena’s outside counsel at TroyGould PC, asking TroyGould to help ensure that the coding for Proposal 2 was changed to routine.¹⁹ Defendant Hillsberg is a partner at TroyGould. Dale Short of TroyGould agreed to lobby Broadridge for the coding change even though he had not “yet tried to research what is routine or non-routine.”²⁰

¹⁵ See Juray Aff. Ex. 11.

¹⁶ Juray Aff. Ex. 8 at `939.

¹⁷ *Id.* at `937-38.

¹⁸ *Id.* at `937.

¹⁹ Juray Aff. Ex. 9.

²⁰ *Id.*

On May 15, 2015, Short wrote to Broadridge requesting that their “coding group reconsider their coding.”²¹ Broadridge responded that it could only do so with an opinion from the NYSE.²² TroyGould asked Broadridge to contact the NYSE. Less than an hour later, Broadridge simply responded that the coding for Proposal 2 was “[u]pdated to routine.”²³ Again, the change in coding was vote dispositive and Galena knew it. Defendant director Schwartz was then told that because the Company “succeeded in getting the authorized share vote classified as ‘routine,’ . . . we should have no problem getting that proposal passed since it allows brokers to automatically vote yes.”²⁴ The 2015 Annual Proxy was not amended to disclose the change.

The 2015 Annual Meeting was held on June 19, 2015. Because Proposal 2 was by then coded as a “routine” matter in contravention of the 2015 Annual Proxy disclosures, brokers voted with discretionary voting authority and their votes were counted on Proposal 2. Proposal 2 passed.

²¹ Juray Aff. Ex. 10 at `641-42.

²² *Id.*

²³ *Id.* at `640; Juray Aff. Ex. 13 (TroyGould noting that it “successfully got this changed to a ‘routine’ matter”).

²⁴ Juray Aff. Ex. 12; *cf.* Exp. Motion Tr. at 27 (arguing that the Defendants were “good, credible people who had no idea that there was an issue here”).

D. The 2016 Annual Meeting

On June 3, 2016, Galena issued the 2016 Annual Proxy.²⁵ The 2016 Annual Proxy included Proposal 2, which proposed a certificate amendment to increase Galena’s authorized shares from 275,000,000 to 350,000,000.²⁶ The 2016 Annual Proxy stated that the “[t]he affirmative vote of the holders of a majority of the shares of common stock issued and outstanding and entitled to vote at the [2016] Annual Meeting is required to approve the [2016 Annual Meeting Certificate] Amendment.”²⁷ It further stated:

Shares held in “street name” by brokers, banks or other nominees who indicate on their proxy cards that they do not have discretionary authority to vote such shares as to a particular matter, which we refer to as “broker non-votes,” will be counted for the purpose of determining whether a quorum exists but will not have any effect upon the outcome of voting with respect to matters voted on at the Annual Meeting except for “Proposal Two: Approval of Amendment to Amended and Restated Certificate of Incorporation to Increase Our Authorized Common Stock,” where they will have the same effect as an “Against” vote. Brokers holding shares for clients who have not given specific voting instructions are permitted to vote in their discretion only with respect to “Proposal

²⁵ Juray Aff. Ex. 14.

²⁶ *Id.* at 30.

²⁷ *Id.*

Five: Ratification of Selection of Independent Registered Public Accounting Firm.”²⁸

Accordingly, Defendants stated in the 2016 Annual Proxy that if a stockholder that held in street name did not instruct his/her/its broker how to vote the shares, then the shares could not be voted “For” the Certificate Amendment. Thus, a reasonable stockholder that did not approve of Proposal 2 would understand that providing no instruction would “have the same effect as an ‘Against’ vote.”

The disclosure was false, because Proposal 2 was coded as a “routine.” As a result, brokers voted in their discretion at the 2016 Annual Meeting on Proposal 2 and those votes were counted.

After the 2016 Annual Proxy was sent, Galena announced on July 8, 2016 that it entered into a Securities Purchase Agreement to sell 28 million shares of common stock and issue warrants to purchase 14 million shares of common stock at \$0.65 per share to a group of investors.²⁹ According to the announcement, since Galena did not have enough authorized shares outstanding to issue the 14 million shares covered by the warrant, it would buy back the options for \$3.5 million if the 2016 Annual

²⁸ *Id.* at 6 (emphasis added).

²⁹ Am. Compl. ¶¶ 17, 20.

Meeting Amendment was not approved.³⁰ This added pressure on the 2016 Annual Meeting Certificate Amendment to pass, which Defendants never disclosed.

On July 14, 2016 (*i.e.*, the day of the 2016 Annual Meeting), Galena discovered that Proposal 2 (the 2016 Annual Meeting Certificate Amendment) had not received the requisite majority of votes outstanding in order to pass due to an apparent discrepancy in the number of shares believed to be outstanding.³¹ Defendants then “closed” the “polls” at the meeting *except* for Proposal 2. This was not disclosed to stockholders.³² Closing the polls ensured that no stockholder could rescind or change any votes. Then, to ensure that Proposal 2 passed, Defendants solicited votes “For” Proposal 2 from specific stockholders who they knew had not voted. Eventually, they obtained a bloc of votes from one stockholder, and disclosed

³⁰ *Id.* ¶ 17.

³¹ Juray Aff. Ex. 15 at ‘638 (showing only 49% of the votes “For” the share increase).

³² Juray Aff. Ex. 16; *see also* Juray Aff. Ex. 17 at `611 (Chris Dowd of Georgeson writing that “[a]s long as no one informs Broadridge that the polls are open on the proposal then no reversals from the street.”). On July 18, 2016, Galena disclosed on Form 8-K that the 2016 Annual Meeting was “held on July 14, 2016 and reconvened on July 15, 2016,” without any explanation as to why the meeting was reconvened or what actions were taken by the board of directors to reconvene the meeting. *See* Juray Aff. Ex. 19.

the vote on Proposal 2 received 50.13% of votes “For” and therefore passed by 264,898 shares.³³

After the vote was disclosed on Form 8-K (announcing *inter alia* that Proposal 2 passed), a stockholder contacted Defendant Schwartz and other Galena employees, alerting them that broker non-votes were improperly counted on Proposal 2. The stockholder even directed Defendant Schwartz to page 6 of the 2016 Annual Meeting Proxy concerning the effect of broker non-votes on Proposal 2.³⁴ Despite the fact that Thomas Knapp, the Company’s general counsel, informed employees that “[t]he broker non votes should not have been added” and asked for the totals to be tripled checked,³⁵ Remy Bernarda (an employee in the investor relations department), “simply replied the broker non-votes are not included.”³⁶ While it was true that broker non-votes were not counted, Bernarda never informed the stockholder that the disclosure was false and brokers had discretionary voting authority (which is why there were no broker non-votes). Bernarda’s limited and terse response was because she and Knapp found the stockholder asking questions about the legitimacy

³³ Juray Aff. Exs. 18 and 19.

³⁴ Juray Aff. Ex. 20.

³⁵ *Id.*

³⁶ Juray Aff. Ex. 21.

of the voting results annoying.³⁷ Thus, Galena knew or should have known that the disclosure was false, but instead ignored the issue.³⁸

E. The 2016 Special Meeting

On September 21, 2016, Galena issued the 2016 Special Proxy.³⁹ The 2016 Special Proxy informed stockholders that the 2016 Special Meeting was being held for the following purposes:

Proposal No. 1 — To approve an amendment to the Company’s Amended and Restated Certificate of Incorporation... [the “Reverse Stock Split Amendment”], to effect a reverse stock split of the Company’s common stock, at a ratio of not less than 1 for 2 and not greater than 1 for 20, with the exact ratio and effective time of the reverse stock split to be determined by the Board of Directors and publicly announced in a press release. This proposal must be approved by a majority of the outstanding shares of our common stock. As a result, abstentions and broker non-votes will have the same effect as a vote against such proposal.

Proposal No. 2 — To authorize the issuance of shares of the Company’s common stock issuable upon the redemption, conversion or other satisfaction of the Company’s obligations under its Amended and Restated 9% Original Issue Discount Senior Secured Debenture due November 10, 2018 in the principal amount of

³⁷ *Id.*

³⁸ Galena was specifically informed of the problem in 2016, contradicting Defendants’ representation that “at no time in any of those processes would somebody tell us that [the proxy disclosures] were wrong.” Exp. Motion Tr. at 19.

³⁹ Juray Aff. Ex. 22.

\$25,530,000, without the need for any limitation or cap on issuances as required by and in accordance with NASDAQ Marketplace Rule 5635(d). This proposal must be approved by a majority of the votes properly cast on the matter affirmatively or negatively. As a result, abstentions and broker non-votes will be entirely excluded from the vote and will have no effect on its outcome.

Proposal No. 3 — To authorize adjournment of the Special Meeting, if necessary or appropriate to solicit additional proxies if there are insufficient votes at the Special Meeting in favor of the Reverse Stock Split (the “Adjournment Proposal”). This proposal must be approved by a majority of the votes properly cast on the matter affirmatively or negatively. As a result, abstentions and broker non-votes will be entirely excluded from the vote and will have no effect on its outcome.⁴⁰

As to broker discretionary voting authority, Defendants repeated the false disclosure from the 2016 Annual Proxy in the 2016 Special Proxy:

The approval of the Reverse Stock Split requires the affirmative vote of the majority of all outstanding shares. A representative of our Company will serve as the inspector of elections at the Special Meeting. The approval of the issuance of common stock for the redemption and/or conversion of the debenture and warrants as described in Proposal No. 2 requires the affirmative vote of the majority of shares present in person or represented by proxy and voting on such matters at the Special Meeting.

Shares that abstain from voting as to a particular matter will be counted for the purpose of determining whether a quorum exists. However, with respect to Proposal No. 1 – Approval of Amendment to Amended and Restated

⁴⁰ *Id.* at 2.

Certificate of Incorporation to Effect a Reverse Stock Split, an abstention will have the same effect as an “Against” vote. **Shares held in “street name” by brokers, banks or other nominees who indicate on their proxy cards that they do not have discretionary authority to vote such shares as to a particular matter, which we refer to as “broker non-votes,”** will be counted for the purpose of determining whether a quorum exists but will not have any effect upon the outcome of voting with respect to matters voted on at the Special Meeting except for Proposal No. 1 – Approval of Amendment to Amended and Restated Certificate of Incorporation to Effect a Reverse Stock Split where they will have the same effect as an “Against” vote. Brokers holding shares for clients who have not given specific voting instructions are permitted to vote in their discretion only with respect to Proposal No.2 – Authorize Issuance of Common Stock for Conversion of Debenture and Proposal No.3 – Approval of Adjournment of the Special Meeting.⁴¹

This disclosure was false when it was made and improved the chances of getting the amendment approved. Galena employees also knew that many shares remained unvoted leading up to the meeting. On October 19, 2016, Defendant Ghiglieri was “surprised that so many sizeable shareholders still remain unvoted. We should still attempt to get the coyotes from the top 5-10 on the nobo list I would think just to give us cushion.”⁴² Bernarda responded that she was “not surprised.

⁴¹ *Id.* at 3 (emphasis added).

⁴² Juray Aff. Ex. 23 at `622.

This is the problem with an all-retail shareholder base. Uncommitted and impossible to track/pin down. My concern is that shareholders will vote AGAINST because they have been through the ringer for almost 3 years.”⁴³ She further noted that one stockholder owned 5 million shares, “but could be a wild card in either direction similar with all of the other top holders we don’t know.”⁴⁴

Proposal 2 passed by a slim 5,705,870 share margin (2.5% of outstanding shares).

The 2016 Special Meeting Certificate Amendment was signed by Knapp on November 1, 2016 and filed with the Delaware Secretary of State on November 2, 2016. The amendment that was filed, however, was not the same as the text that was disclosed to stockholders in the Special Meeting Proxy. The 2016 Special Meeting Proxy stated:

If the Reverse Stock Split is approved, Article III, Section A of the Charter is amended and restated in its entirety as follows:

A. Classes of Stock. This Corporation is authorized to issue [] shares, of which [] shall be Common Stock with a par value of \$0.0001 per share (the “Common Stock”) and [5,000,000] shares shall be Preferred Stock with a par value of \$0.0001 per share.

⁴³ *Id.* at `621.

⁴⁴ *Id.*

Reverse Stock Split. Effective at 12:01 a.m., Eastern [Daylight Savings] Time on [] [], 2016 this Certificate of Amendment of the Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the “Split Effective Time”), the shares of Common Stock issued and outstanding immediately prior to the Split Effective Time and the shares of Common Stock issued and held in the treasury of the Corporation immediately prior to the Split Effective Time are reclassified into a smaller number of shares such that each two to twenty shares of issued Common Stock immediately prior to the Split Effective Time is reclassified into one share of Common Stock, the exact ratio within the two to twenty range to be determined by the board of directors of the Corporation prior to the Split Effective Time and publicly announced by the Corporation. Notwithstanding the immediately preceding sentence, no fractional shares shall be issued and, in lieu thereof, upon surrender after the Split Effective Time of a certificate which formerly represented shares of Common Stock that were issued and outstanding immediately prior to the Split Effective Time, any person who would otherwise be entitled to a fractional share of Common Stock as a result of the reclassification, following the Split Effective Time, shall be entitled to receive a cash payment equal to the fraction to which such holder would otherwise be entitled multiplied by the closing price of a share of Common Stock on the NASDAQ Capital Market immediately following the Split Effective Time.

Each stock certificate that, immediately prior to the Split Effective Time, represented shares of Common Stock that were issued and outstanding immediately prior to the Split Effective Time shall, from and after the Split Effective Time, automatically and without the necessity of presenting the same for exchange, represent that number of whole shares of Common Stock after the Split Effective Time into which the shares of Common Stock formerly

represented by such certificate shall have been reclassified (as well as the right to receive cash in lieu of fractional shares of Common Stock after the Split Effective Time).⁴⁵

The resolution in the Reverse Stock Split Amendment that was actually filed with the Delaware Secretary of State stated:

RESOLVED, that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered " Section (A) of Article ITI " so that, as amended and restated, said Article shall be and read as follows:

A. Classes of Stock. This Corporation is authorized to issue 355,000,000 shares, of which 350,000,000 shall be Common Stock with a par value of \$0.0001 per share (the "Common Stock") and 5,000,000 shares shall be Preferred Stock with a par value of \$0.0001 per share.

Reverse Stock Split. Effective at 12:01 a.m., Eastern Standard Time on November 11, 2016 (the "Effective Time"), each 20 shares of common stock issued and outstanding or held by the Corporation in treasury immediately prior to the Effective Time (the "Old Common Stock") shall automatically without further action on the part of the Corporation or any holder of Old Common Stock, be reclassified, combined and changed into one fully paid and nonassessable share of new common stock (the "New Common Stock"). There shall be no fractional shares issued with respect to the New Common Stock. In lieu thereof, the aggregate of all fractional shares otherwise issuable to the holders of record of Old Common Stock shall be issued to Computershare (the "Transfer Agent"), as agent, for the accounts of all holders of record of Old Common Stock

⁴⁵ Juray Aff. Ex. 22 at 9.

otherwise entitled to have a fraction of a share issued to them. The sale of all fractional interests will be effected by the Transfer Agent as soon as practicable after the Effective Time on the basis of prevailing market prices of the New Common Stock at the time of sale. After such sale and upon the surrender of the stockholders' stock certificates, the Transfer Agent will pay to such holders of record their pro rata share of the net proceeds derived from the sale of the fractional interests. From and after the Effective Time, certificates representing the Old Common Stock shall represent the number of whole shares of New Common Stock into which such Old Common Stock shall have been reclassified, combined and changed pursuant to this Certificate of Amendment, subject to the elimination of fractional share interests as described above.⁴⁶

Thus, Defendants filed a different certificate amendment than was voted on by the stockholders.

II. PLAINTIFF CHALLENGES THE RESULTS OF THE 2016 MEETINGS AND THE UPCOMING 2017 SPECIAL MEETING

On April 27, 2017, Plaintiff challenged the results of the votes on Proposal 2 at the 2016 Annual Meeting and Proposal 1 at the 2016 Special Meeting. In light of Plaintiff's lawsuit, the Company determined that similar challenges could be made with respect to other amendments described above (dating back to 2011).

On May 30, 2017, Galena's board of directors purportedly approved the ratification of the filing and effectiveness of each of the Certificate Amendments

⁴⁶ Juray Aff. Ex. 31.

under 8 *Del. C.* § 204 (the “204 Ratification”). Pursuant to 8 *Del. C.* § 204(d), Galena held the 2017 Special Meeting to seek stockholder approval of the 204 Ratification. In connection therewith, the Company filed the 2017 Special Proxy.⁴⁷ On June 2, 2017, Plaintiff filed the Amended Complaint, seeking (among other relief) to enjoin the 2017 Special Meeting.

In light of its pattern of misleading Galena stockholders since 2011, Galena contacted the NYSE regarding the coding of the proposals for the 2017 Special Meeting. The NYSE stated that each of the proposals set forth in the 2017 Special Proxy was a “routine” matter under NYSE Rule 452.⁴⁸ The 2017 Special Proxy stated: “Under the rules of the NYSE, the Ratifications and the Adjournment Proposal are ‘routine’ matters. Accordingly, brokers will have . . . discretionary authority to vote on the Ratifications and the Adjournment Proposal and may vote ‘FOR’ each of the Ratifications and the Adjournment Proposal.”⁴⁹

The 2017 Special Meeting was held on July 6, 2017. Because each of the proposals was a “routine” matter, “For” votes cast by brokers at the 2017 Special

⁴⁷ Juray Aff. Ex. 25.

⁴⁸ Juray Aff. Ex. 24; Juray Aff. Ex. 35.

⁴⁹ Juray Aff. Ex. 25 at 5.

Meeting without instruction from the beneficial owners were counted “For” the pertinent proposal. Each proposal at the 2017 Special Meeting passed.

III. RESOLUTION OF THE LITIGATION AND GALENA’S 205 PETITION

After Plaintiff filed the Amended Complaint on June 2, 2017, the Company filed the 205 Petition on June 5, 2017. On June 8, the Company represented that it only had a few months of cash remaining and would need a trial in late summer 2017.⁵⁰ Plaintiff’s action and the Company’s Section 205 Petition were consolidated on June 20, 2017 (Trans. ID 60754626). The parties then negotiated a schedule leading to a trial to be held between August 28-31, 2017.

The parties engaged in expedited discovery in July 2017. Given the Company’s represented financial condition, settlement discussions occurred in parallel with discovery. Plaintiff received and reviewed nearly 5,000 documents from Galena, certain Galena employees and third parties (including Broadridge, Computershare and TroyGould). Plaintiff also produced 1,402 pages of documents. The parties exchanged privilege logs on July 21, 2017. On July 24, 2017, the Settlement Term Sheet was executed.

⁵⁰ Exp. Motion Tr. at 21.

IV. THE SELLAS MERGER AND REVERSE SPLIT

On August 7, 2017, Galena, SELLAS Life Sciences Group Ltd (“SELLAS”), and various other SELLAS-affiliated entities, agreed to merge, with SELLAS becoming an indirect wholly-owned subsidiary of Galena and the surviving corporation of the merger (the “SELLAS Merger”). Galena also announced a reverse stock split of up to 30-1 to occur immediately prior to the SELLAS Merger (the “SELLAS Reverse Split”).⁵¹

The SELLAS Merger closed on December 29, 2017. Immediately prior to the closing, the 30-1 SELLAS Reverse Split (*i.e.* the maximum split proposed) was effected.⁵² Following these transactions, Galena’s stockholders now own approximately 32.5% of the outstanding SELLAS shares.⁵³

V. THE VALIDITY ORDER

On December 8, 2017, Galena filed an Unopposed Motion for Entry of Order Under 8 Del. C. § 205 (Trans. ID 61446704). In Galena’s supporting brief, it argued that the 204 Ratification should be validated under Section 205, or, alternatively, that the amendments dating back to 2011 should be ratified pursuant to 8 Del. C. §

⁵¹ Juray Aff. Ex. 26.

⁵² Juray Aff. Ex. 30.

⁵³ *Id.*

205. On December 12, 2017, the Court entered the Validity Order, declaring that the amendments to Galena’s certificate of incorporation in 2011, 2013, 2015, and 2016 were “validated and declared effective.”

ARGUMENT

I. THE CERTIFIED CLASS SHOULD BE CERTIFIED

In reviewing a proposed settlement, the Court must determine whether the action may be certified as a class action under Court of Chancery Rule 23.⁵⁴ Under Rule 23, “a condition precedent to the certification of a class action is a two-step analysis. The first step requires that the action satisfy all *four* of the prerequisites mandated by subsection (a) of the rule.”⁵⁵ Subsection (a) provides:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The Stipulation at Section A(1)(d) defines the “Class” as “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.” The elements of Rule 23 are all met to certify that Class.

⁵⁴ *Prezant v. De Angelis*, 636 A.2d 915, 925 (Del. 1994).

⁵⁵ *Nottingham Partners v. Dana*, 564 A.2d 1089, 1094 (Del. 1989).

A. Rule 23(a)'s Threshold Requirements for Class Certification Are Met Here

1. Numerosity

Rule 23(a)'s numerosity requirement is satisfied here. There were 181,837,117 shares entitled to vote at Galena's 2016 Annual Meeting,⁵⁶ 214,481,939 shares entitled to vote at Galena's 2016 Special Meeting⁵⁷ and 37,435,524 shares outstanding at Galena's 2017 Special Meeting.⁵⁸ Joinder of thousands of stockholders who held these shares would be impractical.

2. Commonality

Rule 23(a)'s requirement that there are questions of law or fact common to the Class is satisfied here. Common questions of law and fact include (1) the validity of the votes at the 2016 Annual Meeting and 2016 Special Meeting; (2) whether Defendants breached their fiduciary duties by (a) making false disclosures in the 2016 Annual Meeting and 2016 Special Meeting Proxies, (b) filing or causing to be filed invalid certificate amendments, and (c) issuing invalid shares of stock; and (3) the validity of the 2017 Special Meeting in purporting to ratify defective corporate acts.

⁵⁶ Juray Aff. Ex. 14 at 6.

⁵⁷ Juray Aff. Ex. 22 at 3.

⁵⁸ Juray Aff. Ex. 25 at 3.

3. Typicality

Rule 23(a)'s requirement that the claims of the class representative are typical of the claims of the Class is satisfied here. The Amended Complaint alleged that Defendants' conduct caused the same injury to Plaintiff and the Class from the same actions at the 2016 Annual Meeting and 2016 Special Meeting. Because Plaintiff's legal and factual position is not materially different from that of the Class members, Plaintiff meets the typicality requirement.⁵⁹

4. Adequacy

Rule 23(a)'s requirement that the class representative has adequately represented the interests of the Class is satisfied here. Plaintiff and his counsel have adequately represented the Class.⁶⁰ Plaintiff held Galena common stock at all relevant times, monitored and participated actively in the action through oral and written communications with counsel, and assisted in negotiating the terms of and approved the terms of the Settlement after extensive discussions with counsel. There

⁵⁹ *Leon N. Weiner & Assoc., Inc. v. Krapf*, 584 A.2d 1220, 1225-26 (Del. 1991); *In re Lawson Software, Inc.*, 2011 WL 2185613, at *2 (Del. Ch. May 27, 2011) (“All claims grow out of the same events and courses of conduct and the same legal theories would apply. As one regularly finds in challenges to the conduct of fiduciaries in the merger context, the typicality requirement is satisfied here.”).

⁶⁰ See, e.g., *In re AXA Fin., Inc. S'holders Litig.*, 2002 WL 1283674, at *5 (Del. Ch. May 22, 2002).

are no conflicts of interest between Plaintiff and the Class. Plaintiff retained experienced counsel who vigorously represented the Class.⁶¹

B. Class Certification Is Proper Under Court of Chancery Rules 23(b)(1) and (2)

If the provisions of Rule 23(a) are satisfied, the next step is to fit the action within the framework of subsection (b). Here, Plaintiff's claims of breach of fiduciary duty and violation of Delaware statutory laws are properly certifiable under Court of Chancery Rules 23(b)(1) and 23(b)(2).⁶²

C. The Remaining Elements of Rule 23 Are Satisfied

The Settlement Notice was mailed on January 12, 2017 to all record holders of the 2016 Special Meeting and 2017 Special Meeting. Notice was also mailed to the banks and brokers that held through the Depository Trust Company ("DTC") on the record dates for the 2016 Special Meeting and 2017 Special Meeting. The record date for the 2016 Annual Meeting (May 16, 2016) was in close proximity to the record date for the 2016 Special Meeting (September 9, 2016). Given the nature of

⁶¹ *In re Cox Radio, Inc. S'holders Litig.*, 2010 WL 1806616, at *8 (Del. Ch. May 6, 2010); *Lawson Software*, 2011 WL 2185613, at *2.

⁶² See *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 432-33 (Del. 2012) (noting that Delaware courts repeatedly have held that actions challenging the propriety of director conduct in carrying out corporate transactions are properly certifiable under both subdivisions (b)(1) and (b)(2)). See also *Nottingham Partners*, 564 A.2d at 1094-97; *Cox Radio*, 2010 WL 1806616, at *8.

the claims, size of the Settlement Fund (which bears the cost of notice) and close proximity of the 2016 meeting record dates, Plaintiff did not separately mail notice to record holders who only held as of the record date for the 2016 Annual Meeting. A website with the Settlement documents was also maintained by the settlement administrator.

II. THE SETTLEMENT SHOULD BE APPROVED AS FAIR, REASONABLE AND ADEQUATE

A. The Applicable Standard

Delaware favors the voluntary settlement of representative litigation.⁶³ In evaluating a class action settlement, the Court's task is to "consider the nature of the claim, the possible defenses thereto, the legal and factual circumstances of the case, and then to apply its own business judgment in deciding whether the settlement is reasonable in light of these factors."⁶⁴ "[T]he principal focus is upon the benefits provided in the settlement, in light of the nature of the claims and the likelihood of success on the merits."⁶⁵

⁶³ See *Kahn v. Sullivan*, 594 A.2d 48, 58 (Del. 1991).

⁶⁴ *Polk v. Good*, 507 A.2d 531, 535 (Del. 1986).

⁶⁵ *Baupost Ltd. P'ship 1983 A-1 v. Providential Corp.*, 1993 WL 401866, at *2 (Del. Ch. Sept. 3, 1993).

B. The Settlement Benefits

The primary benefit of the Settlement is a \$1.3 million Settlement Fund consisting of \$1.25 million of Settlement Stock and \$50,000 of cash. The number of shares of Settlement Stock that the Company will need to issue to equal \$1.25 million will be based on the volume-weighted average closing price for the 20 trading days immediately preceding the day before the Settlement Stock is transferred to the Settlement Fund, which will not occur until the Settlement is approved. The Plan of Allocation provides for the Settlement Stock to be sold as soon as reasonably practicable following its deposit in the Settlement Fund. The Stipulation limits daily trading to 10% of the daily volume as averaged over the previous trading days. The cash received from the Settlement Stock sales will then be distributed pursuant to the Plan of Allocation to Class members that held stock as of the 2016 Special Meeting.

The Settlement Fund is fair and reasonable to the Class in light of the value of Plaintiff's claims. Galena's certificate provides the individual Defendants with advancement and indemnification and exculpation for non-loyalty breaches of fiduciary duty. Galena's director and officer liability insurance policy required it to pay the first \$1.5 million of fees and expenses associated with the litigation. Given the narrow focus of the claims and expedited schedule, Plaintiff expected the cost of

litigation to be less than \$1.5 million. Moreover, the nature of the claims and defenses thereto made a material contribution from insurers unlikely. Accordingly, Plaintiff expected any settlement to be funded most, if not all, by Galena.

Plaintiff demanded cash in settlement negotiations but agreed to accept stock and then sell it for cash because of the particular facts in this case. Specifically, Galena was a small pharmaceutical company with a developmental drug portfolio so it had limited cash and lacked revenue producing assets to generate more cash. Galena's primary source of cash to fund its operations is stock sales. Thus, any cash Galena had was likely received from prior stock sales and any cash it paid to settle the case would have to be replenished with future stock sales. Galena also had substantial debt, including \$7.5 million that was still owed to the Department of Justice, and several other pending securities law suits that it was paying to defend.

On November 30, 2017, the Court ruled that the July 24, 2017 Settlement Term Sheet was an enforceable contract. Plaintiff had opposed enforcement because Defendants did not inform him of negotiations of the SELLAS Merger and Reverse Split during settlement negotiations. While Plaintiff would have negotiated for additional protections had the transactions been disclosed, the SELLAS Merger and Reverse Split have now closed and the value of the settlement consideration is fair and reasonable to the Class.

On February 12, 2018, SELLAS stock closed at \$5.47 and the average 10 day volume was 22,885.⁶⁶ According to an 8-K filed by SELLAS on January 5, 2018, there were 5,766,891 shares outstanding.⁶⁷ At an average price of \$5.47, SELLAS will have to issue 228,519 shares of stock. Plaintiff retained Garden City as a settlement administrator because it has experience in dealing with stock settlements. The Settlement Fund will be maintained at Huntington Bank, which will be responsible for selling the Settlement Stock. It will cost an estimated \$0.02 per share to sell the stock plus several dollars for each actual transaction of stock sales. Thus, in total, the estimated cost to sell the stock is less than \$10,000.

There were 213.9 million Class shares outstanding as of the 2016 Special Meeting.⁶⁸ Plaintiff cannot determine which stockholders own the shares today that were outstanding as of the 2016 Special Meeting. To avoid paying shares that did not exist at the time of the claims in this case with settlement consideration, and considering the nature of the harm, the Plan of Allocation provides for paying the Settlement Fund to holders as of the record date for the 2016 Special Meeting.

⁶⁶ The 20-day average closing price as of February 12, 2018 was \$6.37.

⁶⁷ Juray Aff. Ex. 30 at 1.

⁶⁸ These shares have since been reverse split 1-for-20 and then 1-for-30 and currently represent approximately 6.2% of the outstanding shares of SELLAS.

The Settlement also provided for Defendants to file the Validity Order declaring the Certificate Amendments valid. This lifted the invalidity cloud hanging over Galena's head. As the Court noted in *Cheniere*, validating a defective capital structure “avoid[s] potential problems down the road figuring out who can vote, who can't vote, giving opinions as to due authorization, and all kinds of nasty consequences that would flow if these shares are not validated.”⁶⁹ The Settlement required Defendants to provide the Court with an adequate record for approval of the order. On December 8, 2017, Defendants filed a Motion for Entry of Order Under 8 Del. C. § 205, a brief in support of the motion and affidavits from each of the individual Defendants in support of the motion. The Validity Order was entered on December 11, 2017. As a result, the Certificate Amendments were validated and declared effective.

C. The Difficulty and Uncertainty of Continuing the Litigation Supports the Settlement

Plaintiff signed the Settlement Term Sheet on July 24, 2017. Written and document discovery, including document production, interrogatories and requests for admission, for both Plaintiff and Defendants had been completed and depositions

⁶⁹ *In re Cheniere Energy, Inc.*, C.A. No. 9710, at 95 (Del. Ch. Mar. 16, 2015) (TRANSCRIPT).

were scheduled to begin on July 27, 2017. Defendants and third parties produced nearly 5,000 documents. Trial was scheduled to begin on August 28, 2017. Plaintiff was prepared to complete discovery and try this case, but the below theories were unlikely to produce superior benefits to the Settlement.

1. Arguments on Liability

The original complaint alleged that Defendants improperly counted broker non-votes as votes “For” certificate amendments at the 2016 Annual Meeting and 2016 Special Meeting when they should have been counted as votes “Against.” As explained above, the proxy statements for the 2016 meetings disclosed that brokers lacked discretionary voting authority on certificate amendments and these disclosures were inconsistent with the reported voting results. Had Galena actually miscounted votes, Plaintiff would have had a very strong breach of fiduciary duty case.

Defendants responded that the proxy statements’ disclosures were false because brokers had discretionary voting authority on certificate amendments and exercised that authority at the 2016 Annual Meeting and 2016 Special Meeting. Defendants made this false disclosure in proxy statements for the five Certificate Amendment votes since 2011. Defendants produced emails during the litigation from the NYSE stating that brokers had discretionary voting authority on the five

Certificate Amendments.⁷⁰ Defendants also produced voting records from Galena’s transfer agent, Broadridge, which reconciled with the reported voting results.⁷¹ Thus, as a result of developments that emerged during fact discovery, Plaintiff was left primarily with a disclosure claim on the two certificate amendments in 2016.

While Defendants conceded the disclosure was false, it would have been difficult to prove a breach of fiduciary duty that would result in a monetary payment to the Class. Plaintiff had strong arguments that the false disclosure was material and may have affected the outcome of the votes, as the certificate amendments at the 2016 Annual Meeting and 2016 Special Meeting passed by only 0.15% and 2.5% of the outstanding shares, respectively. Plaintiff also developed evidence that the “polls” on the 2016 Annual Meeting certificate amendment proposal were improperly left open at the meeting so Galena could solicit votes in favor of the proposal that night after the proposal failed to receive sufficient votes to pass at the meeting.⁷²

⁷⁰ See Juray Aff. Exs. 24 & 35.

⁷¹ See, e.g. Juray Aff. Ex. 32.

⁷² Juray Aff. Exs. 16, 17 & 18. See *State of Wis. Inv. Bd. V. Peerless Sys. Corp.*, 2000 WL 1805376, at *10-11 (Del. Ch. Dec. 4, 2000) (applying enhanced scrutiny to meeting adjournment that kept polls open for stockholder vote).

Defendants would have argued that the Certificate Amendments were not motivated by any self-interest. Rather, the additional authorized shares were necessary for Galena to sell stock in order to continue its operations. Defendants also asserted a reliance on counsel and reliance on corporate records defense. In support of the Section 205 Motion, Defendants submitted affidavits stating they were unaware that disclosures in proxy statements were incorrect, would have corrected disclosures if they had known statements were incorrect and relied on Galena's counsel and advisors to ensure disclosures were correct.⁷³ Defendants also would have argued that any breach of their fiduciary duty of care is exculpated by Galena's certificate and they cannot be held liable. Defendants would also have pointed to the imprecise language in the NYSE rules and the fact that other companies were pursuing ratification of defective corporate acts because they too had made incorrect disclosure regarding broker discretionary authority.⁷⁴

2. Argument on Damages

Even if non-exculpated liability were established, damages would have been difficult to quantify. Disclosure violations constitute *per se* irreparable harm

⁷³ See, e.g., Affidavit of Sanford Hillsberg ¶¶ 2, 4, 6, 8, 10 & 12 (Trans. ID 61446704).

⁷⁴ Exp. Motion Tr. at 22.

because the harm caused by the violation cannot be easily quantified.⁷⁵ Plaintiff analyzed Galena's stock price and would have argued that damages could be measured by a drop following certain announcements, like the effective date of the 1-for-20 reverse split. However, given the volatility of Galena's stock and its low trading price (below \$0.50 between July and November 2016), it would have been difficult to prove a change of several cents per share from one day to the next was actually the result of new information and supported compensable harm for a disclosure violation on a certificate amendment vote.

Plaintiff also analyzed the amount paid to TroyGould, the law firm Defendants contended provided legal advice regarding NYSE rules and assisted in preparing proxy statements. Defendant Hillsberg is a partner at TroyGould and TroyGould was paid approximately \$2.4 million between 2012 and 2016. This amount, however, likely included payments for services other than providing advice on NYSE rules and assisting in the drafting proxies. Moreover, TroyGould was not a defendant and even though it was at least partially responsible for the defective

⁷⁵ *In re Transkaryotic Therapies, Inc.*, 954 A.2d 346, 361 (Del. Ch. 2008) (“[T]his Court has explicitly held that a breach of the disclosure duty leads to *irreparable harm*.”) (emphasis in original); *Concord Steel, Inc. v. Wilmington Steel Processing Co., Inc.*, 2009 WL 3161643, at *14 (Del. Ch. Sept. 30, 2009) (“The extent of that harm would be difficult to quantify and, therefore, further shows the existence of irreparable harm.”).

proxy statements, Plaintiff did not have claims to support requiring Defendants to pay money directly to the Class based on TroyGould's fees.

Plaintiff also considered a remedy that involved the Defendants' shares.⁷⁶ However, Defendants' 122,479 shares were worth less than \$75,000 and their options were under water and of little value. Cancellation of shares and options would have also only provided an indirect benefit to the Class. The Settlement Fund is worth substantially more than Plaintiff could have obtained from the cancellation of Defendants' shares and options and is a direct, rather than derivative benefit for the Class.

D. The Release Is Narrow

Stockholder class action settlements frequently provide defendants with a release that is broad in both the scope of claims and individuals that are released. Plaintiff here negotiated a narrow release. The only claims released are those arising out of or related to the matters that were alleged in the case, structure of the Settlement and claims that stock is invalid due because the Certificate Amendments are invalid or did not comply with Delaware law. The release does not include "Unknown Claims," which Plaintiff pressed for after the Settlement Term Sheet was

⁷⁶ Exp. Motion Tr. at 29-30.

executed. The release excludes any federal claims and specifically carves out three pending federal securities law suits. “Released Defendant Persons” do not include Defendants agents, affiliates or advisors (other than their Delaware counsel in this litigation).

* * * * *

While the amount of cash Plaintiff obtains through the sale of the Settlement Stock to distribute to the Class may ultimately be greater or less than \$1.25 million, it will have a value of \$1.25 million when it is paid and is a fair and reasonable compromise of the claims.

III. THE REQUEST FOR ATTORNEYS' FEES AND INCENTIVE FEE TO PLAINTIFF SHOULD BE GRANTED

Plaintiff's Counsel requests the Court award attorneys' fees of 15% of the Settlement Fund. Plaintiff's Counsel also requests an award of attorney's fees of \$250,000 for the benefit conferred by the litigation in causing disclosure, a stockholder meeting and vote, and entry of the Validity Order for the five Certificate Amendments, which corrected Galena's capital structure. Defendants are required to separately pay any amount the Court awards for the validity benefits so it will not reduce the Settlement Fund. Plaintiff also requests a Plaintiff incentive fee of \$13,000.

A. The Legal Standard

The amount of an award of fees and expenses is committed to the sound discretion of the trial court.⁷⁷ The primary consideration is the benefit achieved through the litigation.⁷⁸ Secondary factors include the stage of the litigation when the matter settled, time and effort expended by counsel, the quality of the work performed, the standing and skill of the lawyers involved, the complexity of the case

⁷⁷ *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980).

⁷⁸ *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1254 (Del. 2012).

and the contingent nature of the representation.⁷⁹ The Court may also consider awards in similar cases.⁸⁰

B. The Requested Fee Award Is Reasonable

1. The Settlement Fund Fee Award

Plaintiff's Counsel seek an award of attorneys' fees of 15% of the Settlement Fund. Plaintiff's Counsel requests the 15% be applied after the Settlement Stock is sold and be net of any costs incurred in selling the Settlement Stock. This way the attorneys' fees paid for the creation of the Settlement Fund will depend on the amount of cash in the Settlement Fund, just like a cash settlement. For example, if the Settlement Stock is sold for \$1.25 million and the Settlement Fund incurs \$10,000 in fees to sell the Settlement Stock, the fee award would be \$193,500 ($[\$50,000 + \$1,250,000 - \$10,000] \times 15\%$). If the stock price increases during stock sales so the cash received is greater than \$1.25 million, the fee will be greater than \$193,500 and if the stock price falls during stock sales so the amount recovered is less than \$1.25 million, the fee will be less than \$193,500. Following the stock sales,

⁷⁹ See *Sugarland*, 420 A.2d at 149; *In re Talley Indus. Inc.*, 1998 WL 191939 at *15 (Del. Ch. Apr. 13, 1998); *In re Emerson Radio S'holder Derivative Litig.*, 2011 WL 1135006, at *6 (Del. Ch. Mar. 28, 2011).

⁸⁰ *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *3 (Del. Ch. Jan. 10, 1992).

Plaintiff will submit an administrative order to the Court that states the amount of cash in the fund.

A fee award of 15% is reasonable given the benefit achieved and the stage of the litigation. Plaintiff filed the complaint on April 27, 2017 and the Amended Complaint on June 2, 2017 and obtained an expedited 3-day trial that was scheduled to begin on August 28, 2017. A Settlement Term Sheet was signed on July 24, 2017. By that time, Plaintiff and Defendants had completed document production and Plaintiff had responded to Defendants' interrogatories and requests for admission. Depositions were scheduled to begin on July 27, 2017.

A settlement at this stage supports a fee of 15% or more of the Settlement Fund.⁸¹ Plaintiff's Counsel's request takes into account the size of the benefit, that the benefit was obtained before depositions, and that Plaintiff's Counsel is also seeking an award of attorneys' fees for the validity benefits, which will be paid separately and not out of the Settlement Fund. The litigation was expedited and the Settlement Fund was the product of hard-fought negotiation and a good result given

⁸¹ *Emerson Radio*, 2011 WL 1135006, at *4 (awarding 25% of the benefit after plaintiffs "conducted meaningful adversarial discovery."); *In re Arthrocare Corp. Stockholder Litig.*, C.A. No. 9313 at 34-35 (Del. Ch. Nov. 6, 2014) (TRANSCRIPT) (awarding 17.5% of the benefit where the case was settled in expedited proceedings before depositions).

the nature of the claims. These factors all support an award of attorneys' fees of 15%.

2. The 2017 Special Meeting and the Validity Order Benefits

There is no dispute that Plaintiff's litigation caused Defendants to recognize that disclosure in proxy statements for the five Certificate Amendments was false and materially misleading. Plaintiff also established that the 2016 Special Meeting Certificate Amendment Defendants filed with the Delaware Secretary of State was not the one stockholders voted on. Defendants further conceded that the false disclosure was material and therefore cast doubt on the validity of the Certificate Amendments and a cloud over Galena's capital structure. Indeed, the 2016 Certificate Amendments passed by a mere 0.15% and 2.5% of the outstanding shares. Accurate disclosure could have changed the outcome. Galena issued hundreds of millions of shares pursuant to the Certificate Amendments.

As a result of the litigation, Defendants (i) mailed stockholders the 30-page 2017 Special Proxy for a stockholder vote on ratification of the Certificate Amendments under Section 204 and (ii) held the 2017 Special Meeting for stockholders to vote on ratification. In the 2017 Special Meeting Proxy, Defendants disclosed:

- i what a broker non-vote is and that proxy statements for votes on certificate amendments since 2011 stated brokers lacked discretionary voting authority on certificate amendments so providing no voting instructions had the same effect as voting “Against” a proposal;⁸²
- i that prior disclosures regarding broker discretionary voting authority on certificate amendments was false, brokers had discretionary voting authority and exercised it to vote on the Certificate Amendments;⁸³
- i that Defendants counted the discretionary broker votes without informing stockholders, filed the Certificate Amendments based on those votes, issued hundreds of millions of shares and reverse split the shares 20-for-1;⁸⁴ and
- i that “past issuances of Common Stock may not be valid.”⁸⁵

The 2017 Special Meeting was held on July 6, 2017. According to an 8-K filed after the meeting, 80% of the votes cast were voted in favor of ratification of the Certificate Amendments.

⁸² Juray Aff. Ex. 25 at 4, 8, 11, 15, 19.

⁸³ *Id.* at 8, 11, 15, 19.

⁸⁴ *Id.* at 8-9, 11, 15, 19, 22-24.

⁸⁵ *Id.* at 10, 13, 16, 20, 25.

Plaintiff disputed the effectiveness of the vote at the 2017 Special Meeting to ratify defective certificate amendments pursuant to Section 204 because Defendants allowed all outstanding shares to vote, including shares of putative stock, which is prohibited by Section 204. As soon as Plaintiffs disputed the effectiveness of the 2017 Special Meeting vote, Defendants filed a Section 205 Petition.

The Court need not determine the effectiveness of the vote, because the Stipulation provided for Defendants to file the Validity Order and provide the Court with an adequate record, including a brief and affidavits, to grant the Validity Order. Defendants' brief included information about the vote at the 2017 Special Meeting, which the Court previously stated would be additional information it would want in determining whether to grant relief under Section 205.⁸⁶ The Validity Order was entered on December 11, 2017.

These benefits fully support an award of attorneys' fees of \$250,000, which must be paid separately from the Settlement Fund by Defendants. First, the disclosures in the 2017 Special Proxy and the holding of a stockholder vote alone support a fee.⁸⁷ Second, the Validity Order obtained through the litigation validates

⁸⁶ See Exp. Motion Tr. at 28.

⁸⁷ *In re Sauer-Danfoss Inc. S'holders Litig.*, 65 A.3d 1116, 1136-37 (Del. Ch. 2011) (“This Court has often awarded fees of approximately \$400,000 to \$500,000 for one or two meaningful disclosures, such as previously withheld projections or

five Certificate Amendments through which hundreds of millions of shares were issued. Third, the litigation stopped Defendants from continuing to make the same false disclosure every time Galena sought to amend its certificate to increase shares or perform a stock split. This benefit has already paid off.

Defendants incorrectly disclosed that brokers lacked discretionary authority to vote on the Reverse Split in connection with the SELLAS Merger in November 2017, but realized the mistake before it was too late. Defendants opened and then immediately adjourned the stockholder meeting without conducting any business, made a supplemental proxy statement that correctly disclosed broker discretionary voting authority, gave stockholders additional time to vote based on that new information, and then reconvened the meeting.⁸⁸ None of that would have occurred without the litigation.

undisclosed conflicts faced by fiduciaries or their advisors”); *In re PAETEC Holding Corp. S'holders Litig.*, 2013 WL 1110811, at *8 (Del. Ch. Mar. 19, 2013) (awarding \$500,000 fee for an unremarkable disclosure-only settlement of merger litigation,” where “settlement provided a single material disclosure”); *In re Nat'l City Corp. S'holders Litig.*, 2009 WL 2425389, at *6 (Del. Ch. July 31, 2009) (“meager additional disclosures” justified \$400,000 fee). *EMAK Worldwide, Inc. v. Kurz* 50 A.3d 429, 431, 433 (Del. 2012) (affirming \$2.5 million fee award for the preservation of shareholder voting rights); *San Antonio Fire & Police Pension Fund v. Bradbury*, 2010 WL 4273171, at *13 (Del. Ch. Oct. 28, 2010) (awarding \$2.9 million fee to plaintiff’s counsel for the “[protect]ion] [of] the stockholder franchise”).

⁸⁸ Juray Aff. Ex. 27 at p. vi; Juray Aff. Ex. 28 at Ex. 99.1; Juray Aff. Ex. 29.

The \$250,000 fee is far less than amounts awarded in similar cases. For example, in *Cheniere*, plaintiffs claimed that the company failed to get a sufficient number of votes to increase its incentive compensation plan by 25 million shares.⁸⁹ The case involved only one stockholder approval of one action and settled for, among other things, a validity order covering approximately 17 million shares that had been issued to company insiders and employees pursuant to the plan.⁹⁰ The Court awarded a fee of \$5.5 million, \$1 million of which was specifically allocated for the benefit resulting from the validation of 17 million shares.⁹¹ The Validity Order in this case validates five Certificate Amendments and hundreds of millions of shares, nearly all of which were issued to non-insiders.

The Court in *Cheniere* relied on *ev3*, where the Court awarded a fee award of \$1.1 million. In *ev3*, plaintiff challenged an as yet unexercised “top-up option” in a merger agreement for failure to comply with the DGCL.⁹² During expedited proceedings, the parties reached a settlement that corrected the statutory defects. The Court stressed the substantial benefits of avoiding “[d]eep faults that could have

⁸⁹ *Cheniere*, C.A. No. 9710, at 12 (Del. Ch. Mar. 16, 2015).

⁹⁰ *Id.* at 14, 18, 53, 84.

⁹¹ *Id.* at 104.

⁹² *Olson v. ev3, Inc.*, 2011 WL 704409 (Del. Ch. Feb. 21, 2011).

developed in the *ev3* corporate structure if the Top-Up Option shares were found invalidly issued and the Merger invalidly consummated.”⁹³ The Court also recognized the domino effect danger *ev3* could have faced because stock invalidly issued could have called into question subsequent acts by the surviving corporation.⁹⁴ Similarly, the litigation here avoided potential future claims that the SELLAS Merger was invalid because there were already “deep faults” in Galena’s corporate structure and many shares that voted on the Merger were invalidly issued. The litigation also caused Defendants to correct disclosure on the Reverse Split, which prevented further serious problems for the surviving entity.

In *Colfax*, plaintiffs were awarded \$375,000 for identifying post-conversion dividend payments made to former holders of convertible preferred stock that potentially violated certificate of designations for the issuance of the shares.⁹⁵ The payments were maintained by the recipients but a Section 205 action was brought at the Court’s suggestion to remedy potential flaws in the transaction.⁹⁶ The litigation here cured the invalidity of hundreds of millions of shares held by third parties and

⁹³ *Id.* at *14.

⁹⁴ *Id.* at *11.

⁹⁵ *In re Colfax Corp.*, C.A. No. 10447, at 36 (Del. Ch. Apr. 2, 2015) (TRANSCRIPT).

⁹⁶ *Id.* at 28.

therefore conferred a greater benefit than simply validating payments to insiders like in *Colfax*. In *Xencor*, Plaintiff filed a breach of fiduciary duty action which also challenged the validity of a certificate amendment and recapitalization transactions.⁹⁷ Plaintiff alleged that six transactions were invalid in several ways, including numerous defective written consents that invalidated Xencor's capital structure.⁹⁸ Plaintiff negotiated a partial settlement of the invalidity claims, preserving its other fiduciary duty claims.⁹⁹ The Court awarded \$950,000 over Defendants' objection.¹⁰⁰ Similarly, here the litigation caused the correction of multiple invalid certificate amendments and Galena's entire capital structure.

C. The Remaining *Sugarland* Factors Fully Support the Requested Fee Award

The other *Sugarland* factors fully support the requested attorneys' fee award. The case was not overly complex but was also not "cookie-cutter deal litigation."¹⁰¹ There were novel issues concerning NYSE rules on broker discretionary voting

⁹⁷ See also *In re Xencor, Inc.*, C.A. No. 10742, at 4 (Del. Ch. Dec. 10, 2015) (TRANSCRIPT).

⁹⁸ *Id.* at 11.

⁹⁹ *Id.* at 5.

¹⁰⁰ *Id.* at 55.

¹⁰¹ *In re Del Monte Foods Co. S'holders Litig.*, 2011 WL 2535256, at *13 (Del. Ch. June 27, 2011).

authority and which stockholders could vote on ratification pursuant to Section 204. Plaintiff pressed for discovery and prepared a case for trial on a highly expedited basis. Plaintiff refused to consider non-monetary settlements and instead obtained consideration that will put money into stockholders' pockets. Such relief is rarely obtained for disclosure claims and claims concerning votes on certificate amendments. Plaintiff also negotiated for a release that specifically carved out other pending securities law suits and unknown claims.

Time and effort of counsel serves as a cross-check on the reasonableness of a fee award.¹⁰² Counsel expended 419.30 hours in the litigation on an entirely contingent basis¹⁰³ through July 24, 2017 (the date the Settlement Term Sheet was executed) with a value of \$221,702.50 at current hourly rates.¹⁰⁴ In addition, counsel incurred \$4,197.05 in expenses. The total fee sought represents \$1,057.72 per hour (a Settlement Fund fee of \$193,500 and Section 204/205 Fee of \$250,000) as of July 24, 2017, which is in line with the implied hourly fee awards in other cases.

¹⁰² *Emerson Radio*, 2011 WL 1135006, at *6.

¹⁰³ See *In re First Interstate Bancorp Consol. S'holder Litig.*, 756 A.2d 353, 365 (Del. Ch. 1999), aff'd sub nom. *Bradley v. First Interstate Bancorp*, 748 A.2d 913 (Del. 2000) (TABLE).

¹⁰⁴ Juray Aff. Ex. 33 (Fee Affidavit of Kevin H. Davenport, Esq.).

Finally, the ability and reputation of counsel supports the fee requested. The Court is familiar with the record of Prickett Jones in successfully representing stockholders in this Court. The standing of opposing counsel may also be considered in determining an allowance of counsel fees.¹⁰⁵ Defendants are represented by an experienced, skillful and well-respected firm.

D. The Request for an Incentive Award to Plaintiff is Appropriate

Plaintiff and Plaintiff's Counsel seek approval of an incentive award for Plaintiff in the amount of \$13,000, payable out of any attorneys' fee award. In determining whether to grant an incentive award, this Court considers four factors set forth in *Raider v. Sunderland*, 2006 WL 75310 (Del. Ch. Jan. 5, 2006). The factors are (i) whether lead plaintiff makes unusually significant efforts; (ii) the efforts result in a direct benefit to the class; (iii) the lead plaintiff owns few shares and stands to gain a small pro-rata recovery; and (iv) notice is provided to the class.

Here, Plaintiff uncovered what initially appeared to be fraud in vote counting at annual meetings, contacted counsel and filed this plenary action. He reviewed important case documents, including the complaint and Amended Complaint and numerous discovery documents, and he responded to interrogatories and produced

¹⁰⁵ *In re Warner Commc'n's Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

documents. Plaintiff also pressed for a monetary recovery for the Class and a narrow release that excluded existing federal lawsuits. His active participation in the litigation contributed to the Settlement and Settlement Fund for the Class, of which he will recover his small pro rata share. His willingness to step forward and the resulting benefit merit an incentive award, as do the other *Raider* factors.¹⁰⁶

¹⁰⁶ See *Raider*, 2006 WL 75310, at *2; *In re Orchard Enters. Inc. S'holder Litig.*, 2014 WL 4181912, at *1, 7, 13 (Del. Ch. Aug. 22, 2014) (\$12,500 awarded to lead plaintiffs); *Forsythe v. ESC Fund Mgmt Co. (U.S.), Inc.*, 2012 WL 1655538, at *1, 8 (Del. Ch. May 9, 2012) (total of \$62,500 awarded to three plaintiffs in derivative action).

CONCLUSION

For the foregoing reasons, Plaintiff and Plaintiff's Counsel respectfully request that the Court approve the Settlement and award Plaintiff's Counsel the requested attorneys' fees and expenses and Plaintiff incentive fee.

PRICKETT, JONES & ELLIOTT, P.A.

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Dated: February 15, 2018

CERTIFICATE OF SERVICE

I, Eric J. Juray, do hereby certify on this 22nd day of February, 2018, that I caused a copy of the Public Inspection Version of Plaintiff's Opening Brief in Support of the Settlement and Petition for Award of Attorneys' Fees and Expenses to be served via eFiling through File & ServeXpress upon counsel for defendants as follows:

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EXHIBIT D

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S
PETITION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

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Dated: March 1, 2018

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
NATURE AND STAGE OF THE PROCEEDINGS	2
STATEMENT OF FACTS	3
A. The parties	3
B. Patel’s initial lawsuit casts doubt on the Company’s capital structure and prevents a strategic transaction.....	4
C. The Company tries to rectify the harm caused by Patel’s litigation.....	6
D. Patel attempts to thwart the Company’s efforts to validate its capital structure, so Galena files its Section 205 petition	8
E. The parties reach a settlement, but Patel breaches the parties’ agreement	9
F. The Court validates the charter amendments	10
ARGUMENT	10
I. The 205 Fee Application should be rejected.	12
A. Patel’s litigation “efforts” pursuant to Section 205 produced no benefit to Galena	13
B. Patel’s effort regarding the 205 Action was devoted to stopping the Company from obtaining relief.....	16
C. To the extent Patel’s counsel is rewarded for the 205 Action, any fee awarded should be reduced.....	17
II. Patel is not entitled to an incentive fee.....	18
CONCLUSION.....	22

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES</u>	
<i>In re Activision Blizzard, Inc. S'holder Litig.</i> , 124 A.3d 1025 (Del. Ch. 2015)	13, 16
<i>In re Atlas Energy, Inc. S'holders Litig.</i> , C.A. No. 5990-VCL (Del. Ch. Sept. 19, 2011) (TRANSCRIPT).....	18
<i>Baker v. Sadiq</i> , 2016 WL 4375250 (Del. Ch. Aug. 16, 2016).....	13
<i>Brinckerhoff v. Tex. E. Prods. Pipeline Co.</i> , 986 A.2d 370 (Del. Ch. 2010)	19
<i>Chen v. Howard-Anderson</i> , 2017 WL 2842185 (Del. Ch. June 30, 2017) (ORDER)	18, 19, 20
<i>DePinto v. Stafford</i> , C.A. No. 10742-CB (Del. Ch. Dec. 10, 2015) (TRANSCRIPT)	16
<i>Dow Jones & Co. v. Shields</i> , 1992 WL 44907 (Del. Ch. Mar. 4, 1992)	15
<i>Forsythe v. ESC Fund Management Co. (U.S.)</i> , 2012 WL 1655538 (Del. Ch. May 9, 2012)	20
<i>In re Fuqua Indus., Inc. S'holder Litig.</i> , 2006 WL 2640967 (Del. Ch. Sept. 7, 2006), <i>aff'd sub nom. Abrams v. Sachnoff & Weaver, Ltd.</i> , 922 A.2d 414 (Del. 2007) (TABLE)	18, 19, 20
<i>Henkel v. Battista</i> , C.A. No. 3419-VCN (Del. Ch. Dec. 16, 2008) (TRANSCRIPT)	19, 21
<i>Oliver v. Boston Univ.</i> , 2009 WL 1515607 (Del. Ch. May 29, 2009)	18, 19
<i>In re Orchard Enters., Inc. S'holders Litig.</i> , 2014 WL 4181912 (Del. Ch. Aug. 22, 2014).....	13, 15, 20

<i>In re Pride Int'l, Inc. S'holders Litig.,</i> C.A. No. 6201-VCS (Del. Ch. Nov. 23, 2011) (TRANSCRIPT)	22
<i>In re Quest Software Inc. S'holder Litig.,</i> 2013 WL 5978900 (Del. Ch. Nov. 12, 2013)	13
<i>Raider v. Sunderland,</i> 2006 WL 75310 (Del. Ch. Jan. 5, 2006)	21, 22
<i>In re Rural Metro Corp. S'holders Litig.,</i> 88 A.3d 54 (Del. Ch. 2014)	14
<i>In re Sears Hldgs. Corp. S'holder & Deriv. Litig.,</i> C.A. No. 11081-VCL (Del. Ch. May 9, 2017) (TRANSCRIPT)	19
<i>Smith, Katzenstein & Jenkins LLP v. Fidelity Mgmt. & Research Co.,</i> 2014 WL 1599935 (Del. Ch. Apr. 16, 2014)	15

Assuming that the Court holds the settlement hearing, and assuming that defendants are able to comply with the settlement stipulation,¹ defendants support the approval of the settlement and oppose certain fee awards as set forth herein.

PRELIMINARY STATEMENT

This Court, when warranted by the circumstances, will award class plaintiffs' counsel reasonable attorneys' fees for benefits achieved through litigation. But this Court should decline to reward a class plaintiff and his counsel in circumstances where (as here) their litigation efforts harm a company, they seek to prevent the company from rectifying that harm, and then they breach their contractual obligations in an effort to avoid a negotiated settlement—forcing the defendants to obtain judicial relief.

While defendants here do not object to the notion that plaintiff Suhas Patel's counsel are entitled to reasonable fees and expenses out of the common fund created by the parties' settlement, defendants do object to two of Patel's requests.

First, Patel's counsel should not be allowed to double-dip by obtaining an additional award of attorneys' fees for the purported "benefit" caused when petitioner/defendant Galena Biopharma, Inc. ("Galena" or the "Company") worked to clean up the mess that Patel's litigation created. Patel litigated one consolidated action and settled one consolidated action. Patel's counsel are seeking 15% of the

¹ *But see* Trans. ID 61741748 (letter requesting postponement of settlement hearing).

common fund created. They should not also get \$250,000 for Galena’s efforts to validate a number of (already valid) corporate actions.

Second, Patel himself should not be entitled to any special monetary award for his unremarkable efforts as a class representative—particularly considering that he breached his contractual obligations during the course of this litigation. This case is not one of the rare situations in which a class representative provided extraordinary service to the class he represented. In fact, Patel’s application makes clear that he did little more than verify his pleadings and interrogatory responses (*i.e.*, the bare minimum required under this Court’s rules). His involvement was anything but exceptional, and his request for an incentive fee should be denied.

NATURE AND STAGE OF THE PROCEEDINGS

Plaintiff Suhas Patel filed a purported class action complaint on April 27, 2017, against Galena and its fiduciaries. Trans. ID 60527689. He amended his complaint on June 2. Trans. ID 60673342.

Galena filed a petition pursuant to 8 *Del. C.* § 205 on June 5 (the “205 Action”).² Trans. ID 60679942. The two actions were consolidated on June 20. Trans. ID 60754626.

² Citations to “Compl. ¶ __” refer to Patel’s original complaint; citations to “Am. Compl. ¶ __” refer to Patel’s amended complaint; and citations to “205 Pet. ¶ __” refer to Galena’s Section 205 petition.

The parties executed a binding term sheet resolving the consolidated action on July 24. On December 6, the parties filed a stipulation of settlement after defendants obtained an order enforcing the term sheet. Trans. ID 61435598.

On February 15, 2018, Patel filed his Opening Brief in Support of the Settlement and Petition for Award of Attorneys' Fees and Expenses ("Pl. Br. at ___"). Trans. ID 61686551. The settlement hearing has been scheduled for March 15, 2018, at 2:00 p.m.

STATEMENT OF FACTS³

A. The parties

Galena is a Delaware corporation. As of the time of the settlement, its principal place of business was in San Ramon, California, and it was a biopharmaceutical company developing important hematology and oncology therapeutics.⁴

At the time the complaint was filed, defendant Stephen F. Ghiglieri was Galena's interim CEO. Defendant Mark W. Schwartz was Galena's former CEO

³ For a full recitation of the background of and corporate actions that were addressed in this litigation, defendants refer to Galena's Opening Brief in Support of Its Unopposed Motion for Entry of Order under 8 Del. C. § 205 (Trans. ID 61446704) ("205 Brief"). Defendants provide here a summary version of those facts and dispute the slanted characterizations set forth in Patel's brief.

⁴ After the settlement was reached, Galena entered into a business combination with SELLAS Life Sciences Group Ltd., has since changed its name to SELLAS Life Sciences Group, Inc., and has moved its principal place of business to New York City.

and director. Defendants William L. Ashton, Rudolph Nisi, Richard Chin, Irving M. Einhorn, Stephen Galliker, Sanford Hillsberg, and Mary Ann Gray were all Galena directors.

Patel was a Galena stockholder with a history of carping about the Company's business.

B. Patel's initial lawsuit casts doubt on the Company's capital structure and prevents a strategic transaction

On April 27, 2017, Patel filed a Verified Stockholder Class Action Complaint challenging the voting results at Galena's July 14, 2016 annual meeting of stockholders (the "2016 Annual Meeting") and Galena's October 21, 2016 special meeting of stockholders (the "2016 Special Meeting"). Patel's complaint challenged approvals by Galena's stockholders of (i) an amendment to the Company's charter to increase the number of authorized shares of common stock and (ii) a reverse stock split. In his original complaint, Patel alleged, among other things, that Galena's Board breached its fiduciary duties "by incorrectly calculating the votes" at the 2016 Annual Meeting and the 2016 Special Meeting. Compl. ¶ 57; *see also* Pl. Br. at 1, 35 (same). More specifically, Patel alleged that the Company improperly counted broker non-votes so the two proposals would receive stockholder approval. *See, e.g.*, Compl. ¶¶ 21, 34; Pl. Br. at 1-2, 35. Patel's allegations did not pan out.

Rather, the proposal at the 2016 Annual Meeting to amend the Company's

certificate of incorporation to increase the number of authorized common shares (the “2016 Amendment”) and the proposal at the 2016 Special Meeting to approve the reverse stock split (the “2016 Reverse-Split Amendment”) were both “routine” matters under NYSE Rule 452. Therefore, brokers were allowed to exercise discretionary voting authority over shares as to which the beneficial owner had not provided instructions. Both proposals challenged in Patel’s original complaint received stockholder approval, and the results of the stockholder votes were disclosed on Forms 8-K filed on July 18, 2016 and October 26, 2016, respectively.

Even though Patel’s litigation theory was inaccurate, the public existence of his litigation placed a cloud on the validity of the 2016 Amendment and the 2016 Reverse-Split Amendment and, accordingly, the Company’s entire capital structure. *See* 205 Brief at 14 (citing affidavits to that effect). The cloud on Galena’s capital structure in turn adversely affected Galena’s business.

In fact, Galena disclosed on its Amendment No. 2 to Form S-4 (filed with the SEC on November 6, 2017) certain of the adverse effects of Patel’s litigation. On page 87 of that filing, Galena disclosed that this litigation “prevented Galena from seeking to raise capital through the capital markets as well as using the Debenture to free up capital.” On pages 92-93, Galena further disclosed:

Party 1 was indicating that it would back away from further discussions with Galena due to Party 1’s need for at least \$3.5 million of cash at closing and Galena’s inability to commit to delivering that amount of net cash at closing due to, among other things, the

deteriorating liquidity position of Galena and the inability to seek capital through a financing or free up cash by using the Debenture due to the Patel litigation in Delaware. The Patel litigation was effectively causing Galena to be unable to raise any further cash through the sale of Galena Common Stock.

Recognizing the harms wrought by Patel’s lawsuit, Galena had to take action.

C. The Company tries to rectify the harm caused by Patel’s litigation

In light of Patel’s challenge to the amendments to the Company’s charter that were approved at the 2016 Annual Meeting and the 2016 Special Meeting, the Company determined that—although the votes were, again, properly counted—similar disclosure allegations could be asserted with respect to amendments approved at the annual meetings of stockholders held in 2011, 2013, and 2015 (the “2011 Annual Meeting,” the “2013 Annual Meeting,” and the “2015 Annual Meeting,” respectively).

At the 2011 Annual Meeting, the 2013 Annual Meeting, and the 2015 Annual Meeting, the Board recommended that the Company’s stockholders approve proposals to amend the Company’s charter to increase the number of authorized shares of Company common stock. Each of the proxy statements for those meetings disclosed that brokers would not have discretionary authority to vote on those proposals. But the proposals were actually “routine” matters. Therefore, votes cast by nominees/brokers at the meetings in favor of the proposals, without instruction from the beneficial owners, were counted in favor of

the proposals. Thus, the amendment proposals considered at the 2011 Annual Meeting, the 2013 Annual Meeting, and the 2015 Annual Meeting received stockholder approval.

Patel never challenged the amendments approved by the Company's stockholders in 2011, 2013, or 2015.

Nevertheless, to address the dire situation facing the Company, the Board adopted resolutions on May 30, 2017, approving under 8 *Del. C.* § 204 the ratification of the filing and effectiveness of each of the amendments approved in 2011, 2013, 2015, and 2016 (the “204 Ratification”). In connection with a special meeting to seek stockholder approval of the 204 Ratification (the “2017 Special Meeting”), the Company filed a definitive proxy statement on June 9, 2017, which disclosed that:

The failure to approve the Ratifications may leave us exposed to potential claims that (i) the votes on the Share Increase Amendments and the Reverse Stock Split Amendment did not receive requisite stockholder approval, (ii) the Share Increase Amendments and the Reverse Stock Split Amendments therefore were not validly adopted, and (iii) as a result, (a) the Company does not have sufficient authorized but unissued shares of Common Stock to permit future sales and issuances of common stock, including pursuant to the Debenture (as defined in the accompanying proxy statement), and outstanding warrants and stock options, (b) past issuances of common stock may not be valid, and (c) we would not be able to validate our total outstanding shares of common stock in connection with any strategic transaction that our Board of Directors may determine is advisable, including, without limitation, a sale of the Company, a business combination, merger or reverse merger, or a license or other disposition of corporate assets of the Company. **Any inability to issue**

common stock in the future and any invalidity of past issuances of common stock could expose us to significant claims and have a material adverse effect on our liquidity, which could result in our filing for bankruptcy or an involuntary petition for bankruptcy being filed against us.⁵

D. Patel attempts to thwart the Company’s efforts to validate its capital structure, so Galena files its Section 205 petition

Rather than support Galena’s efforts to validate each of the amendments and the reverse stock split, Patel amended his complaint and sought to enjoin the vote on the 204 Ratification. Indeed, heedless of the potential disastrous effects to the Company and its other stockholders, Patel claimed that the Company could not use Section 204 to ratify the corporate acts. Am. Compl. ¶ 60; Pl. Br. at 21-22.

At its own expense and to prevent Patel from destroying the Company, Galena filed a petition under Section 205 to request validation by this Court of the various amendments.

On June 8, this Court denied Patel’s request to schedule a preliminary injunction hearing regarding the 204 Ratification and ordered the parties to discuss a trial schedule for all of the parties’ claims. The parties scheduled a three-day trial for the end of August.

⁵ The NYSE confirmed that each of the proposals for the 2017 Special Meeting was a “routine” matter under NYSE Rule 452. Consistent with that guidance, page 5 of the proxy statement for the 2017 Special Meeting stated, “Under the rules of the NYSE, the Ratifications and the Adjournment Proposal are ‘routine’ matters. Accordingly, brokers will have . . . discretionary authority to vote on the Ratifications and the Adjournment Proposal and may vote ‘FOR’ each of the Ratifications and the Adjournment Proposal.”

The 2017 Special Meeting was held on July 6, 2017. Because each of the proposals was considered a “routine” matter, “FOR” votes cast by nominees/brokers at the 2017 Special Meeting without instruction from the beneficial owners were counted in favor of the pertinent proposal. Each of the proposals under consideration at the 2017 Special Meeting passed (garnering almost 80% of the votes cast), and the Company disclosed this fact on Form 8-K. That same day, the Company filed certificates of validation for each of the Amendments, whereupon the 204 Ratification became effective.

E. The parties reach a settlement, but Patel breaches the parties’ agreement

Galena made an expedited document production, as did several third parties (including Galena’s long-time counsel, TroyGould). Apparently recognizing from the documents that his claims were weak, Patel agreed to settle the consolidated action.

On July 24, 2017, the parties executed a binding term sheet (the “Term Sheet”) memorializing the material terms of the settlement. The Term Sheet contemplated that the parties would proceed to execute customary settlement documentation. But Patel refused.

Patel breached the Term Sheet, attempting to use the Company’s August 7 announcement of its entry into a merger agreement with non-party SELLAS Life Sciences Group Ltd. as a ploy to (at one point) *double* the settlement consideration

from Galena. On September 7, defendants moved to enforce the Term Sheet. Trans. ID 61088797. Patel’s allegations of fraud were rejected, and this Court entered an order enforcing the Term Sheet. Trans. ID 61409959. The parties finally filed the stipulation of settlement on December 6, 2017.⁶ Trans. ID 61435598.

F. The Court validates the charter amendments

The parties’ stipulation allowed Galena to obtain an order from the Court validating the charter amendments, and Galena did so. On December 11, 2017, the Court entered the order validating and declaring effective the 204 Ratification and the amendments approved at the 2011 Annual Meeting, the 2013 Annual Meeting, the 2015 Annual Meeting, the 2016 Annual Meeting, and the 2016 Special Meeting (the “Validation Order”). Trans. ID 61451222. Thus, after seven months of costly litigation, Galena was essentially returned to the same place it was before Patel filed suit.

ARGUMENT

Unlike the stockholder votes to approve the charter amendments at issue in this action, Patel’s fee applications are anything but routine. Patel and his counsel request: (i) an award of attorneys’ fees and expenses of 15% of the settlement fund (the “Class Fee Application”); (ii) \$250,000 “for the benefit conferred by the

⁶ Because the action actually settled on July 24, 2017, Patel’s counsel should not be entitled to fees for any work performed after that date. *See Pl. Br. at 51.*

litigation in causing disclosure, a stockholder meeting and vote, and entry of the “Validity Order” (the “205 Fee Application”);⁷ and (iii) an “incentive fee” for Patel of \$13,000 (the “Incentive Fee”). Pl. Br. at 41. Assuming that the Settlement is approved and the Settlement Stock is issued, any fee awarded pursuant to the Class Fee Application should be modest, but the 205 Fee Application and the Incentive Fee should be rejected wholesale.

Patel’s initial complaint—challenging proposals approved at the 2016 Annual Meeting and the 2016 Special Meeting—caused the Company to evaluate whether Patel’s allegations were accurate and whether similar challenges might be asserted against prior charter amendments. Although the underlying theory of Patel’s initial complaint was inaccurate, the Company elected to remove all doubt about its capital structure by using the proper mechanisms under Delaware law.

Any other fiduciary for Galena’s stockholders might have supported and applauded the Company’s efforts. Not Patel. He challenged Galena’s ability to use Section 204, obstructed Galena’s efforts, and breached his contractual obligations. Those actions should not be rewarded.

⁷ The “stockholder meeting and vote” that Patel now argues is a benefit of the litigation—so that his lawyers can get money—is the same “stockholder meeting and vote” that Patel claimed was a breach of fiduciary duty, alleged was “ineffective and violat[ive of] the express terms of Section 204,” and sought to enjoin. See, e.g., Am. Compl. ¶¶ 55, 83

Nor should Patel’s counsel be entitled to a double recovery. Patel concedes that “[t]he primary benefit of the Settlement is a \$1.3 million Settlement Fund consisting of \$1.25 million of Settlement Stock and \$50,000 of cash.” Pl. Br. at 31. If the settlement is approved and the Settlement Stock is issued, Patel’s counsel are entitled to a reasonable award of attorneys’ fees and expenses from the common fund. They should not also get an additional \$250,000 for the Company’s efforts in obtaining the Validity Order.

I. The 205 Fee Application should be rejected.

Patel and his counsel did nothing to remove the cloud over Galena’s capital structure that was created by Patel’s litigation. Quite the contrary, they took affirmative steps to *prevent* the Company from using Section 204 to put to rest the doubts caused by this action. As a result of that obstruction, Galena was forced to file a petition pursuant to Section 205 and then to seek and support the entry of an order under Section 205.⁸

Put differently, Patel and his counsel now seek an award of attorneys’ fees for a remedy they did not request, a remedy they actually sought to prevent, and a

⁸ Patel concedes that any benefits achieved through use of Section 204 and 205 were the direct result of the Company’s effort. *See, e.g.*, Pl. Br. at 44 (“Defendants . . . mailed . . . the 2017 Special Proxy” and “held the 2017 Special Meeting for stockholders to vote on the ratification.”); *id.* at 46 (“Defendants filed the 205 Petition.”); *id.* (“Defendants . . . file[d] the Validity Order and provide[d] the Court with an adequate record, including a brief and affidavits, to grant the Validity Order.”).

remedy ultimately awarded to Galena while Patel and his counsel sat on the sidelines. For these reasons alone, this Court should reject the 205 Fee Application.

* * *

Should the Court be inclined to consider the merits of Patel's application, this Court looks to the well-established *Sugarland* factors. Those factors are "(1) the results achieved; (2) the time and effort of counsel; (3) the relative complexities of the litigation; (4) any contingency factor; and (5) the standing and ability of counsel involved." *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1070 (Del. Ch. 2015) (citation omitted).

A. Patel's litigation "efforts" pursuant to Section 205 produced no benefit to Galena

Of the *Sugarland* factors, "Delaware courts have assigned the greatest weight to the benefit achieved in litigation." *Baker v. Sadiq*, 2016 WL 4375250, at *6 (Del. Ch. Aug. 16, 2016) (citation omitted). It is the policy of this Court to compensate plaintiffs' counsel for only "the portion of the benefit *to which they causally contributed.*" *In re Orchard Enters., Inc. S'holders Litig.*, 2014 WL 4181912, at *4 (Del. Ch. Aug. 22, 2014) (emphasis added); *In re Quest Software Inc. S'holder Litig.*, 2013 WL 5978900, at *6 (Del. Ch. Nov. 12, 2013) ("The size of the benefit conferred and *the portion of this benefit attributable to plaintiffs* are

often considered the two most important elements” (emphasis added)). Here, no actual benefit was conferred; even if one was, it was not conferred by Patel.

Patel argues that his litigation benefited the Company and its stockholders by curing the uncertainty surrounding the approval of the charter amendments at the 2016 Annual Meeting and the 2016 Special Meeting. Patel is wrong. His lawsuit created the uncertainty, and his litigation efforts did nothing to clean up the mess he created.

As Galena has made clear in this litigation, even if its proxy statements were unintentionally misleading, the requisite votes under Delaware law were obtained and the certificate amendments were neither invalid nor void. *Cf., e.g., In re Rural Metro Corp. S'holders Litig.*, 88 A.3d 54, 104 (Del. Ch. 2014) (finding that “plaintiffs proved at trial that the [merger] Proxy Statement contained materially misleading disclosures,” but not invalidating, voiding, or rescinding the merger). Therefore, under Delaware law, the Validity Order was technically unnecessary: Patel had no challenge to Galena’s counting of votes. The only reason for the Validity Order was to undo the uncertainty—and mitigate the adverse effects—caused by this litigation.

The Company initiated the 205 Action only after Patel challenged the Company’s ability to efficiently use Section 204 to remove all doubt from the Company’s capital structure. The 205 Action, therefore, was not a net benefit; it

was just necessary to overcome Patel’s adverse efforts. In fact, before Patel challenged the amendments approved in 2016, Galena and its stockholders (including Patel) had all treated those amendments as validly adopted. *See* 205 Brief at 28-29.

By validating Galena’s capital structure, the Validity Order did nothing but restore Galena to its pre-litigation reality. Galena obtained nothing from the 205 Action that it did not already have before Patel’s lawsuit—it simply regained the certainty that existed before that lawsuit. But the process of getting back to square one came at a significant cost. It certainly did not cause any “benefit” such that Patel’s counsel should be compensated.

Even if this Court is inclined to find that some benefit was secured through the 205 Action, the benefit was not attributable to Patel. By any measure, Galena—not Patel or Patel’s counsel—was the driving force behind the 205 Action. Therefore, Patel’s counsel should not be entitled to a fee for the 205 Action. *See, e.g., Dow Jones & Co. v. Shields*, 1992 WL 44907, at *3 (Del. Ch. Mar. 4, 1992) (“[P]laintiffs’ counsel are entitled to a much lesser fee than if they had been the sole cause of the . . . benefit.”); *Orchard*, 2014 WL 4181912, at *4 (reducing plaintiffs’ counsel’s fee to a percentage of the benefit attributable to their efforts); *Smith, Katzenstein & Jenkins LLP v. Fidelity Mgmt. & Research Co.*, 2014 WL 1599935, at *14-15 (Del. Ch. Apr. 16, 2014) (same).

B. Patel’s effort regarding the 205 Action was devoted to stopping the Company from obtaining relief

The time and effort expended by Patel’s counsel serves as a “cross-check on the reasonableness of a fee award.” *Activision*, 124 A.3d at 1074; *see also DePinto v. Stafford*, C.A. No. 10742-CB, at 50 (Del. Ch. Dec. 10, 2015) (TRANSCRIPT). Although a review of the time and effort of counsel is unnecessary here in light of the fact that Patel did not secure a benefit, the more important of the two “is effort, as in what plaintiffs’ counsel actually did.” *Activision*, 124 A.3d at 1074. Patel’s counsel did nothing in the 205 Action.

The Davenport Affidavit submitted with Patel’s brief provides no information regarding the efforts of Patel’s counsel regarding the 205 Action. And none of Patel’s efforts were devoted to clearing the cloud over the Company’s capital structure. To the extent that Patel or his counsel made any effort regarding the 205 Action, it was to oppose the relief that Galena ultimately obtained. Patel sought to enjoin the vote on the 204 Ratification, actively opposed the entry of a validating order under Section 205, and sought to escape the parties’ settlement Term Sheet.

Typically, when a benefit is conferred by a representative plaintiff’s litigation efforts, that benefit is something that was *sought* by the plaintiff—for example, additional disclosures or corporate governance changes. Any benefit

conferred by the Validity Order was conferred in spite of Patel, essentially over his objection, and entirely through Galena’s efforts.

For these reasons, the time and effort expended by Patel’s counsel do not support the 205 Fee Application.

C. To the extent Patel’s counsel is rewarded for the 205 Action, any fee awarded should be reduced

Should the Court determine that Patel’s counsel is entitled to a fee for the 205 Action, that fee should be reduced by the cost that Galena incurred in enforcing the Term Sheet.

Patel—purportedly acting as a fiduciary for the Company’s stockholders—negotiated and executed a binding Term Sheet resolving the litigation. He then breached that Term Sheet and refused to consummate the deal to which he had agreed. Galena, having already expended significant resources and effort in connection with the 204 Ratification (which Patel sought to enjoin), was then forced to seek enforcement of the Term Sheet from this Court. Patel thus caused further harm to Galena, delayed the resolution of this action (also increasing uncertainty and Galena’s costs), and forced Galena to expend additional resources.

Galena already paid to enforce the Term Sheet, securing the Validity Order over Patel’s objection. It should not now have to pay an *additional* sum to Patel’s counsel for the 205 Action. Rather, if the Court decides to award Patel’s counsel some fee for the 205 Action—an action that Patel did not file, prosecute, assist, or

present to the Court for approval—that fee should be reduced by the amount of attorneys’ fees and expenses that Galena incurred in enforcing the Term Sheet. *See Ex. A* (Rule 88 affidavit calculating an amount no less than \$32,500).

II. Patel is not entitled to an incentive fee.

The most surprising aspect of Patel’s brief is that this self-appointed fiduciary for the class wants to take \$13,000 from his fellow class members merely for having served as the class plaintiff. His request should be rejected entirely.

As an initial matter, Patel’s application is contrary to settled Delaware law that “representative plaintiffs typically receive no compensation for their services other than their pro-rata share of the class recovery and their reasonable out-of-pocket costs and expenses.” *In re Fuqua Indus., Inc. S’holder Litig.*, 2006 WL 2640967, at *2 (Del. Ch. Sept. 7, 2006), *aff’d sub nom. Abrams v. Sachnoff & Weaver, Ltd.*, 922 A.2d 414 (Del. 2007) (TABLE); *see also Chen v. Howard-Anderson*, 2017 WL 2842185, at *4 (Del. Ch. June 30, 2017) (ORDER) (noting the “presumption against awarding a separate payment or bonus” to lead plaintiffs); *In re Atlas Energy, Inc. S’holders Litig.*, C.A. No. 5990-VCL, at 73 (Del. Ch. Sept. 19, 2011) (TRANSCRIPT) (stating that the Court “generally . . . do[es]n’t like” plaintiff’s awards because “it creates potentially problematic incentives”).

Although plaintiffs’ awards are not prohibited as a matter of Delaware law, they are awarded in only exceptional cases and should be rare. *Oliver v. Boston*

Univ., 2009 WL 1515607, at *1 (Del. Ch. May 29, 2009); *see also Fuqua*, 2006 WL 2640967, at *2 (observing that a “plaintiff’s award” is “an additional sum intended to reward and incentivize *extraordinary service* to the class performed by the class representative” (emphasis added)). This Court generally will not grant such awards unless the plaintiff’s service as class representative was exemplary—and demonstrably so.⁹ *Henkel v. Battista*, C.A. No. 3419-VCN, at 26 (Del. Ch. Dec. 16, 2008) (TRANSCRIPT) (stating that a plaintiff’s award is inappropriate unless “the plaintiff . . . accomplished or contributed something specific, concrete and material”); *In re Sears Hldgs. Corp. S’holder & Deriv. Litig.*, C.A. No. 11081-VCL, at 33 (Del. Ch. May 9, 2017) (TRANSCRIPT) (denying a plaintiff’s award because the Court “didn’t see anything in this record warranting” such award).

A plaintiff’s award is generally inappropriate unless “(1) lead plaintiff makes *unusually significant efforts* monitoring the litigation; (2) the efforts result in a direct benefit to the class; (3) the lead plaintiff owns so few shares that she stands to gain only a small pro-rata recovery as a member of the class; and (4)

⁹ This Court has held that a plaintiff’s award “may be justified where the named plaintiff has devoted a *significant* amount of time and effort to litigating the case.” *Chen*, 2017 WL 2842185, at *4 (emphasis added). And when the Court says significant, it really means *significant*. *See, e.g., Oliver*, 2009 WL 1515607, at *1 (granting a plaintiff’s award for 2,000 hours of involvement, including depositions, attendance at trial, assistance with document review, and extensive interaction with counsel); *Brinckerhoff v. Tex. E. Prods. Pipeline Co.*, 986 A.2d 370, 374, 396 (Del. Ch. 2010) (granting a plaintiff’s award for 1,000 hours of involvement in a “significant role in the litigation”).

notice is provided to the class.” *Fuqua*, 2006 WL 2640967, at *2 (emphasis added). “The decision of whether to grant an incentive award to a named plaintiff . . . is within [this C]ourt’s discretion.” *Chen*, 2017 WL 2842185, at *3 (citation omitted).

The two paragraphs in Patel’s brief dedicated to this request demonstrate that Patel did little more than verify his pleadings and his interrogatory responses—that is, little more than is required under the Chancery Court Rules. *See* Pl. Br. at 52-53. Patel also filed an affidavit in support of his request, one day late.¹⁰ Patel did not give a deposition, he did not attend any deposition, and he certainly did not travel to Delaware to give trial testimony.

Patel cited three cases in his application. None of those three is comparable to the situation here. In *Orchard*, 2014 WL 4181912, at *7, co-lead plaintiffs were awarded \$12,500 for a benefit worth more than \$9 million. In that case, the co-lead plaintiffs spent “approximately ninety-five hours and dedicated four different employees to involvement in this case—including having its Chief Operating Officer prepare and sit for a Rule 30(b)(6) deposition.” Trans. ID 55637321, at 49 (settlement brief). The three plaintiffs in *Forsythe v. ESC Fund Management Co. (U.S.)*, 2012 WL 1655538, at *8 (Del. Ch. May 9, 2012), “made substantial contributions”: one “traveled to Wilmington four times, testified in the prior books

¹⁰ Patel’s failure to comply with this Court’s scheduling order is reason alone to reject his unwarranted request.

and records action, was deposed in that action and again in this action, and attended both mediation sessions”; one “traveled to New Jersey to meet with counsel and to Wilmington to be deposed”; and one “traveled to Wilmington for the first mediation session.” In *Raider v. Sunderland*, 2006 WL 75310, at *2 (Del. Ch. Jan. 5, 2006), the Court granted a plaintiff’s award for 205 hours of involvement over five years of litigation that increased the value of the final settlement by \$4,500,000—one third of the total value.

Patel’s so-called efforts do not come close these litigation efforts. Other cases—involving more significant effort than Patel exhibited—rejected incentive fees. And Patel cited *no* case in which a class plaintiff received an incentive fee where that plaintiff breached a binding settlement term sheet and had to be ordered to perform.

In *Henkel*, this Court denied lead plaintiff’s application for an incentive award because his service was “insufficient . . . to justify an award of separate compensation to him.” *Henkel*, C.A. No. 3419-VCN, at 26. There, the plaintiff was an experienced industry actor who contributed “40 or 50” hours of work throughout the litigation. *Id.* Patel failed to identify how many hours he spent on this case. The information Patel did provide suggests that he spent only the minimal time necessary to verify pleadings and discovery responses. *See* Patel Aff. (Trans. ID 61698936).

Likewise, in *In re Pride International, Inc. Shareholders Litigation*, then-Chancellor Strine declined to grant a plaintiff's award because the lead plaintiff's service to the class was not "anything out of the ordinary, other than taking a deposition." C.A. No. 6201-VCS, at 21 (Del. Ch. Nov. 23, 2011) (TRANSCRIPT). In so declining, the Court opined that a plaintiff's award is not justified "absent something really unusual."¹¹ *Id.* The same result is warranted here; Patel did not sit for a deposition or even attend the hearing on defendants' motion to enforce the Term Sheet.

Simply serving as a class plaintiff (and providing the verifications required by the Chancery Court Rules) should not suffice for the award of an incentive fee. If so, *every* representative plaintiff would be entitled to special compensation. Patel has failed to show that his effort in prosecuting this litigation was so unusually significant as to rebut the presumption against plaintiff's awards. For these reasons, this Court should reject the application for an Incentive Fee.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny the 205 Fee Application and the Incentive Fee.

¹¹ The *Pride* Court seemed to differentiate between an *award* for exemplary service as class representative and a *fee* for acting as class representative. See *Pride*, C.A. No. 6201-VCS, at 21 (declining plaintiff's application for a plaintiff's award and stating "[t]his is really a fee"). Notably, Patel's own brief labels his request as a "fee." See Pl. Br. at 41 ("Plaintiff also requests a Plaintiff *incentive fee* of \$13,000." (emphasis added)).

/s/ Blake Rohrbacher

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Schwartz, and Stephen F. Ghiglieri*

Words: 4799

Dated: March 1, 2018

EXHIBIT A

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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

RULE 88 AFFIDAVIT OF BLAKE ROHRBACHER, ESQ.

STATE OF DELAWARE)
) ss:
COUNTY OF NEW CASTLE)

Blake Rohrbacher, being duly sworn, deposes and says:

1. I am an attorney at law of the State of Delaware with the law firm of Richards, Layton & Finger, P.A., One Rodney Square, Wilmington, Delaware 19801.
2. I am counsel for Defendants Galena Biopharma, Inc., William L. Ashton, Rudolph Nisi, Richard Chin, Irving M. Einhorn, Stephen Galliker, Sanford Hillsberg, Mary Ann Gray, Mark W. Schwartz, and Stephen F. Ghilieri (collectively, "Defendants") in the above-captioned matter and am fully competent to make this affidavit. I submit this affidavit pursuant to Chancery Court Rule 88 in support of Defendants' Brief in Opposition to Plaintiff's Petition for an Award of Attorneys' Fees and Expenses.

3. I reviewed my firm's time and expense records in this matter. In particular, I reviewed the expenses and attorneys' fees incurred by my firm in

connection with Defendants' efforts to enforce the binding term sheet executed by the parties in the above-captioned matter on July 24, 2017 (the "Term Sheet").

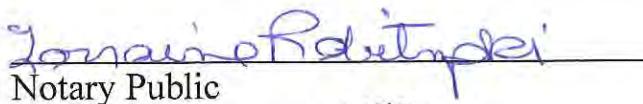
4. Between August 14, 2017 (the date on which plaintiff refused to comply with the Term Sheet) and November 30, 2017 (the date on which the Court entered its order enforcing the Term Sheet), Defendants incurred expenses of no less than \$500.00 and attorneys' fees of no less than \$32,000.00. In total, Defendants incurred expenses and attorneys' fees of no less than \$32,500.00 in enforcing the Term Sheet.

5. I hereby certify in good faith that the fees and expenses incurred were reasonable and were incurred in connection with Defendants' efforts to enforce the Term Sheet.



Blake Rohrbacher (#4750)
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SWORN AND SUBSCRIBED before me
this 1st day of March, 2018.



Lorraine Robitzski
Notary Public



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 1, 2018, a copy of the foregoing was served by File & ServeXpress on the following attorneys of record:

Ronald A. Brown, Jr., Esquire
Kevin H. Davenport, Esquire
Eric J. Juray, Esquire
Prickett, Jones & Elliott, P.A.
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/s/ John M. O'Toole
John M. O'Toole (#6448)