



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MICHAEL DEPINTO, On Behalf of  
Himself and All Others Similarly  
Situating,

Plaintiff,

v.

JOHN S. STAFFORD, III, BASSIL I.  
DAHIYAT, JONATHAN FLEMING,  
ATUL SARAN, HAROLD R. WERNER,  
BRUCE L.A. CARTER, CHARLES  
STEWART, and DONALD C. FOSTER,

Defendants.

---

IN RE XENCOR, INC.  
SHAREHOLDERS LITIGATION

Consol. C.A. No. 10742-CB

**STIPULATION AND AGREEMENT OF  
COMPROMISE, SETTLEMENT AND RELEASE**

This Stipulation and Agreement of Compromise, Settlement and Release (together with the exhibits hereto, the “Stipulation”) is entered into as of November 21, 2016, by and among Xencor, Inc., John S. Stafford, III, Bassil I. Dahiyat, Jonathan Fleming, Atul Saran, Harold R. Werner, Bruce L.A. Carter, Charles Stewart, Donald C. Foster, and Plaintiff (collectively, the “Parties” and individually a “Party”) in connection with the above-captioned action pending before the Court of Chancery of the State of Delaware (the “Court of Chancery” or

the “Court”). This Stipulation states all of the terms of settlement and resolution of this matter and is intended by the Parties to fully and finally compromise, resolve, discharge and settle the Released Claims, as defined herein, subject to the approval of the Court. 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 June 12, 2013, Xencor, Inc. (“Xencor” or the “Company”) initiated a multi-part recapitalization of the Company (the “Recapitalization”).

B. Under the terms of the Recapitalization plan, Xencor, among other things, increased the Company’s authorized common and preferred stock, created a new Series A-1 Preferred Stock (“A-1 Stock”) and reclassified each series of existing Series A through E Preferred Stock into a fraction of a share of A-1 Stock (the “Reclassification”). Xencor also converted outstanding convertible promissory notes (the “Notes”) with a face value (excluding interest) of approximately \$15.1 of principal into A-1 Stock at a conversion price of \$0.33, so that 3.03 shares of A-1 Stock were issued for each \$1 principal of the Notes (the “Note Conversion”).

C. In connection with the Reclassification and Note Conversion, the Company also conducted a financing by selling approximately \$10 million of

A-1 Stock (the “A-1 Stock Financing”). Specifically, the Company sold 5,586,510 shares of A-1 Stock to certain of its major investors including John Stafford III and his affiliates; MedImmune Ventures, Inc. and its affiliates; Oxford Biosciences Partners V, LP and its affiliates; and HealthCare Ventures VIII, LP and its affiliates (collectively, the “Major Investors”). The Major Investors were incentivized to participate in the financing pro-rata pursuant to a pay-to-play provision approved by the Company’s Board. Despite this, Novo Nordisk A/S declined to participate and its equity position in the Company was significantly diluted pursuant to the pay-to-play provision. The Company’s minority shareholders were offered the opportunity to participate pro-rata in the A-1 Stock Financing but were not subjected to the pay-to-play provision. The offering to the minority shareholders was to take place after the offering to the Major Investors closed. The Reclassification, the Note Conversion and the A-1 Stock Financing involving the Major Investors were completed by June 13, 2013.

D. Thereafter, on July 18, 2013, the Company sent an offering memorandum to its minority shareholders seeking, but not requiring, participation in the A-1 Stock Financing pro-rata. Minority shareholders were also offered the opportunity to purchase additional shares of A-1 Stock to the extent the Major Investors declined to participate on a pro-rata basis, leaving unsubscribed shares of A-1 Stock.

E. In August 2013, Xencor retained underwriters in connection with a potential initial public offering of its common stock.

F. On September 11, 2013 Xencor filed a confidential registration statement with the Securities and Exchange Commission.

G. On or about September 23, 2013, Xencor closed the sale of 1,766,430 shares of A-1 Stock to all participating Company stockholders other than the Major Investors.

H. On November 1, 2013, Xencor effected a 3.1-for-1 reverse stock split of its common stock.

I. On December 3, 2013, Xencor closed its initial public offering (“IPO”) selling 14,639,500 shares of its common stock for \$5.50 per share. In connection with the IPO, all of Xencor’s outstanding shares of preferred stock on September 30, 2013, including the A-1 Stock, were converted into shares of Xencor common stock on a 1-for-1 basis.

J. On or about September 10, 2014, Michael DePinto (“DePinto” or “Plaintiff”) and another Xencor stockholder, pursuant to 8 *Del. C.* § 220 (“Section 220”), made a demand on Xencor to inspect certain of its books and records with regard to the Recapitalization. Xencor initially refused the Section 220 demand subject to Plaintiff providing additional information to support the demand. On November 26, 2014, Plaintiff and the other demanding stockholder

filed in the Court of Chancery a complaint under Section 220. The parties thereafter resolved the Section 220 action and Xencor produced to Plaintiff certain books and records with regard to the Recapitalization.

K. After reviewing and analyzing the documents produced in connection with the Section 220 action, as well as other documents and information regarding the Recapitalization provided by Plaintiff and others, on March 6, 2015, Plaintiff filed a Verified Class Action Complaint for Breach of Fiduciary Duties (Count I) and Invalidity of Director and Stockholder Written Consents (Count II) (the “Class Action Complaint”) in an action captioned *DePinto v. Stafford, et al.*, C.A. No. 10742-CB (the “Class Action” or “Action”). DePinto filed the Class Action seeking an award of monetary and equitable relief for the alleged expropriation of value sustained by Xencor’s preferred stockholders (other than the defendants and their related entities) due to the Recapitalization, interest, an award of fees and costs and other relief deemed to be just and appropriate.

L. The Class Action Complaint sought certification of a class consisting of all former holders of Xencor Series A through E preferred stock whose shares were converted to A-1 Stock in the Recapitalization (other than the defendants and any person, firm, trust, corporation, or other entity related to, or affiliated with, any defendant), and alleged that defendants John S. Stafford, III,

Bassil I. Dahiyat, Jonathan Fleming, Atul Saran, Harold R. Werner, Bruce L.A. Carter, Charles Stewart, and Donald C. Foster breached their fiduciary duties in connection with the Recapitalization. The defendants listed in this Paragraph shall be collectively referred to herein as “Defendants” and individually as a “Defendant.”

M. Count II of the Class Action Complaint challenged the validity of certain of the director and stockholder written consents that authorized the Recapitalization. Count II also alleged that Xencor failed to provide notice to shareholders of amendments made to the Company’s certificate of incorporation in November and December 2013.

N. On June 10, 2015, Xencor brought a verified petition for relief under 8 *Del. C.* § 205 and a Motion to Expedite seeking judicial ratification to validate the corporate acts challenged in Count II of the Class Action Complaint. The Court then directed Xencor to re-file its petition as a counterclaim in the Action. Xencor filed its Verified Counterclaim on July 14, 2015. Plaintiff filed an answer to the Verified Counterclaim on August 3, 2013.

O. On October 5, 2015, the Parties entered into and filed a Stipulation of Partial Settlement between and among Plaintiff, on behalf of himself only, and Defendants, pursuant to which Plaintiff consented to entry of an Order ratifying the corporate acts challenged in Count II of the Class Action. On

December 14, 2015, the Court entered an Order and Partial Final Judgment in accordance with the terms set forth in the Stipulation of Partial Settlement.

P. On December 14, 2015, the Parties entered into and filed a Stipulation and (Proposed) Order Governing Case Schedule. On December 15, 2015, the Court entered a revised Scheduling Order (the “December 15, 2015 Order”).

Q. Pursuant to the December 15, 2015 Order, the Parties engaged in extensive discovery throughout late-2015 and 2016. The Parties engaged in multiple rounds of written discovery, Plaintiff served nine (9) subpoenas, the Parties and third-parties produced over 25,000 documents, Class Counsel deposed ten (10) witnesses, and Defendants’ counsel deposed Plaintiff.

R. On January 6, 2016, Plaintiff filed his Motion for Class Certification. After briefing and oral argument, on June 21, 2016, the Court, pursuant to Court of Chancery Rule 23(a) and 23(b)(1), certified a class of all former holders of Series A through E preferred stock of Xencor whose shares were converted to A-1 Stock in Xencor’s 2013 Recapitalization, excluding Defendants and any person, firm, trust, corporation or other entity related to, or affiliated with, any Defendant (the “Class”). The Court also certified Plaintiff as representative of the Class and the law firms of Prickett, Jones & Elliott, P.A. and Kessler Topaz Meltzer & Check, LLP as Class Counsel.

S. On July 19, 2016, the Court entered a Third Revised Stipulation and (Proposed) Order Governing Case Schedule that provided, among other things, for a four day trial to commence on March 7, 2017.

T. On September 27, 2016, the Parties and/or their representatives attended a voluntary mediation session before Delaware Court of Chancery Vice Chancellor Joseph R. Slights III to attempt to negotiate a global settlement of the Action. During the September 27 mediation session, the Parties agreed to settle Plaintiff's claims.

U. On September 28, 2016, a term sheet incorporating the terms of an agreement to fully and finally settle the claims asserted in the Action was signed by counsel for Plaintiff and Defendants.

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

W. The entry by the Parties 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.



X. Class Counsel has conducted an investigation and pursued and obtained significant written discovery as well as substantial party and non-party discovery, including ten (10) depositions, relating to the claims and the underlying events alleged in the Class Action. Class Counsel has analyzed the evidence adduced in its investigation and through discovery, and has researched the applicable law with respect to Plaintiff and the Class. In negotiating and evaluating the terms of this Stipulation, Class Counsel considered the legal and factual defenses to Plaintiff's claims. Class Counsel has received sufficient information to evaluate the merits of this Settlement. Based upon its evaluation, Class Counsel has determined that the Settlement set forth in this Stipulation is fair, reasonable and adequate and in the best interests of all Class Members, and that it confers substantial benefits upon the Class Members.

Y. Defendants and Xencor deny any and all allegations of their respective wrongdoing, fault, liability or damage whatsoever, and each of the Defendants and Xencor denies that he or it engaged in, committed or aided or abetted the commission of any breach of duty, wrongdoing or violation of law. Entry into the Stipulation does not constitute an admission by Defendants that they breached their fiduciary duties.

Z. Defendants and Xencor 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. Nothing in this Stipulation shall be construed as an admission by any of the Defendants or Xencor of any kind, including admissions as to wrongdoing, fault, liability, or damages whatsoever, or as evidence as to any of the foregoing. Nothing in this Stipulation shall be construed as an allocation of fault or liability between or among any of the Defendants or Xencor.

**NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED,** by Plaintiff, for himself and on behalf of the Class, by Defendants and by Xencor that, subject to the approval of the Court and pursuant to Delaware Court of Chancery Rule 23 and the other conditions set forth herein, for the good and valuable consideration set forth herein and conferred on Plaintiff and the Class, the Action against Defendants and Xencor shall be finally and fully compromised, settled and dismissed with prejudice, and that the Released Claims shall be finally and fully compromised, settled, released and dismissed with prejudice as to the Released Parties, as defined herein, in the manner and upon the terms and conditions hereafter set forth.

**A. Definitions**

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

a. “Account” means the bank or other account administered by the Claims Administrator into which the Settlement Amount shall be deposited. The funds deposited into the Account shall be invested in instruments backed by the full faith and credit of the United States Government or an agency thereof, or if the yield on such instruments is negative or the amount is less than \$250,000, in an account fully insured by the United States Government or an agency thereof.

b. “Claimant” means a Class Member who submits a Claim Form to the Claims Administrator seeking to share in the proceeds of the Net Settlement Fund.

c. “Claim Form” or “Proof of Claim Form” means the proof of claim form, as approved by the Court, that will be mailed to all Class Members and that a Claimant must certify and submit to the Claims Administrator in order for that Claimant to be eligible to share in a distribution of the Net Settlement Fund and which shall be substantially in the form annexed hereto as Exhibit D.

d. “Claims” means 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, or may hereafter exist, including known claims and Unknown Claims, whether direct, derivative, individual, class, representative, legal, equitable or of any other type, or in any other capacity, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including but not limited to any claims under state securities law, or under state disclosure law, or any claims that could be asserted derivatively on behalf of Xencor.

e. “Claims Administrator” means Strategic Claims Services.

f. “Class Counsel” means the law firms of Prickett, Jones & Elliott, P.A. and Kessler Topaz Meltzer & Check, LLP.

g. “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed pursuant to the Plan of Allocation referred to in Section B of this Stipulation and attached hereto as Exhibit E.

h. “Class Member” means a member of the Class.

i. “Effective Date” means the first business day following the date the Judgment becomes Final. The finality of the Judgment shall not be

affected by any proceeding (including appeals) regarding solely an application for attorneys' fees and expenses or any other awards or approval of any Plan of Allocation of the Net Settlement Fund.

j. "Final" means with respect to any judgment or order that the judgment or order is finally affirmed on appeal or is no longer subject to appeal and the time for any petition for reargument, appeal, or review, by certiorari or otherwise, has expired.

k. "Defendants" means John S. Stafford, III, Bassil I. Dahiyat, Jonathan Fleming, Atul Saran, Harold R. Werner, Bruce L.A. Carter, Charles Stewart, and Donald C. Foster.

l. "Judgment" means the Final Order and Judgment to be entered in the Action substantially in the form attached hereto as Exhibit C.

m. "Net Settlement Fund" means the Settlement Fund less any Taxes, and Tax Expenses (as defined below), attorneys' fees, expert fees, notice and administration costs and any other expenses approved by the Court.

n. "Person" means an individual, natural person, corporation, partnership, limited liability company, limited partnership, joint venture, association, joint stock company, estate, legal representative, trust, government (or any political subdivision, department, or agency thereof), and any other type of business or legal entity.

o. “Released Defendants’ Claims” means any Claims (including “Unknown Claims”) that have been or could have been asserted in the Action or any forum by Defendants or Xencor or their respective successors and assigns against Plaintiff, the Class Members, or any of their respective counsel, which arise out of or relate in any way to the institution, prosecution, settlement or dismissal of the Action; provided, however, that the Released Defendants’ Claims shall not include any claims relating to the enforcement of the Settlement.

p. “Released Defendant Parties” means (i) Xencor and the named Defendants, (ii) any of their families, parent entities, controlling persons, associates, affiliates, or subsidiaries; and (iii) each and all of their respective past or present officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, insurers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors, or assigns of (i) and (ii) above.

q. “Released Plaintiff’s Claims” means any and all manner of Claims (including “Unknown Claims”) that were asserted by Plaintiff on its own behalf and/or on behalf of all other Class Members in the Action, or could have

been or in the future might be asserted by Plaintiff, any Class Member or the Class in the Class Action or in any other court, tribunal, forum or proceeding that are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, events, conduct, decisions, negotiations, fairness opinions, transactions, occurrences, statements, representations, misrepresentations, omissions, disclosures, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that relate in any way to or concern the Recapitalization, the Reclassification, or the Note Conversion, including, without limitation, those that were alleged, asserted, or claimed in the Class Action or which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, the events or conduct at issue in the Class Action, provided, however, that the Released Claims shall not include any claims for the enforcement of the Settlement.

r. “Released Plaintiff Parties” means (i) Plaintiff, (ii) all Class Members, and (iii) Class Counsel and any of the foregoing’s respective families, parent entities, controlling persons, associates, predecessors, successors, affiliates, or subsidiaries, and each and all of their past or present officers, directors, executives, shareholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, entities providing fairness opinions,

underwriters, brokers, dealers, insurers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors, and assigns.

s. “Released Claims” means the Released Defendants’ Claims and the Released Plaintiff’s Claims.

t. “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

u. “Settlement” means the settlement contemplated by this Stipulation.

v. “Settlement Amount” means a total amount of two million three hundred seventy-five thousand dollars in cash (\$2,375,000).

w. “Settlement Fund” means the fund consisting of the Settlement Amount deposited in the Account.

x. “Settlement Hearing” means the hearing to be held by the Court to determine, whether Plaintiff and Class Counsel have adequately represented the Class and whether the proposed Settlement should be approved as fair, reasonable and adequate, whether any objections to the Settlement should be overruled, whether all Released Claims should be dismissed with prejudice as against the Released Parties, whether an Order and Judgment approving the



Settlement should be entered, whether and in what amount any award of attorneys' fees and/or expenses should be paid to Class Counsel out of the Settlement Fund, and whether an incentive award should be paid to Plaintiff.

y. "Unknown Claims" means any and all claims that otherwise fall within the definition of Released Plaintiff's Claim and that Plaintiff or any Class Member does not know or suspect exists in his, her or its favor at the time of the release of the Released Claims as against the Released Defendant Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement, and any and all claims that otherwise fall within the definition of Released Defendants' Claims and that any Defendant or Xencor does not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims as against the Released Plaintiff Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement. With respect to any of the Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiff, Xencor and each Defendant shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States or other jurisdiction, or principle of common law,

which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

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

The Parties acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Parties, and by operation of law the other Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge, and the other Class Members and other Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for and was a key element of the Settlement and was relied upon by the Parties in entering into this Stipulation.

**B. Settlement Consideration and Administration**

2. In consideration for the full and final settlement and dismissal with prejudice of, and the release of, any and all Released Claims, Defendants shall cause to be paid a total of \$2,375,000 for the benefit of the Class as follows:

a. within ten (10) business days after entry of an Order in the form attached hereto as Exhibit A (the “Scheduling Order”), the Defendants shall contribute, or cause their relevant insurers to contribute, twenty thousand dollars (\$20,000) to the Settlement Fund, provided that Class Counsel has timely provided properly executed W-9 forms and the wire transfer information necessary to facilitate a transfer of funds;

b. within twenty (20) business days after entry of the Judgment, the Defendants shall contribute, or cause their relevant insurers to contribute, the balance of the Settlement Amount to the Settlement Fund (the “Settlement Funding Date”). No Defendant nor any Released Party shall have any obligation to pay or bear any additional amounts, expenses, costs, damages, or fees to or for the benefit of Plaintiff or any Class Members in connection with this Settlement, including but not limited to attorneys’ fees and expenses for any counsel to any Class Member, or any costs of notice or settlement administration or otherwise.

3. Class Counsel shall retain the Claims Administrator, which shall, subject to the supervision, direction and approval of the Court, oversee administration and distribution of the Settlement Fund. The Claims Administrator shall discharge its duties under Class Counsel's supervision and subject to the jurisdiction of the Court. No Released Defendant Party shall have any responsibility whatsoever for the administration of the Settlement, and no Released Defendant Party shall have any liability whatsoever to any person, including, but not limited to, Plaintiff and the Class Members, for fees or expenses charged by the Claims Administrator or otherwise in connection with any such administration.

4. Within fourteen (14) days after entry of the Scheduling Order, Defendants shall provide the Claims Administrator information sufficient to identify any Person, firm, trust, corporation or other entity related to, or affiliated with, any Defendant that held shares of Series A through E Preferred Stock to enable the Claims Administrator to exclude such persons from receipt of any payment from the Net Settlement Fund.

5. Under the supervision of Class Counsel, the Claims Administrator shall provide notice of the proposed Settlement and distribute the Settlement Fund as set forth in this Section B, as approved by the Court of Chancery.

6. Class Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all reasonable costs related to distribution of the notice and other administrative costs actually and reasonably incurred up to \$20,000.00.

7. The Net Settlement Fund shall be allocated among all Class Members pursuant to the Plan of Allocation attached hereto as Exhibit E. Class Members seeking payment from the Net Settlement Fund must submit timely, valid and properly executed Claim Forms to the Claims Administrator. Class Members who fail to submit timely, valid and properly executed Claim Forms will be barred from participating in the distribution of the Net Settlement Fund but otherwise will be bound by all of the terms of the Stipulation, including the terms of any final orders or judgments entered and the releases given to Defendants and the other Released Parties.

8. Neither Defendants nor any other Released Defendant Party shall take any position on or have any involvement with the proposed Plan of Allocation so long as the proposed Plan of Allocation remains as reflected herein. Any modification of the proposed Plan of Allocation by the Court shall not affect the enforceability of the Stipulation, provide any of the Parties with the right to terminate the Settlement, impose an obligation on any of the Defendants or the other Released Defendant Parties to increase the consideration paid in connection

with the Settlement or affect or delay the binding effect, effectiveness or finality of the Judgment and the release of the Released Claims. Finality of the Settlement shall not be conditioned on any ruling by the Court or any appellate court solely concerning any plan of allocation. Any Court order regarding a modification of the Plan of Allocation shall be posted on a website established for the Settlement maintained by the Claims Administrator.

9. Prior to the distribution of the Net Settlement Fund, Class Counsel shall present for the approval of the Court a final accounting of the receipts and disbursements from the Settlement Fund and the proposed Class Distribution Order of the Net Settlement Fund.

10. The Net Settlement Fund shall be distributed to Class Members as set forth in the Plan of Allocation only after the Effective Date and after: (i) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (ii) all costs of administration, Taxes and Tax Expenses have been paid or reserved; and (iii) the Court has approved the aforementioned accounting and Class Distribution Order.

11. At the time of distribution, Class Counsel shall direct the Claims Administrator to make distributions from the Net Settlement Fund to each Class Member in accordance with the Class Distribution Order.

12. Payment from the Settlement Fund made pursuant to and in the manner set forth herein shall be deemed conclusive compliance with this Stipulation. No Class Member shall have any claim against Plaintiff, Class Counsel, Defendants, Xencor, the Released Parties, the Claims Administrator, or any of their counsel, based on the distributions made substantially in accordance with this Stipulation, the Plan of Allocation and/or orders of the Court. The Released Parties shall have no liability whatsoever for the investment of the Settlement Fund, notice to the Class, the administration of the Settlement Fund, the calculation of any distribution from the Settlement Fund, or the nonperformance of the Claims Administrator, nor shall they have any liability whatsoever for the payment or withholding of Taxes (including interest and penalties) owed by the Class Members or any losses incurred in connection therewith, except as otherwise provided in this Stipulation.

13. Upon the occurrence of the Effective Date, none of the Defendants, nor any person or entity who or which paid any portion of the Settlement Fund on their behalf, shall have any right to the return of the Settlement Fund or any portion thereof.

14. All checks shall become stale 120 days from the date of issuance, at which time all funds remaining in the Net Settlement Fund for such stale checks shall be irrevocably forfeited. If, after reasonable and diligent efforts

have been made to distribute the Net Settlement Fund to Class Members, any balance remains in the Net Settlement Fund six (6) months after the distribution, that balance shall, if economically feasible, be proportionately reallocated to Class Members who have cashed their distribution check under the same terms as the Plan of Allocation. Thereafter, any balance remaining in the Net Settlement Fund shall escheat to the State of Delaware.

15. Without affecting the finality of the Judgment in any way, the Parties agree to the Court's retention of continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund and the Net Settlement Fund; (c) the Class Members for all matters relating to the Action; and (d) any motion for a Class Distribution Order.

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

16. Pursuant to the Judgment, upon the Effective Date and the occurrence of all of the other events referenced in Paragraph 20 below, the Action shall be dismissed with prejudice, with each Party to bear its own costs and expenses, except as otherwise expressly provided in this Stipulation.

17. Pursuant to the Judgment, upon the Effective Date and the occurrence of all of the other events referenced in Paragraph 20 below, Released Plaintiff Parties and their respective successors-in-interest, successors,



predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, in their capacities as such, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, shall be deemed by operation of law to have fully, finally and forever released, settled and discharged the Released Defendant Parties and all of their respective counsel from and with respect to the Released Plaintiff's Claims, and shall forever be barred and enjoined from commencing, instigating, instituting, maintaining, prosecuting, asserting, or participating in any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, or other forum of any kind, whether individual, class, derivative, representative, legal, equitable, or in any other capacity, asserting any of the Released Plaintiff's Claims against any of the Released Defendant Parties.

18. Pursuant to the Judgment, upon the Effective Date and the occurrence of all of the other events referenced in Paragraph 20 below, Defendants, Xencor and their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns or transferees, in their capacities as such, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, and any and all of the other Released Defendant Parties, shall be deemed by operation of law to have fully, finally and forever released, settled and

discharged each and every one of the Released Defendants' Claims, and shall forever be barred and enjoined from commencing, instituting or prosecuting any of the Released Defendants' Claims, against any of the Released Plaintiff Parties.

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

19. As soon as practicable after this Stipulation has been executed, Plaintiff, Xencor and Defendants shall jointly apply to the Court for entry of the Scheduling Order, among other things: (a) providing for the mailing to the Class Members of the Notice of Proposed Settlement of Class Action, Settlement Hearing and Right to Appear (the "Notice"), substantially in the form attached hereto as Exhibit B, (b) approving the Notice, substantially in the form attached hereto as Exhibit B, (c) scheduling the Settlement Hearing to consider: (i) the proposed Settlement, (ii) the joint request of the Parties that the Judgment be entered substantially in the form attached hereto as Exhibit C, (iii) Plaintiff's application for attorneys' fees and expenses, including the incentive payment to Plaintiff described in Section F below, and (iv) any objections to the foregoing; and (d) staying the prosecution of the Action pending further order of the Court. The Parties agree to take all reasonable and appropriate steps to seek and obtain entry of the Scheduling Order. At the Settlement Hearing, the Parties shall jointly request that the Judgment be entered substantially in the form attached hereto as Exhibit C.

**E. Conditions of Settlement**

20. This Stipulation shall be subject to the following conditions and, except as provided in Section H, shall be canceled and terminated unless:

a. the Court enters the Scheduling Order substantially attached hereto as Exhibit A;

b. the full Settlement Amount is deposited in the Account by the Settlement Funding Date;

c. the Court enters the Judgment substantially in the form attached hereto as Exhibit C and dismisses the Class Action with prejudice; and

d. the Effective Date shall have occurred.

**F. Attorneys' Fees and Expenses**

21. Plaintiff intends to petition the Court for an award of attorneys' fees in an amount no greater than twenty percent (20%) of the Settlement Fund and for reimbursement of litigation expenses incurred in prosecuting the Action in an amount no greater than One Hundred and Fifty Thousand Dollars \$150,000.00 (the "Fee and Expense Application"). Class Counsel will also seek approval of an incentive award of three thousand dollars (\$3,000) payable to the Plaintiff out of any attorney's fee awarded to Class Counsel.

22. The Parties acknowledge and agree that any fee and expense award shall be paid from the Settlement Fund and shall reduce the settlement

consideration paid to the Class Members accordingly. The Parties acknowledge and agree that any fees and expenses awarded by the Court to Class Counsel shall be paid solely from the Account to Class Counsel (wiring transfer information to be provided) within three (3) business days after the date of entry by the Court of an order awarding such attorneys' fees and expenses (the "Fee and Expense Award"), notwithstanding the existence of any timely filed objections to the Fee and Expense Award, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof; provided, however, that in the event that the Fee and Expense Award is disapproved, reduced, reversed or otherwise modified, whether on appeal, further proceedings on remand, successful collateral attack or otherwise, then Class Counsel shall, within five (5) business days after Class Counsel receives notice of any such disapproval, reduction, reversal or other modification, return to the Settlement Fund the difference between the attorneys' fees and expenses awarded by the Court in the Fee and Expense Award on the one hand, and any attorneys' fees and expenses ultimately and finally awarded on appeal, further proceedings on remand or otherwise on the other hand. The Fee and Expense Application shall be the only petition for attorneys' fees and expenses filed by or on behalf of Plaintiff, any other Class Member, Class Counsel, or counsel for any other Class Member. In no event shall any of the Released Parties be obligated to pay any of such attorneys' fees and expenses to Class Counsel, as it

is expressly understood that all such payments will be made out of the Settlement Fund. The disposition of the Fee and Expense Application is not a material term of this Stipulation, and it is not a condition of this Stipulation that such application be granted. The Fee and Expense Application may be considered separately from the proposed Settlement. Any disapproval or modification of the Fee and Expense Application 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 Claims. Class Counsel warrants that no portion of any award of attorneys' fees or expenses shall be paid to Plaintiff or any Class Member, except as may be approved by the Court.

**G. Stay Pending Court Approval**

23. Pending Court approval of the Settlement, the Parties agree to stay any and all proceedings in the Action other than those incident to the Settlement. The Parties also agree to use their best efforts to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any Class Member in any other litigation against any of the Released Parties which challenges the Settlement or otherwise involves, directly or indirectly, a Released Claim.

24. Except as necessary to pursue the Settlement, pending final determination of whether the Settlement should be approved, all Parties (including Plaintiff, Defendants, and Xencor) agree not to institute, commence, prosecute, continue, or in any way participate in, whether directly or indirectly, representatively, individually, or in any other capacity, any action or other proceeding asserting any Released Claims.

25. Notwithstanding Paragraphs 23 and 24, nothing herein shall in any way impair or restrict the rights of any Party to defend this Settlement or to otherwise respond in the event any person objects to the Settlement, the proposed Judgment to be entered, or, in the case of the Plaintiff solely, the Fee and Expense Application.

#### **H. Effect of Disapproval, Cancellation or Termination**

26. If either (a) the Court does not enter the Judgment in substantially the form of Exhibit C, (b) the Court enters the Judgment but on or following appellate review the Judgment is modified or reversed in any material respect, or (c) any of the other conditions of Paragraph 20 is not satisfied, this Stipulation shall be canceled and terminated unless counsel for each of the Parties to this Stipulation, within ten (10) business days from receipt of such ruling or event, agrees in writing with counsel for the other Parties to proceed with this Stipulation and Settlement, including only with such modifications, if any, as to

which all other Parties in their sole judgment and discretion may agree. For purposes of this Paragraph, an intent to proceed shall not be valid unless it is expressed in a signed writing. For purposes of this Section H, neither a modification nor a reversal on appeal of the amount awarded pursuant to the Fee and Expense Application shall be deemed a material modification of the Judgment or this Stipulation.

27. If either: (i) this Stipulation is canceled or terminated pursuant to its terms, (ii) the conditions to the Settlement set forth in Paragraph 18 above are not satisfied, or (iii) the Settlement does not become final for any reason:

a. The Settlement Fund paid or due with respect to such amounts, less any cost or expenses of notice or administration actually incurred and paid or payable, and less any fees or costs actually incurred and paid or payable, shall be refunded to Defendants within ten (10) business days after such cancellation or termination;

b. All of the Parties to this Stipulation shall be deemed to have reverted to their respective litigation status immediately prior to September 28, 2016, they shall negotiate a new scheduling order in good faith and they shall proceed in all respects 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 any issue in the Action shall be preserved without prejudice in any way; and

c. Plaintiff agrees that this Stipulation, and any statements made in connection with the negotiation of this Stipulation, shall not be used to establish liability or the amount of any damages in the Action.

**I. Investment of the Settlement Fund**

28. The Settlement Fund shall be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court until such time as it is distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court.

**J. Tax Treatment**

29. The Settlement Fund is intended to be a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, and the Parties shall so treat it, and the Claims Administrator, as administrator of the Account within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing any required tax returns for the Account and paying from the Account any taxes, including any interest or penalties thereon (the “Taxes”), owed with respect to the Account. In addition, the Claims Administrator and Class Counsel, and the Parties, as required, shall do all things that are necessary or advisable to carry out the provisions of this Paragraph.



30. All Taxes arising with respect to the Settlement Fund and any expenses and costs incurred in connection with the payment of Taxes pursuant to this Paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing, administration and distribution costs and expenses relating to the filing or the failure to file all necessary or advisable tax returns (the “Tax Expenses”)) shall be paid out of the Settlement Fund. None of the Defendants, the Released Parties or the Claims Administrator shall have any liability or responsibility for the Taxes or the Tax Expenses. The Claims Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund and the distributions and payments therefrom, including, without limitation, the tax returns described in Treasury Regulation § 1.468B-2(k), and to the extent applicable, Treasury Regulation § 1.468B-2(l). All tax returns shall be consistent with the terms herein and in all events shall reflect that all Taxes shall be paid out of the Settlement Fund. The Claims Administrator shall also timely pay any required Taxes and Tax Expenses out of the Settlement Fund, and are authorized to withdraw, with the consent of Class Counsel but without prior consent of the Defendants or order of the Court, from the Account amounts necessary to pay Taxes and Tax Expenses.

## **K. Miscellaneous Provisions**

31. Neither Defendants nor any Released Defendant Party shall have any responsibility or liability for the acts or omissions of Class Counsel or any of their agents, as described herein. Neither Defendants nor any Released Defendant Party shall be liable for any attorneys' fees or costs for which Plaintiff or any Class Member petitions for reimbursement in the Action, including but not limited to any request pursuant to Paragraphs 19 and 20 of this Stipulation. Any ensuing award of fees or costs in the Action shall be satisfied solely from the Settlement Fund.

32. All of the Exhibits referred to herein shall be incorporated by reference as though fully set forth herein.

33. This Stipulation may be amended or modified only by a written instrument signed by counsel for all Parties or their successors.

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

35. Each Released Party denies any and all allegations of its or his wrongdoing, fault, liability or damage in the Action. Neither this Stipulation, nor the fact or any terms of the Settlement, is evidence, or an admission or concession

by any Party in the Action, any signatory hereto or any Released Party, of any matter (except as specifically set forth in this Stipulation), including any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action or any wrongdoing by any of the Defendants or Xencor or any damages or injury to any Class Members. Nothing in this Stipulation constitutes an admission of any factual allegations, litigation misconduct or wrongdoing by any party.

36. 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.

37. The waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of any provision of this Stipulation by any other Party.

38. This Stipulation and the Exhibits constitute the entire settlement agreement between the Plaintiff, on the one hand, and Xencor and the Defendants, on the other hand, and supersede any prior term sheets and agreements among Plaintiff, on the one hand, and Xencor or Defendants, on the other hand with respect to the settlement of the Action. 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.

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

40. The Parties and their respective counsel of record 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).

41. Plaintiff represents and warrants 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.

42. Where this Stipulation creates obligations for specified Parties, only those specified Parties are responsible for the obligations.

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 be binding upon and shall inure to the benefit of the Parties and the Class (and, in the case of the releases, all Released Parties) and the respective legal representatives, heirs, executors, administrators,

transferees, successors and assigns of all such foregoing persons or entities and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate or reorganize.

45. This Stipulation, the Settlement, and any and all disputes arising out of 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 arising out of this Stipulation or the Settlement, or to enforce any of the terms of the Stipulation or Settlement, shall (i) be brought, heard and determined exclusively in the Court, which shall retain jurisdiction over the Parties and all such disputes (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 no other action) brought in this Court or, if subject matter jurisdiction is unavailable in this Court, any such action brought in any other state or federal court sitting in Wilmington, Delaware; (2)

consents to service of process by registered mail upon such Party and/or such Party's agent; (3) waives any objection to venue in this Court or Delaware 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. Nothing in this paragraph shall affect the applicable law or available forum (i) with respect to any other agreements that survive this Stipulation and the Settlement, or (ii) for claims that are neither released nor created hereby.

PRICKETT, JONES & ELLIOTT, P.A.

/s/ Elizabeth M. McGeever

Michael Hanrahan (#941)  
Elizabeth M. McGeever (#2057)  
Kevin H. Davenport (#5327)  
1310 North King Street  
Wilmington, DE 19801  
(302) 888-6500  
*Attorneys for Plaintiff*  
*Michael DePinto*

OF COUNSEL:

KESSLER TOPAZ MELTZER  
& CHECK LLP  
Eric L. Zagar  
280 King of Prussia Road  
Radnor, PA 19087  
(610) 667-7706

MORRIS, NICHOLS, ARSHT  
& TUNNELL LLP

OF COUNSEL:

COOLEY LLP  
Koji Fukumura  
Mary Kathryn Kelley  
4401 Eastgate Mall  
San Diego, CA 92121  
(858) 550-6000

/s/ D. McKinley Measley

William M. Lafferty (#2755)  
D. McKinley Measley (#5108)  
Richard Li (#6051)  
1201 North Market Street  
Wilmington, DE 19801  
(302) 658-9200  
*Attorneys for Defendants*

November 21, 2016

# **EXHIBIT A**



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

MICHAEL DEPINTO, On Behalf of  
Himself and All Others Similarly  
Situating,

Plaintiff,

v.

JOHN S. STAFFORD, III, BASSIL I.  
DAHIYAT, JONATHAN FLEMING,  
ATUL SARAN, HAROLD R. WERNER,  
BRUCE L.A. CARTER, CHARLES  
STEWART, and DONALD C. FOSTER,

Defendants.

---

IN RE XENCOR, INC.  
SHAREHOLDERS LITIGATION

Consol. C.A. No. 10742-CB

**[PROPOSED] SCHEDULING ORDER**

WHEREAS, the parties to the above-captioned actions and Xencor, Inc. (collectively, the “Parties” and individually a “Party”), having applied pursuant to Court of Chancery Rule 23(e) for an order approving the proposed settlement of the Action in accordance with the Stipulation and Agreement of Compromise, Settlement, and Release entered into by the Parties on November 21, 2016 (the “Stipulation”), and for dismissal of the Action on the merits with prejudice upon the terms and conditions set forth in the Stipulation (the “Settlement”);



NOW, upon consent of the Parties, after review and consideration of the Stipulation filed with the Court and the Exhibits annexed thereto, and after due deliberation,

**IT IS HEREBY ORDERED** this \_\_\_\_ day of November 2016, that:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.

2. A hearing (the “Settlement Hearing”) shall be held on \_\_\_\_\_, 2017 at \_\_\_\_\_ .m., in the Court of Chancery, 500 North King Street, Wilmington, DE 19801, to:

- a. Determine whether Plaintiff and Class Counsel have adequately represented the Class;
- b. Determine whether the proposed Settlement should be approved as fair, reasonable and adequate;
- c. Determine whether all Released Claims (as defined in the Stipulation) should be dismissed with prejudice as against the Released Parties;
- d. Determine whether a Final Order and Judgment approving the Settlement should be entered;
- e. Determine whether and in what amount any attorney’s fees and/or expenses should be paid to Plaintiff out of the Settlement Fund;

- f. Determine whether any incentive fee should be awarded to Plaintiff payable out of any attorney's fee awarded;
- g. Hear and determine any objections to the Settlement or Plaintiff's application for attorneys' fees and/or expenses; and
- h. Determine any other matters the Court of Chancery deems appropriate.

3. The Court may adjourn and reconvene the Settlement Hearing or any adjournment thereof, including the consideration of an application for attorneys' fees and/or expenses, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, or a notation on the docket in the Action.

4. The Court may approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties and without further notice to the Class. Further, the Court may render its Judgment, and order the payment of attorneys' fees and/or expenses, all without further notice to the Class.

5. The Court approves, in form and substance, the Notice of Proposed Settlement of Class Action, Settlement Hearing, and Right to Appear (the "Notice") and the Claim Form substantially in the forms attached as Exhibits B and D to the Stipulation.

6. The Court finds that the mailing and publication of the Notice in substantially the manner set forth in paragraphs 7 and 8 of this Order constitute the best notice practicable under the circumstances to all persons entitled to such notice of the Settlement Hearing and the proposed Settlement, and meets the requirements of Court of Chancery Rule 23 and of due process.

7. The Court approves the firm of Strategic Claims Services as the Claims Administrator, with the responsibilities set forth in the Stipulation. Payment of the Claims Administrator's fees and expenses shall be made solely from the Settlement Fund.

8. As soon as practicable after the date of entry of this Order, and in any event at least sixty (60) calendar days prior to the Settlement Hearing, the Claims Administrator shall cause the Notice to be mailed by U.S. Mail, First Class, postage pre-paid to the Class Members at their respective last known addresses set forth in Xencor's stock records. All stockholders of record in the Class who received the Notice who were not also the beneficial owners of Xencor preferred stock held by them of record shall be requested to forward the Notice to such beneficial owners of those shares. The Claims Administrator shall use reasonable efforts to give notice to such beneficial owners by making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners.

9. At least twenty (20) calendar days prior to the Settlement Hearing, the Plaintiff shall file with the Court an opening brief in support of the proposed Settlement, and Class Counsel shall file Plaintiff's application for attorneys' fees and/or expenses, including any supporting affidavits. Any brief in support of any objection(s) to the Settlement or to Plaintiff's application for attorneys' fees and/or expenses shall be filed at least ten (10) business days prior to the Settlement Hearing.

10. At least ten (10) business days prior to the date of the Settlement Hearing, Class Counsel shall file with the Court proof of mailing of the Notice.

11. At least five (5) business days prior to the Settlement Hearing, the Parties may file with the Court a responsive brief to any objections made to the Settlement and Class Counsel shall file any reply in support of Plaintiff's application for attorneys' fees and/or expenses.

12. Any Class Member who objects to the Settlement, the Final Order and Judgment to be entered in the Action, Plaintiff's application for attorneys' fees and/or expenses and/or any incentive fee award to Plaintiff or who otherwise wishes to be heard, may appear in person or by such member's attorney at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person

shall be considered by the Court unless not later than ten (10) business days prior to the Settlement Hearing such person files with the Court and, on or before such filing, serves (by hand, e-mail or overnight mail) upon counsel listed below: (a) a written notice of intention to appear; (b) proof of membership in the Class; (c) a statement of such person's objections to any matters before the Court; and (d) the grounds for such objections and the reasons that such person desires to appear and be heard, as well as all documents or writings such person desires the Court to consider. Such filings shall be served, on or before such filing with the Court, by hand, e-mail or overnight mail upon the following counsel:

Elizabeth M. McGeever, Esq.  
Kevin H. Davenport, Esq.  
Prickett, Jones & Elliott, P.A.  
1310 N. King Street  
Wilmington, DE 19801  
(302) 888-6500

William M. Lafferty, Esq.  
D. McKinley Measley, Esq.  
Richard Li, Esq.  
Morris, Nichols, Arsht & Tunnell, LLP  
1201 N. Market Street  
Wilmington, DE 19801  
(302) 658-9200

13. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in the Action or any other action or proceeding. Class Members who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

14. All proceedings in the Action, other than proceedings as may be necessary to carry out the terms and conditions of the Stipulation, are hereby stayed and suspended until further order of this Court.

15. If the Settlement provided for in the Stipulation is approved by the Court at or following the Settlement Hearing, the Court shall enter a Final Order and Judgment substantially in the form attached as Exhibit C to the Stipulation.

16. The effectiveness of the Final Order and Judgment shall not be conditioned upon the approval of attorneys' fees and/or litigation expenses, either at all or in any particular amount, by the Court.

17. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class Members, and the Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

---

Chancellor Andre G. Bouchard



## EXHIBIT B

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

MICHAEL DEPINTO, On Behalf of	)	
Himself and All Others Similarly	)	
Situated,	)	
	)	
Plaintiff,	)	
	)	Consol. C.A. No. 10742-CB
v.	)	
	)	
JOHN S. STAFFORD, III, BASSIL I.	)	
DAHIYAT, JONATHAN FLEMING,	)	
ATUL SARAN, HAROLD R. WERNER,	)	
BRUCE L.A. CARTER, CHARLES	)	
STEWART, and DONALD C. FOSTER,	)	
	)	
Defendants.	)	
<hr/>		
IN RE XENCOR, INC.	)	
SHAREHOLDERS LITIGATION	)	

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION,  
SETTLEMENT HEARING, AND RIGHT TO APPEAR**

TO: ALL FORMER SERIES A, B, C, D OR E PREFERRED STOCKHOLDERS OF XENCOR, INC. (“XENCOR” OR THE “COMPANY”) WHOSE SHARES WERE CONVERTED TO SERIES A-1 PREFERRED STOCK OF XENCOR IN XENCOR’S 2013 RECAPITALIZATION (EXCLUDING THE DEFENDANTS AND ANY PERSON, FIRM, TRUST, CORPORATION, OR OTHER ENTITY RELATED TO OR AFFILIATED WITH ANY DEFENDANT).

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS ACTION. IF THE COURT OF CHANCERY OF THE STATE OF DELAWARE APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS OF THE PROPOSED SETTLEMENT OR PURSUING THE “RELEASED CLAIMS” (AS DEFINED BELOW).



PERSONS OR ENTITIES WHO ARE CLASS MEMBERS IN THEIR CAPACITIES AS RECORD HOLDERS, BUT NOT BENEFICIAL OWNERS, ARE REQUESTED TO FORWARD THIS NOTICE PROMPTLY TO BENEFICIAL OWNERS. ADDITIONAL COPIES OF THIS NOTICE MAY BE OBTAINED FROM THE CLAIMS ADMINISTRATOR AS SET FORTH IN SECTION V BELOW.

## **I. PURPOSE OF THIS NOTICE**

You received this Notice because you have been identified as a member of the class of former Series A through E preferred stockholders of Xencor (the “Class”) whose rights will be affected by a proposed settlement (the “Settlement”) of the claims in this class action lawsuit (the “Action”). Under the terms of the Settlement, the Defendants will cause to be paid \$2,375,000 for the benefit of the Class, on terms set forth in a Stipulation and Agreement of Compromise, Settlement and Release dated November 21, 2016 (the “Stipulation”).

The purpose of the Notice is to inform you of the Action, describe the proposed Settlement, and inform you of the need to file the enclosed Claim Form to receive your share of the Net Settlement Fund.<sup>1</sup> The Settlement will be considered at a hearing to be held by the Court of Chancery of the State of Delaware (the “Court”). The hearing will be held in the Leonard L. Williams Justice Center, Court of Chancery, 500 North King Street, Wilmington, Delaware 19801, on \_\_\_\_\_, 2017, at \_\_\_\_:00 \_\_.m. (the “Settlement Hearing”) to

---

<sup>1</sup> For capitalized terms used in this Notice that are not defined where they first appear, please see Section IX, entitled “**DEFINITIONS**.”

(a) determine whether Plaintiff and Class Counsel have adequately represented the Class and whether the Settlement should be approved by the Court as fair, reasonable, adequate, and in the best interests of the Class; (b) determine whether an Order and Final Judgment (the “Judgment”) should be entered on the terms specified in the Stipulation; (c) consider the application of the law firms of Kessler Topaz Meltzer & Check, LLP and Prickett, Jones & Elliott, P.A. (“Class Counsel”) for an award of attorneys’ fees, reimbursement of expenses, and payment of an incentive award to Michael DePinto (the “Plaintiff”), the Xencor stockholder who was appointed by the Court to represent the interests of the Class; and (d) rule on such other matters as the Court may deem appropriate.

## **II. COMPOSITION OF THE CLASS**

The “Class” consists of all former holders of shares of Xencor Series A through E Preferred Stock whose shares were converted to Series A-1 Preferred Stock of Xencor (the “A-1 Stock”) in Xencor’s 2013 recapitalization (the “Recapitalization”), excluding the Defendants and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendant.

A member of the Class is referred to in this Notice as a “Class Member.” You may not opt out of the Class.

### **III. BACKGROUND AND DEVELOPMENTS TO DATE IN THIS ACTION**

**THE FOLLOWING RECITATION 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 June 12, 2013, Xencor initiated a multi-part Recapitalization of the Company.

Under the terms of the Recapitalization plan, Xencor, among other things, increased the Company's authorized common and preferred stock, created the new A-1 Stock and reclassified each series of existing Series A through E Preferred Stock into a fraction of a share of A-1 Stock (the "Reclassification"). Xencor also converted outstanding convertible promissory notes (the "Notes") with a face value (excluding interest) of approximately \$15.1 of principal into A-1 Stock at a conversion price of \$0.33, so that 3.03 shares of A-1 Stock were issued for each \$1 principal of the Notes (the "Note Conversion").

In connection with the Reclassification and Note Conversion, the Company also conducted a financing by selling approximately \$10 million of A-1 Stock (the "A-1 Stock Financing"). Specifically, the Company sold 5,586,510 shares of A-1 Stock to certain of its major investors, including John Stafford III and his affiliates; MedImmune Ventures, Inc. and its affiliates; Oxford Biosciences Partners V, LP and its affiliates; and HealthCare Ventures VIII, LP and its affiliates (collectively,

the “Major Investors”). The Major Investors were incentivized to participate in the financing pro-rata pursuant to a pay-to-play provision approved by the Company’s Board. Despite this, Novo Nordisk A/S declined to participate and its equity position in the Company was significantly diluted pursuant to the pay-to-play provision. The Company’s minority shareholders were offered the opportunity to participate pro-rata in the A-1 Stock Financing but were not subjected to the pay-to-play provision. The offering to the minority shareholders was to take place after the offering to the Major Investors closed. The Reclassification, the Note Conversion and the A-1 Stock Financing involving the Major Investors were completed by June 13, 2013.

Thereafter, on July 18, 2013, the Company sent an offering memorandum to its minority shareholders seeking, but not requiring, participation in the A-1 Stock Financing pro-rata. Minority shareholders were also offered the opportunity to purchase additional shares of A-1 stock to the extent the Major Investors declined to participate on a pro-rata basis, leaving unsubscribed shares of A-1 Stock.

In August 2013, Xencor retained underwriters in connection with a potential initial public offering of its common stock.

On September 11, 2013 Xencor filed a confidential registration statement with the Securities and Exchange Commission.

On or about September 23, 2013, Xencor closed the sale of 1,766,430 shares of A-1 Stock to participating Company stockholders other than the Major Investors.

On November 1, 2013, Xencor effected a 3.1-for-1 reverse stock split of its common stock.

On December 3, 2013, Xencor closed its initial public offering (“IPO”), selling 14,639,500 shares of its common stock for \$5.50 per share. In connection with the IPO, all of Xencor’s outstanding shares of Preferred Stock on September 30, 2013, including the A-1 Stock, were converted into shares of Xencor common stock on a 1-for-1 basis.

On or about September 10, 2014, Plaintiff Michael DePinto and another Xencor stockholder, pursuant to 8 *Del. C.* § 220 (“Section 220”), made a demand on Xencor to inspect certain of its books and records with regard to the Recapitalization. Xencor initially refused the Section 220 demand subject to Plaintiff providing additional information to support the demand. On November 26, 2014, Plaintiff and the other demanding stockholder filed in the Court of Chancery a complaint under Section 220. The parties thereafter resolved the Section 220 action and Xencor produced to Plaintiff certain books and records with regard to the Recapitalization.

After reviewing and analyzing the documents produced in connection with the Section 220 action, as well as other documents and information regarding the Recapitalization provided by Plaintiff and others, on March 6, 2015, Plaintiff filed a Verified Class Action Complaint for Breach of Fiduciary Duties (Count I) and Invalidity of Director and Stockholder Written Consents (Count II) (the “Class Action Complaint”) in this Action. Plaintiff filed the Class Action Complaint seeking an award of monetary and equitable relief for the alleged expropriation of value sustained by Xencor’s preferred stockholders (other than the defendants and their related entities) due to the Recapitalization; interest; an award of fees and costs; and other relief deemed to be just and appropriate.

The Class Action Complaint sought certification of a class consisting of all former holders of Xencor Series A through E Preferred Stock whose shares were converted to A-1 Stock in the Recapitalization (other than the defendants and any person, firm, trust, corporation, or other entity related to, or affiliated with, any defendant), and alleged that defendants John S. Stafford, III, Bassil I. Dahiyat, Jonathan Fleming, Atul Saran, Harold R. Werner, Bruce L.A. Carter, Charles Stewart, and Donald C. Foster breached their fiduciary duties in connection with the Recapitalization. The defendants listed in this Paragraph are collectively referred to herein as “Defendants” and individually as a “Defendant.”

Count II of the Class Action Complaint challenged the validity of certain of the director and stockholder written consents that authorized the Recapitalization. Count II also alleged that Xencor failed to provide notice to shareholders of amendments made to the Company's certificate of incorporation in November and December 2013.

On June 10, 2015, Xencor brought a verified petition for relief under 8 *Del. C.* § 205 and a Motion to Expedite seeking judicial ratification to validate the corporate acts challenged in Count II of the Class Action Complaint. The Court then directed Xencor to re-file its petition as a counterclaim in the Action. Xencor filed its Verified Counterclaim on July 14, 2015. Plaintiff filed an answer to the Verified Counterclaim on August 3, 2013.

On October 5, 2015, the Parties entered into and filed a Stipulation of Partial Settlement between and among Plaintiff, on behalf of himself only, and Defendants, pursuant to which Plaintiff consented to entry of an Order ratifying the corporate acts challenged in Count II of the Class Action. On December 14, 2015, the Court entered an Order and Partial Final Judgment in accordance with the terms set forth in the Stipulation of Partial Settlement.

On December 14, 2015, the Parties entered into and filed a Stipulation and (Proposed) Order Governing Case Schedule. On December 15, 2015, the Court entered a revised Scheduling Order (the "December 15, 2015 Order").

Pursuant to the December 15, 2015 Order, the Parties engaged in extensive discovery throughout late-2015 and 2016. The Parties engaged in multiple rounds of written discovery, Plaintiff served nine (9) subpoenas, the Parties and third-parties produced over 25,000 documents, Class Counsel deposed ten (10) witnesses, and Defendants' counsel deposed Plaintiff.

On January 6, 2016, Plaintiff filed his Motion for Class Certification. After briefing and oral argument, on June 21, 2016, the Court, pursuant to Court of Chancery Rule 23(a) and 23(b)(1), certified the Class consisting of all former holders of Series A through E Preferred Stock of Xencor whose shares were converted to A-1 Stock in Xencor's 2013 Recapitalization, excluding Defendants and any person, firm, trust, corporation or other entity related to, or affiliated with, any Defendant. The Court also certified Plaintiff as representative of the Class and the law firms of Prickett, Jones & Elliott, P.A. and Kessler Topaz Meltzer & Check, LLP as Class Counsel.

On July 19, 2016, the Court entered a Third Revised Stipulation and (Proposed) Order Governing Case Schedule that provided, among other things, for a four-day trial to commence on March 7, 2017.

On September 27, 2016, the Parties and/or their representatives attended a voluntary mediation session before Delaware Court of Chancery Vice Chancellor Joseph R. Slight III to attempt to negotiate a global settlement of the Action.



During the September 27 mediation session, the Parties agreed to settle Plaintiff's claims.

On September 28, 2016, a term sheet incorporating the terms of an agreement to fully and finally settle the claims asserted in the Action was signed by counsel for Plaintiff and Defendants.

#### **IV. TERMS OF THE SETTLEMENT**

Under the Settlement, the Defendants will cause to be paid \$2,375,000 (the "Settlement Amount") to settle the claims in the Action, and the Plaintiff and the Class will agree to fully and finally release their right to pursue those claims further in any court. The Releases provided by the Stipulation are worded broadly to bar any possible further claims related to the facts alleged in the Class Action Complaint or otherwise related to the Recapitalization, as further discussed below.

The Settlement is subject to approval by the Court. Any payments to Class Counsel, any incentive award to Plaintiff, and the costs of notice and administration of the Settlement will be paid from the Settlement Amount and interest earned thereon (the "Settlement Fund"). Class Counsel intend to request an attorney fee award of 20% of the Settlement Fund, a \$3,000 incentive award for the Plaintiff, and reimbursement of expenses up to \$150,000. In addition, Class Counsel expects that the costs of mailing this Notice and administering the Settlement will not exceed \$20,000. Any incentive award to the Plaintiff will be

paid out of the attorneys' fees awarded to Class Counsel. If the Court approves the payments to Class Counsel in full and the estimate of notice and administration costs is accurate, then the amount available for distribution to the Class will be approximately \$1,760,000. The amount available for distribution to the Class after deducting attorneys' fees to Class Counsel, reimbursing Class Counsel's expenses, and paying the costs of Settlement notice and administration is referred to as the "Net Settlement Fund."

This Notice includes only a summary of various terms of the Settlement, and it does not purport to be a comprehensive description of its terms. The complete terms and conditions of the Settlement are set forth in detail in the Stipulation, which has been filed with the Court and is available on the Settlement Website, [www.strategicclaims.net](http://www.strategicclaims.net).

#### **V. DISTRIBUTION OF THE NET SETTLEMENT FUND**

If this Notice has been addressed to you, then you are believed to be a Class Member entitled to receive a payment from the Net Settlement Fund. To confirm your entitlement to a payment, you will be required to sign and return the enclosed Claim Form, which (among other things) contains certifications that the information pre-printed on the form is accurate and that you are not affiliated with any of the Defendants.

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE AN ELIGIBLE CLAIMANT OR THAT YOU ARE**

**ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT, YOU MUST SIGN AND SUBMIT THE ENCLOSED CLAIM FORM NO LATER THAN 120 DAYS AFTER THE MAILING OF THIS NOTICE.**

Your payment is estimated to be the amount printed below your name on the Claim Form. Please note that this is only an estimate and your payment could be more or less.

To claim your payment, you must submit the enclosed Claim Form no later than 120 days after the mailing of this Notice. If you believe that either (a) the number of shares of Series A through E Preferred Stock that you owned or (b) the principal amount of the Notes, if any, that you owned is different from what is pre-printed on the Claim Form, then you must also submit documentation supporting your position. You may request an additional copy of your Claim Form by calling the Claims Administrator toll-free at (866) 274-4004 or sending an email to [info@strategicclaims.net](mailto:info@strategicclaims.net). If you do not submit a timely and valid Claim Form, you will not be entitled to share in the Settlement.

No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being provided. Each Class Member's tax obligations related to the Settlement, if any, are the sole responsibility of the Class Member, and may vary depending on the Class Member's particular circumstances.

## **VI. ALLOCATION OF THE NET SETTLEMENT FUND AMONG CLASS MEMBERS**

The Net Settlement Fund will be divided among Class Members based on a plan, called a “Plan of Allocation,” which will be considered by the Court at the Settlement Hearing and is subject to the Court’s approval.

Class Counsel has developed the proposed Plan of Allocation described below in consultation with the financial expert they retained in the Action. The Court may decide to modify this plan, or use a different one. The Court has also reserved the right to modify the Plan of Allocation without further notice to Class Members. Any Orders regarding the Plan of Allocation will be posted on the Settlement Website, [www.strategicclaims.net](http://www.strategicclaims.net).

### **A. Objective of the Plan of Allocation**

The objective of the Plan of Allocation is to distribute equitably the Net Settlement Fund among Class Members, taking into account (a) the number of shares of each of the Series A through E Preferred Stock owned by each Class Member, and (b) the principal amount of Notes, if any, owned by each Class Member. The formula used in the Plan of Allocation is not intended to estimate the amount a Class Member might have been able to recover after a trial in the Action. Rather, it is the basis upon which the Net Settlement Fund will be proportionately allocated among Class Members who submit timely, valid and

properly executed Claim Forms to the Claims Administrator which claims are approved for payment.

**B. Assumptions Used in the Plan of Allocation**

The formula used in the Plan of Allocation was based on the following assumptions used by Class Counsel:

1. Xencor's value was \$75 million, which is the same value that was used in the Recapitalization;
2. Xencor issued 47,879,602 shares of A-1 Stock, which is the number of shares issued in the Recapitalization;
3. Xencor valued the Notes (including interest) at a price of 0.70 (*i.e.*,  $[\text{Principal} + \text{Interest}] \div 0.70$ ) instead of 0.33, which was the price the Notes (excluding interest) were valued at in the Recapitalization. This change results in holders of Notes receiving fewer shares of A-1 Stock than what they received in the Recapitalization; and
4. Xencor used the same proportionate allocation of A-1 Stock among the Series A through E Preferred Stock, subject to adjustments made to the exchange ratios used in the Recapitalization to account for Class Counsel's belief that holders of Notes should have received fewer and Class

Members should have received a greater number of shares of A-1 Stock in the Recapitalization.

Using the above assumptions, the proposed Plan of Allocation allocates the Net Settlement Fund among Class Members based on the following steps. First, a “Stockholder Loss” is calculated for each Class Member by determining the number of shares of A-1 Stock the Class Member should have received in the Reclassification minus the number of shares of A-1 Stock the Class Member actually received. Second, for those Class Members who also owned Notes, a “Noteholder Gain” is calculated by determining the number of shares of A-1 Stock the Class Member actually received from the conversion of the Class Member’s Notes minus the number of shares A-1 Stock the Class Member should have received. Third, a “Net Loss” is calculated for those Class Members whose Stockholder Loss exceeded their Noteholder Gain by subtracting the Class Member’s Noteholder Gain from the Class Member’s Stockholder Loss.<sup>2</sup> Class Members who did not suffer any Net Loss (because their Noteholder Gain exceeded their Stockholder Loss such that they had a “Net Gain”) will not receive

---

<sup>2</sup> Some Class Members may have owned Notes in a different name but remained the actual owner or beneficial owner of the Notes. If Class Counsel determines that a Class Member was the actual owner or beneficial owner of Notes held in a different name, it will offset the Class Member’s Stockholder Loss by any Noteholder Gain of that investor.

any of the Settlement Fund. Fourth, a “Total Net Loss” is calculated using the sum of all Net Losses. Fifth, a Class Member’s “Net Loss Percentage” is calculated by dividing the Class Member’s Net Loss by the Total Net Loss of Class Members that submit timely, valid and properly executed Claim Forms which claims are approved for payment. The Net Settlement Fund will be distributed to Class Members in an amount equal to the Class Member’s Net Loss Percentage times the Net Settlement Fund.

Class Counsel owes a duty to all Class Members to treat them equitably, and believes the Plan of Allocation properly offsets a Class Member’s Stockholder Loss with any Noteholder Gains. Class Counsel developed the proposed Plan of Allocation without direction from the Plaintiff, who owned shares of Series C and D Preferred Stock only. If you object to the Plan of Allocation or believe that the Net Settlement Fund should be allocated in a different manner, you may file an objection as explained in Section XII below.

Based on the estimated size of the Net Settlement Fund (discussed above in Section IV), and assuming all Class Members eligible to receive a payment submit timely, valid and properly executed Claim Forms, each Class Member’s estimated payment is shown on the Claim Form. This amount is only an estimate and the actual payment may be different, depending on the number of claims submitted and accepted for payment.

## **VII. ADDITIONAL PROVISIONS OF THE SETTLEMENT**

All payments made pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Claimants. No person shall have any claim against the Plaintiff, Class Counsel, the Claims Administrator or any other agent designated by Class Counsel arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation, the Class Distribution Order or further orders of the Court.

The Defendants are not entitled to get back any portion of the Settlement Fund once the Court's Judgment approving the Settlement becomes Final. The Defendants do not have any liability, obligation, or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund or the Plan of Allocation.

Approval of the Settlement is independent from approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation will not affect the Settlement, if approved.

The Court has reserved jurisdiction over the disposition of the Settlement Fund and the Net Settlement Fund, and claims of Class Members relating to the Action.

Distributions from the Net Settlement Fund will be made after the Judgment approving the Settlement becomes Final, the deadline for submitting Claim Forms



has expired, the Class Distribution Order has been entered and the Claims Administrator has completed processing all Claim Forms. All checks shall become stale one hundred twenty (120) calendar days from the date of issuance, at which time all funds remaining for such stale checks shall be irrevocably forfeited by their payees. Following the date on which distribution checks have become stale, the Claims Administrator may conduct one or more further distributions of remaining funds, after payment of any unpaid or associated administrative costs, to Claimants who have cashed the checks issued in the prior distribution. Such further distributions will be made in the discretion of Class Counsel, in consultation with the Claims Administrator, in light of the amount of funds remaining and the administrative costs of a further distribution. Any funds remaining after completion of all distributions shall escheat to the State of Delaware.

#### **VIII. CLAIMS RELEASED AS PART OF THE SETTLEMENT**

The Releases provided by the Stipulation are worded broadly to bar any possible further claims related to the facts alleged in the Complaint or otherwise related to the Recapitalization. Applying the broad definitions set forth in the next section, the Settlement will, upon the Effective Date, cause the Plaintiff and all other Class Members fully, finally, and forever, to release, settle, and discharge the “Released Defendant Parties” from and with respect to every one of the “Released

Plaintiff Claims” (including “Unknown Claims”), and shall thereupon be forever barred and enjoined from commencing, instituting, or prosecuting any “Released Plaintiff Claims” against any of the “Released Defendant Parties.”

Under the Settlement, each of the Defendants and Xencor (and any person or entity acting for or on behalf of, or claiming under, any of them) will provide a reciprocal release of any “Released Defendant Claims” against any of the “Released Plaintiff Parties.”

## **IX. DEFINITIONS**

1. “Claimant” means a Class Member who submits a Claim Form to the Claims Administrator seeking to share in the proceeds of the Net Settlement Fund.

2. “Claims” means 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, or may hereafter exist, including

known claims and Unknown Claims, whether direct, derivative, individual, class, representative, legal, equitable or of any other type, or in any other capacity, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, including but not limited to any claims under state securities law, or under state disclosure law, or any claims that could be asserted derivatively on behalf of Xencor.

3. “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed pursuant to the Plan of Allocation.

4. “Claim Form” or “Proof of Claim Form” means the proof of claim form, as approved by the Court, that will be mailed to all Class Members and that a Claimant must certify and submit to the Claims Administrator in order for that Claimant to be eligible to share in a distribution of the Net Settlement Fund.

5. “Final” means with respect to any judgment or order that the judgment or order is finally affirmed on appeal or is no longer subject to appeal and the time for any petition for reargument, appeal, or review, by certiorari or otherwise, has expired.

6. “Net Settlement Fund” means the Settlement Fund less any Taxes, and Tax Expenses (as defined below), attorneys’ fees, expert fees, notice and administration costs and any other expenses approved by the Court.

7. “Person” means an individual, natural person, corporation, partnership, limited liability company, limited partnership, joint venture, association, joint stock company, estate, legal representative, trust, government (or any political subdivision, department, or agency thereof), and any other type of business or legal entity.

8. “Released Defendants’ Claims” means any Claims (including “Unknown Claims”) that have been or could have been asserted in the Action or any forum by Defendants or Xencor or their respective successors and assigns against Plaintiff, the Class Members, or any of their respective counsel, which arise out of or relate in any way to the institution, prosecution, settlement or dismissal of the Action; provided, however, that the Released Defendants’ Claims shall not include any claims relating to the enforcement of the Settlement.

9. “Released Defendant Parties” means (i) Xencor and the named Defendants, (ii) any of their families, parent entities, controlling persons, associates, affiliates, or subsidiaries; and (iii) each and all of their respective past or present officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, insurers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures,

personal or legal representatives, estates, administrators, predecessors, successors, or assigns of (i) and (ii) above.

10. “Released Plaintiff’s Claims” means any and all manner of Claims (including “Unknown Claims”) that were asserted by Plaintiff on its own behalf and/or on behalf of all other Class Members in the Action, or could have been or in the future might be asserted by Plaintiff, any Class Member or the Class in the Class Action or in any other court, tribunal, forum or proceeding that are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, events, conduct, decisions, negotiations, fairness opinions, transactions, occurrences, statements, representations, misrepresentations, omissions, disclosures, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that relate in any way to or concern the Recapitalization, the Reclassification, or the Note Conversion, including, without limitation, those that were alleged, asserted, or claimed in the Class Action or which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, the events or conduct at issue in the Class Action, provided, however, that the Released Claims shall not include any claims for the enforcement of the Settlement.

11. “Released Plaintiff Parties” means (i) Plaintiff, (ii) all Class Members, and (iii) Class Counsel and any of the foregoing’s respective families,

parent entities, controlling persons, associates, predecessors, successors, affiliates, or subsidiaries, and each and all of their past or present officers, directors, executives, shareholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, brokers, dealers, insurers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors, and assigns.

12. “Released Claims” means the Released Defendants’ Claims and the Released Plaintiff’s Claims.

13. “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

14. “Claims Administrator” means Strategic Claims Services.

15. “Unknown Claims” means any and all claims that otherwise fall within the definition of Released Plaintiff’s Claim and that Plaintiff or any Class Member does not know or suspect exists in his, her or its favor at the time of the release of the Released Claims as against the Released Defendant Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement, and any and all claims that otherwise fall

within the definition of Released Defendants' Claims and that any Defendant or Xencor does not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims as against the Released Plaintiff Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement. With respect to any of the Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiff, Xencor and each Defendant shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

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

The Parties acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Parties, and by operation of law the

other Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge, and the other Class Members and other Released Parties by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for and was a key element of the Settlement and was relied upon by the Parties in entering into this Stipulation.

**X. APPLICATION FOR ATTORNEYS’ FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

The Plaintiff and Class Counsel intend to petition the Court for an award of attorneys’ fees of 20% of the Settlement Fund and for reimbursement of expenses up to \$150,000 (the “Fee and Expense Application”), and an incentive award to the Plaintiff in the amount of \$3,000. Any incentive award to the Plaintiff will be paid out of the attorneys’ fees awarded to Class Counsel. Class Counsel will make no other application for an award of attorneys’ fees or expenses in connection with the Action other than the Fee and Expense Application. Final resolution by the Court of the Fee and Expense Application is not a precondition to the dismissal of the Action in accordance with the Stipulation, and the Fee and Expense Application may be considered separately from the Settlement. The failure of the Court to



approve the Fee and Expense Application in whole or in part shall have no effect on the Settlement. The Parties acknowledge and agree that any award of attorneys' fees and expenses by the Court to Class Counsel shall be paid solely out of the Settlement Fund pursuant to the Stipulation, subject to Class Counsel's joint and several obligation to refund or repay within five (5) business days any amounts paid if as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the amount awarded is overturned or reduced. Class Counsel warrant that no portion of any such award of attorneys' fees or expenses shall be paid to the Plaintiff or any Class Member, except as approved by the Court.

#### **XI. THE SETTLEMENT HEARING**

The Court has scheduled a Settlement Hearing which will be held on \_\_\_\_\_, 2017 at \_\_:\_\_ \_\_.m., in the Leonard L. Williams Justice Center, Court of Chancery, 500 North King Street, Wilmington, Delaware 19801 to:

a. determine whether Plaintiff and Class Counsel have adequately represented the Class, and whether the Stipulation, and the terms and conditions of the Settlement proposed in the Stipulation, are fair, reasonable, and adequate and in the best interests of the Class Members and should be approved by the Court;

b. determine whether the proposed Plan of Allocation is fair and reasonable as to all Class Members and make any modifications determined by the Court to be appropriate;

c. determine whether the Judgment should be entered dismissing the Action and the Released Claims as to the Released Parties with prejudice as against the Plaintiff and the Class, releasing the Released Claims, and barring and enjoining prosecution of any and all Released Claims;

d. hear and rule on any objections to the Settlement;

e. consider the application of Class Counsel for an award of attorneys' fees and reimbursement of expenses and payment to the Plaintiff of an incentive award; and

f. hear and rule on such other matters as the Court may deem appropriate.

If the Court approves the Settlement, the Parties will ask the Court to promptly enter the Judgment and, as a result of such Judgment, the Action and the Released Claims will be dismissed on the merits with respect to all Released Parties and with prejudice against the Plaintiff and all Class Members. As further described in Section VIII above, that release and dismissal will bar the institution or prosecution by Plaintiff or any other Class Member of any other action asserting any Released Plaintiff Claim against any of the Released Parties.

Following the approval of the Settlement by the Court (and assuming the Court's ruling is upheld on any appeal), the Net Settlement Fund will be distributed to Claimants, consistent with the Plan of Allocation and the Class Order of Distribution approved by the Court.

If the Effective Date does not occur or if the Stipulation is disapproved, canceled, or terminated pursuant to its terms, (a) all of the Parties to the Stipulation shall be deemed to have reverted to their respective litigation status immediately prior to September 28, 2016, and they shall proceed in all respects 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 any issue in the Action shall be preserved without prejudice in any way; and (c) the statements made in connection with the negotiations of the Stipulation shall not be deemed to prejudice in any way the positions of the Parties with respect to the Action, or to constitute an admission of fact or wrongdoing by any Party, and shall not be used or entitle any Party to recover any fees, costs, or expenses incurred in connection with the Action, and 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.

## **XII. RIGHT TO APPEAR AND OBJECT**

As a Class Member, you are represented by the Plaintiff and Class Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her notice of appearance on the attorneys listed in the next section.

If you wish to object to the Settlement or any of its terms, the proposed Plan of Allocation, Class Counsel's application for attorneys' fees and reimbursement expenses, or the incentive award to the Plaintiff, you may present your objections by following the instructions below.

Any Class Member who objects to the Settlement or any of its terms, the proposed Plan of Allocation, Class Counsel's application for attorneys' fees and reimbursement of expenses, or the incentive award to the Plaintiff, or who otherwise wishes to be heard, may appear in person or through counsel at the Settlement Hearing and present any evidence or argument that may be proper and relevant. To do so, you must, no later than ten (10) business days prior to the Settlement Hearing (unless the Court otherwise directs for good cause shown), file with the Court of Chancery, located at Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, and serve on the attorneys listed below, the following documents: (i) a written notice of the intention to appear

identifying the name, address and telephone number of the objector and, if represented, their counsel; (ii) proof of your membership in the Class; (iii) a written statement of your objections to any matter before the Court; (iv) the grounds for such objections and the reasons for your desiring to appear and to be heard; and (v) all documents and writings which you desire the Court to consider. These papers must be served by hand delivery, overnight mail or electronic filing via File and ServeXpress e-serve on the following attorneys:

Elizabeth M. McGeever, Esquire  
Kevin H. Davenport, Esquire  
PRICKETT, JONES & ELLIOTT, P.A  
1310 North King Street  
Wilmington, Delaware 19801

William M. Lafferty, Esquire  
D. McKinley Measley, Esquire  
MORRIS, NICHOLS, ARSHT  
& TUNNELL LLP  
1201 North Market Street  
Wilmington, Delaware 19801

Any person who fails to object in the manner prescribed above shall be deemed to have waived such objection and shall forever be barred from raising such objection in the Action or any other action or proceeding.

### **XIII. SCOPE OF NOTICE**

This Notice does not purport to be a comprehensive description of the Action, the allegations in it, the terms of the Settlement or the Settlement Hearing. For further information regarding the matters involved in this litigation, you may inspect the pleadings and other papers filed in the Action, unless sealed, 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.

DO NOT WRITE OR TELEPHONE THE COURT.

If you have questions regarding the Settlement, you may direct them to the Claims Administrator or Class Counsel, as follows:

Strategic Claims Services  
Attn: DePinto v. Xencor Settlement  
600 N. Jackson Street, Suite 3  
Media, PA 19063  
Telephone: (866) 274-4004

Eric L. Zagar, Esquire  
KESSLER TOPAZ MELTZER  
& CHECK LLP  
280 King of Prussia Road  
Radnor, Pennsylvania 19087  
(610) 667-7706

Elizabeth M. McGeever, Esquire  
Kevin H. Davenport, Esquire  
PRICKETT, JONES & ELLIOTT, P.A.  
1310 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 888-6500

BY ORDER OF THE COURT:

---

Register in Chancery

Dated: \_\_\_\_\_

# **EXHIBIT C**



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

MICHAEL DEPINTO, On Behalf of  
Himself and All Others Similarly  
Situating,

Plaintiff,

v.

JOHN S. STAFFORD, III, BASSIL I.  
DAHIYAT, JONATHAN FLEMING,  
ATUL SARAN, HAROLD R. WERNER,  
BRUCE L.A. CARTER, CHARLES  
STEWART, and DONALD C. FOSTER,

Defendants.

---

IN RE XENCOR, INC.  
SHAREHOLDERS LITIGATION

Consol. C.A. No. 10742-CB

**[PROPOSED] FINAL ORDER AND JUDGMENT**

The Stipulation and Agreement of Compromise, Settlement and Release, dated November 21, 2016 (the “Stipulation”),<sup>1</sup> of the above-captioned action (the “Action”), and the settlement contemplated thereby (the “Settlement”) having been presented at the Settlement Hearing on \_\_\_\_\_, 2017, pursuant to the Scheduling Order entered herein on \_\_\_\_\_, 2016 (the “Scheduling Order”),

---

<sup>1</sup> The capitalized terms used in this Final Order and Judgment shall have the same meaning as they have in the Stipulation (certain of which are repeated here for ease of reference only).



which Stipulation was entered into by the Parties, and which is incorporated herein by reference; and the Court having determined that notice of said hearing was given to the Class in accordance with the Scheduling Order and that said notice was adequate and sufficient; and the Parties having appeared by their attorneys of record; and the attorneys for the respective Parties having been heard in support of the Settlement of the Actions; and an opportunity to be heard having been given to all other persons desiring to be heard as provided in the notice; and the entire matter of the Settlement having been considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED this \_\_\_\_ day of \_\_\_\_\_, 2017, that:

1. The Notice of Proposed Settlement of Class Action, Settlement Hearing and Right to Appear (the “Notice”) has been given to the Class, proof of the mailing of the Notice has been filed with the Court, and a full opportunity to be heard has been offered to all Parties, the Class and persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of Court of Chancery Rule 23 and due process, and it is further determined that all Class members are bound by the Final Order and Judgment herein.

2. On June 21, 2016, the Court certified a non-opt out Class pursuant to Court of Chancery Rules 23(a) and 23(b)(1) consisting of all former holders of Series A through E Preferred stock of Xencor whose shares were converted to A-1 Stock of Xencor in Xencor's 2013 Recapitalization, excluding defendants and any person, firm, trust, corporation or other entity related to, or affiliated with, any defendant (the "Class").

3. Plaintiff, Michael DePinto, was certified as representative of the Settlement Class. The law firms of Prickett, Jones & Elliott, P.A. and Kessler Topaz Meltzer & Check, LLP were appointed as Class Counsel. Further, the Court now finds, based on the record in the Class Action, that Plaintiff and Class Counsel have fairly and adequately protected and represented the interests of the Class.

4. The Settlement as provided for in the Stipulation, including the Plan of Allocation, is approved as fair, reasonable and adequate, and in the best interests of Plaintiff and the Class, and is hereby approved pursuant to Delaware Court of Chancery Rule 23(e).

5. The Parties (as defined in the Stipulation) are hereby authorized and directed to comply with, and to 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 Final Order and Judgment.

6. This Final Order and Judgment shall not be deemed, construed as, or constitute a presumption, concession, or an admission by any of the Parties of any fault, liability, damages, or wrongdoing as to any facts or claims alleged or asserted in the Action or any other actions or proceedings.

7. “Released Claims” means the Released Defendants’ Claims and the Released Plaintiff’s Claims.

8. “Released Defendants’ Claims” means any Claims (including “Unknown Claims”) that have been or could have been asserted in the Action or any forum by Defendants or Xencor or their respective successors and assigns against Plaintiff, the Class Members, or any of their respective counsel, which arise out of or relate in any way to the institution, prosecution, settlement or dismissal of the Action; provided, however, that the Released Defendants’ Claims shall not include any claims relating to the enforcement of the Settlement.

9. “Released Plaintiff’s Claims” means any and all manner of Claims (including “Unknown Claims”) that were asserted by Plaintiff on its own behalf and/or on behalf of all other Class Members in the Action, or could have been or in the future might be asserted by Plaintiff, any Class Member or the Class in the Class Action or in any other court, tribunal, forum or proceeding that are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, events, conduct, decisions, negotiations, fairness opinions, transactions,

occurrences, statements, representations, misrepresentations, omissions, disclosures, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that relate in any way to or concern the Recapitalization, the Reclassification, or the Note Conversion, including, without limitation, those that were alleged, asserted, or claimed in the Class Action or which are based upon, arise out of, relate in any way to, or involve, directly or indirectly, the events or conduct at issue in the Class Action, provided, however, that the Released Claims shall not include any claims for the enforcement of the Settlement.

10. “Unknown Claims” means any and all claims that otherwise fall within the definition of Released Plaintiff’s Claim and that Plaintiff or any Class Member does not know or suspect exists in his, her or its favor at the time of the release of the Released Claims as against the Released Defendant Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement, and any and all claims that otherwise fall within the definition of Released Defendants’ Claims and that any Defendant or Xencor does not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims as against the Released Plaintiff Parties, including without limitation those which, if known, might have affected the decision to enter into this Settlement. With respect to any of the Released Claims, the Parties

stipulate and agree that upon the Effective Date, Plaintiff, Xencor and each Defendant shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived, relinquished and released any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any state of the United States or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

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

The Parties acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Parties, and by operation of law the other Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge, and the other Class Members and other Released Parties by operation of law shall be deemed to

have acknowledged, that the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for and was a key element of the Settlement and was relied upon by the Parties in entering into this Stipulation.

11. The Parties acknowledge, and the other Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Parties, and by operation of law the other Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts.

12. The Released Claims are hereby dismissed with prejudice and without costs (except as provided in the Stipulation) as to all Released Parties, and effective upon Final Court Approval, the Released Claims are hereby absolutely and unconditionally compromised, settled, released, discharged, and dismissed with prejudice by virtue of the proceedings herein and this Final Order and Judgment. The terms of the Settlement and this Final Order and Judgment shall be forever binding on Plaintiff and all Class Members and shall have res judicata and other preclusive effect in all pending and future claims, litigation, or other proceedings maintained by or on behalf of any Class Members or any stockholder

of Xencor to the extent those claims, litigation, or other proceedings involve, directly or indirectly, any of the Released Claims.

13. Plaintiff, all Class Members, Defendants and Xencor, and related parties as set forth in the Stipulation, are hereby barred and enjoined from commencing, instigating, instituting, maintaining, prosecuting, asserting, or participating in any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, or other forum of any kind, whether individual, class, derivative, representative, legal, equitable, or in any other capacity, from asserting any Released Claims, as and to the extent set forth in the Stipulation.

14. Plaintiff is hereby awarded attorneys' fees in the amount of \$\_\_\_\_\_, which shall be paid from the Settlement Fund to Plaintiff within three (3) business days of entry of this Final Order and Judgment, subject to Plaintiff's obligation to refund any amounts by which the award of attorneys' fees and/or expenses may be subsequently reduced upon appeal or by collateral attack. Plaintiff is hereby awarded an incentive award in the amount of \$\_\_\_\_\_, payable out of the attorney fee award. Plaintiff is further granted reimbursement of expenses in the amount of \$\_\_\_\_\_.

15. The effectiveness of the provisions of this Final Order and Judgment and the obligations of the Parties under the Settlement shall not be conditioned

upon or subject to the resolution of any appeal from this Final Order and Judgment that relates solely to the issue of Plaintiff's application for attorneys' fees and/or expenses.

16. Without affecting the finality of this Judgment in any way, the Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund and the Net Settlement Fund; (c) the Class Members for all matters relating to the Action; and (d) any motion for a Class Distribution Order

---

Chancellor





# EXHIBIT D

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**  
***DePinto v. Stafford, C.A. No. 10742--CB***

**CLAIM FORM**

Name: <i>[Preprinted]</i> Mailing Address: <i>[Preprinted]</i> Number of Xencor Series A Preferred Stock <i>[Preprinted]</i> Number of Xencor Series B Preferred Stock <i>[Preprinted]</i> Number of Xencor Series C Preferred Stock <i>[Preprinted]</i> Number of Xencor Series D Preferred Stock <i>[Preprinted]</i> Number of Xencor Series E Preferred Stock <i>[Preprinted]</i> \$_____ <i>[Preprinted]</i> of principal of Xencor Convertible Promissory Notes Estimated payment: \$_____ <i>[Preprinted]</i>
---

TO RECEIVE A PAYMENT FROM THE SETTLEMENT, YOU MUST COMPLETE AND RETURN THIS CLAIM FORM NO LATER THAN 120 DAYS AFTER THE MAILING OF THE NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION, SETTLEMENT HEARING, AND RIGHT TO APPEAR (THE "NOTICE"). IF THE SETTLEMENT IS APPROVED BY THE COURT, YOU WILL BE BOUND BY THE RELEASE IN THE STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT AND RELEASE, WHETHER OR NOT YOU RETURN THIS FORM. IF YOU HAVE QUESTIONS PLEASE CONTACT THE CLAIMS ADMINISTRATOR TOLL-FREE AT 1-866-274-4004.

**INSTRUCTIONS**

1. Please read this form and the accompanying Notice thoroughly before completing this form.
2. Review the information pre-printed in the box above. If you disagree with the information regarding the number of shares of Xencor Series A through Series E Preferred Stock you held as of June 12, 2012 or the principal amount of Xencor Convertible Promissory Notes you owned as of June 12, 2012, please correct that information, initial your changes, and attach supporting documentation (please do not send originals). If your mailing address has changed, please note your new address above. If you move after submitting this form, please inform the Claims Administrator by one of the means indicated below.
3. Sign, date and print your name at the bottom of this form. If more than one stockholder is identified in the box above, then all must sign this form.
4. After completing and signing this form, return it, together with documentation supporting any changes to the information pre-printed in the box above, no later than 120 days after the mailing of the Notice, by any of the following means:
  - By first-class or express mail to: Attn: *Xencor, Inc.* Preferred Stockholders Settlement, c/o Strategic Claims Services, 600 N. Jackson Street, Suite 3, Media, PA 19063
  - Scanned copies, by email to: [info@strategicclaims.net](mailto:info@strategicclaims.net)
  - By fax to: (610) 565-7985
5. Claim forms submitted by email will be acknowledged upon receipt by reply email. Claim forms submitted by other means will be acknowledged within 60 days by mailed postcard.

## CERTIFICATIONS

I (We) certify that to the best of my (our) knowledge, the information pre-printed in the box above (including any corrections I (we) have marked) is correct and I (we) have not assigned any claim against the Defendants related to Xencor's June 2012 recapitalization.

I (We) certify that I am (we are) not a person, firm, trust, corporation or other entity related to or affiliated with any of the following defendants: John S. Stafford, III, Bassil I. Dahiyat, Jonathan Fleming, Atul Saran, Harold R. Werner, Bruce L.A. Carter, Charles Stewart, or Donald C. Foster.

I (We) certify that I (we) have not submitted any other Claim Form covering the same holdings of Xencor Series A through E Preferred Stock as of June 12, 2012 and know of no other person having done so on my (our) behalf.

If I am (we are) signing below in a representative capacity (e.g., as an officer, trustee, executor, agent or stockholder representative), then I (we) certify that I am (we are) duly authorized to sign and submit this Claim Form.

I (We) certify that I am (we are) not subject to backup withholding under the Internal Revenue Code. *If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the previous sentence.*

## SUBMISSION TO COURT'S JURISDICTION

I (We) submit to the jurisdiction of the Court of Chancery of the State of Delaware, with respect to my (our) claim as a Class Member.

I (We) declare under penalty of perjury under the laws of the United States of America that all of the foregoing certifications are true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Joint Owner-Sign your name here)

\_\_\_\_\_  
(Print or type your name here)

\_\_\_\_\_  
(Joint Owner-Print or type your name here)

If signing in a representative capacity (e.g., as an officer, trustee, executor, agent or stockholder representative), (1) state the capacity below, and (2) if the stockholder identified above is an individual, submit documentation of your authority (e.g., order appointing executor).

\_\_\_\_\_  
Capacity of Person Signing

# **EXHIBIT E**

## **Plan of Allocation**

### **I. The Recapitalization**

In 2013, Xencor reclassified its Series A through E Preferred Stock and converted its 2009 and 2010 Convertible Notes (the “Notes”) into a new Series A-1 Preferred Stock (the “Series A-1 Stock”) (the “Recapitalization”). In the Recapitalization,

1. Xencor was valued at \$75 million,
2. Xencor issued 47,879,602 shares of Series A-1 Stock,
3. the Notes (excluding interest) were converted to Series A-1 Stock at a price of 0.33 (i.e.  $\text{Principal} \div 0.33$ ) and
4. the Series A-E Preferred Stock was converted into Series A-1 Stock at the following exchange ratios: Series A – 0.035, Series B – 0.040, Series C – 0.045, Series D – 0.050, Series E – 0.055.

Class Members held different amounts of different series of Series A through E Preferred Stock. Some Class Members also held different amounts of Notes, which Plaintiff alleged were overvalued in the Recapitalization. Accordingly, to allocate the Net Settlement Fund among Class Members with differing interests, Class Counsel uses the allocation model described below (the “Allocation Model”).

## **II. The Allocation Model Inputs**

For purposes of the Settlement, in the Allocation Model Class Counsel uses the same value of Xencor that was used in the Recapitalization (\$75 million) and same number of shares of Series A-1 Stock issued in the Recapitalization (47,879,602). Class Counsel values the Notes (including interest) at a price of 0.70 (i.e.  $[\text{Principal} + \text{Interest}] \div 0.70$ ), which results in Noteholders receiving fewer shares of Series A-1 Stock in the Allocation Model than Noteholders actually received in the Recapitalization. Finally, Class Counsel uses the same proportionate allocation of Series A-1 Stock among the Series A through E Preferred Stock but updates the exchange ratios used in the Recapitalization to account for the fact that additional shares of Series A-1 Stock should have been issued to Class Members.

## **III. Settlement Fund Allocation**

The Net Settlement Fund<sup>1</sup> will be allocated to Class Members based on their Net Loss Percentage (defined below).

Each Class Member's "Stockholder Loss" is calculated by determining the number of shares Series A-1 Stock the Class Member should have received for the Class Member's shares of Series A through E Preferred Stock that were reclassified in the Recapitalization using the inputs to the Allocation Model

---

<sup>1</sup> "Net Settlement Fund" means the amount of the \$2.375 million Settlement Fund allocable to the Class after payment of award of attorneys' fees and expenses and settlement administration expenses, including taxes and tax expenses.

described above minus the number of shares of Series A-1 Stock the Class Member actually received in the Recapitalization for the Class Member's Series A through E Preferred Stock.

For any Class Member that held Notes, Class Counsel calculated the Class Member's "Noteholder Gain." A Class Member's Noteholder Gain is calculated by determining the number of shares Series A-1 Stock the Class Member should have received from the conversion of the Class Member's Notes in the Recapitalization using the inputs to the Allocation Model described above minus the number of shares of Series A-1 Stock the Class Member actually received for Class Member's Notes in the Recapitalization.

"Net Loss" for each Class Member is calculated by subtracting the Class Member's Noteholder Gain from the Class Member's Stockholder Loss.<sup>2</sup> Class Members that have a greater Noteholder Gain than Stockholder Loss have a Net Gain and shall not receive any of the Settlement Fund. "Total Net Loss" shall be the sum of all Net Losses, excluding any Net Gains.

A Class Member's "Net Loss Percentage" is calculated by dividing the Class Member's Net Loss by the Total Net Loss of Class Members that submit timely,

---

<sup>2</sup> Class Counsel shall attempt in good faith to determine if any Class Member purchased Notes in a different name but remained the actual owner or beneficial owner of the Notes. If Class Counsel determines that the Class Member was the actual owner or beneficial owner of Notes held in a different name, it shall offset the Class Member's Stockholder Loss by the Noteholder Gain of that investor.

valid and properly executed Claim Forms to the Claims Administrator which claims are approved for payment.

Class Members shall receive a Settlement Distribution in an amount equal to the Class Member's Net Loss Percentage times the Net Settlement Fund.