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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE KALOBIOUS  
PHARMACEUTICALS, INC.  
SECURITIES LITIGATION

Case No. 5:15-cv-05841-EJD

**Class Action**

THIS DOCUMENT RELATES TO  
ALL ACTIONS

**STIPULATION AND AGREEMENT OF  
SETTLEMENT**

The Hon. Edward J. Davila

This Stipulation and Settlement Agreement dated March 21, 2018 (“Stipulation”) is submitted pursuant to Fed. R. Civ. P. 23 and Fed. R. Evid. 408. Subject to the Court’s approval, this Stipulation is entered into between and among Lead Plaintiffs Kaniz Fatema, Zeke Ingram, Bhaskar R. Gudlavenkatasiva and Abuhena M. Saifulislam (together, the “KaloBios Investor Group” or “Lead Plaintiffs”) and Plaintiff Austin Isensee (together with the KaloBios Investor Group, the “Plaintiffs”), individually and on behalf of each member of the proposed Settlement Class (defined below), and Defendant Martin Shkreli (“Shkreli,” “Defendant Shkreli,” or the “Settling Defendant”), by and through their respective counsel, and sets forth a settlement (the “Settlement”) of the above-captioned consolidated action (“Action”) as against Defendant Shkreli.

**I. THE LITIGATION**

This Action began with the filing of multiple initial securities class action complaints in

1 the United States District Court for the Northern District of California: (1) by Plaintiff Kang Li  
2 on December 18, 2015; (2) by Plaintiff Matthew Sciabacucchi on December 23, 2015; and (3) by  
3 Plaintiff Austin Isensee on December 31, 2015. These initial complaints named KaloBios  
4 Pharmaceuticals, Inc. (“KaloBios”), Shkreli, and Chris Thorn (“Thorn”) as defendants. Each  
5 complaint asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934  
6 (the “Exchange Act”), 15 U.S.C. §§ 78j(b), and 78t(a), and Rule 10b-5 promulgated thereunder  
7 by the Securities and Exchange Commission (“SEC”), 17 C.F.R. § 240.10b-5, alleging that  
8 Defendants made material misstatements and omissions concerning KaloBios’s business  
9 operations and prospects between November 19, 2015 and December 16, 2015. Defendant  
10 Shkreli denies the allegations in these complaints.

11 On December 30, 2015, KaloBios filed for Chapter 11 bankruptcy, its case proceeding as  
12 Case No. 15-12628 (LSS) (the “Bankruptcy Case”) in the U.S. Bankruptcy Court for the District  
13 of Delaware (the “Bankruptcy Court”).

14 On February 16, 2016, multiple movants, including the KaloBios Investor Group, filed  
15 motions and supporting papers seeking to consolidate these cases and seeking appointment by the  
16 Court to serve as lead plaintiffs. On April 28, 2016, the Court entered an Order appointing the  
17 KaloBios Investor Group to serve as Lead Plaintiffs and appointing their choice of counsel,  
18 Pomerantz LLP (“Pomerantz”), also counsel for Plaintiff Isensee, to serve as Lead Counsel.

19 On March 29, 2016, the KaloBios Investor Group and Plaintiff Isensee filed a proof of  
20 claim in KaloBios’s Bankruptcy Case on their own behalf and on behalf of the putative class at  
21 issue in the Action.

22 On April 18, 2016, Plaintiff Isensee, represented by Lead Counsel, filed his First  
23 Amended Complaint for Violation of the Federal Securities Laws. Plaintiff Isensee’s Amended  
24 Complaint removed Thorn as a named Defendant in the Action, again named KaloBios and  
25 Shkreli as defendants, and also named Ronald Martell (“Martell”) and Herb Cross (“Cross”) for  
26 the first time as defendants in the Action. This Amended Complaint, which included allegations  
27 by certain confidential witnesses, also asserted claims under Sections 10(b) and 20(a) of the  
28 Exchange Act and Rule 10b-5, alleging that Defendants made material misstatements and

1 omissions between November 18, 2015 and December 16, 2015 concerning KaloBios’s business  
2 operations and prospects and Defendant Shkreli’s prior misconduct. Defendant Shkreli denies the  
3 allegations in this First Amended Complaint.

4 In light of KaloBios’s bankruptcy, Lead Counsel engaged in extensive resolution-oriented  
5 discussions and negotiations with counsel for the Defendants KaloBios, Martell, and Cross (the  
6 “Non-Shkreli Defendants”) throughout this time period, both telephonically and during in-person  
7 meetings, including a full-day session on May 3, 2016, attended by their counsel and  
8 representatives from their insurance carriers. During this time period, Lead Counsel also engaged  
9 with Shkreli’s counsel and insurance carriers, both telephonically and in person, in an  
10 unsuccessful early attempt to settle the Action as regards him.

11 An understanding in principal was reached to settle the Action as to the Non-Shkreli  
12 Defendants on May 18, 2016. Thereafter, Lead Counsel and counsel for the Non-Shkreli  
13 Defendants negotiated a Memorandum of Understanding, executed on June 2, 2016, and the  
14 Bankruptcy Court was notified. Lead Counsel also delivered alternative versions of a Class 6  
15 bankruptcy ballot, indicating approval or rejection of KaloBios’s exit plan, to counsel for  
16 KaloBios to hold in escrow pending the decision by the Bankruptcy Court as to whether to  
17 approve or reject the settlement of the Action as regards the Non-Shkreli Defendants . The  
18 Bankruptcy Court entered an order approving the settlement with the Non-Shkreli Defendants and  
19 KaloBios’s plan of reorganization and Chapter 11 exit plan, including the settlement with the  
20 Non-Shkreli Defendants. *See In re KaloBios Pharmaceuticals, Inc.*, Case No. 15-12628-LSS  
21 (Bankr. D. Del.), Dkt. No. 570. Once the Bankruptcy Court indicated its approval of the  
22 settlement with the Non-Shkreli Defendants, Lead Counsel authorized bankruptcy counsel for  
23 KaloBios to release the escrowed vote in favor of the bankruptcy exit plan. The parties then  
24 negotiated the terms of a stipulation, which was submitted to the Bankruptcy Court in near-final  
25 form. The Bankruptcy Court then approved KaloBios’ plan of reorganization and Chapter 11 exit  
26 plan, including the settlement with the Non-Shkreli Defendants. *See In re KaloBios*  
27 *Pharmaceuticals, Inc.*, Case No. 15-12628-LSS (Bankr. D. Del.), Dkt. No 581.

28 A stipulation was finalized on July 1, 2016, and executed by Plaintiffs and the Non-

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1 Shkreli Defendants that day. Plaintiffs filed a motion for preliminary approval of the settlement  
2 with the Non-Shkreli Defendants on August 8, 2016.

3 The stipulation of settlement with the Non-Shkreli Defendants, the bankruptcy orders  
4 which approved such settlement, and the approval motions that Plaintiffs filed with this Court, as  
5 well as its orders preliminarily and finally approving such settlement, all expressly preserved  
6 Plaintiffs' right to continue litigating against Defendant Shkreli.

7 Thus, the litigation against Defendant Shkreli continued. Plaintiffs filed their First  
8 Consolidated Amended Complaint (the "FAC") on July 14, 2016 (Dkt. No. 55), Defendant  
9 Shkreli filed his motion to dismiss on August 16, 2016 (Dkt. No. 61), Plaintiffs opposed on  
10 September 21, 2016 (Dkt. No. 65), and Shkreli filed his reply on October 26, 2016 (Dkt. No. 68).  
11 On January 19, 2017, Lead Counsel and Shkreli's counsel argued the merits of his motion to  
12 dismiss.

13 On January 20, 2017, the Court granted preliminary approval of the settlement with the  
14 Non-Shkreli Defendants. Following class-wide notice, Plaintiffs filed their motion for final  
15 approval of that settlement on May 11, 2017, with reply papers filed on May 25, 2017. On June  
16 23, 2017, the Court granted final approval of the settlement with the Non-Shkreli Defendants, in  
17 an order that it revised on July 24, 2017. Each of these Orders preserved Plaintiffs' ability to  
18 continue litigating against Defendant Shkreli.

19 On June 23, 2017, the Court also entered an Order (Dkt. No. 94) granting Shkreli's motion  
20 to dismiss the FAC, without prejudice. On July 13, 2017, Plaintiffs filed a motion to extend the  
21 deadline for further pleadings until Shkreli's criminal trial ended, which the Court granted.

22 Plaintiffs filed their Second Consolidated Amended Complaint (Dkt. No. 104) ("SAC") on  
23 August 25, 2017. On September 29, 2017, Shkreli again moved to dismiss (Dkt. No. 107). On  
24 October 26, 2017, Plaintiffs filed their opposition (Dkt. No. 112). On November 9, 2017, Shkreli  
25 filed his reply (Dkt. No. 113). On January 9, 2018, Plaintiffs filed a statement of recent decision  
26 (Dkt. No. 119). The Court set February 8, 2018, as the hearing date for Shkreli's motion to  
27 dismiss.

28 While briefing was ongoing, Plaintiffs and Shkreli discussed the possibility of mediation,  
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1 and they agreed to mediate before JAMS mediator Jed Melnick, Esq., on January 30, 2018. In  
2 advance, on January 16, 2018, Plaintiffs and Shkreli simultaneously submitted written mediation  
3 statements, which they exchanged. Plaintiffs and Shkreli conducted a mediation on January 30,  
4 2018, which resulted in their oral agreement to settle the Action for \$1.5 million, subject to  
5 execution of this Stipulation. Plaintiffs and Shkreli executed a Memorandum of Understanding  
6 on February 6, 2018.

## 7 **II. PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLEMENT**

8 Plaintiffs and Lead Counsel believe that the claims asserted in the Action have merit. However,  
9 Plaintiffs and Lead Counsel recognize and acknowledge the expense and length of continued  
10 proceedings necessary to prosecute the Action against the Settling Defendant through trial and  
11 appeal. Based on their investigation and discovery, Plaintiffs are entering into this Settlement in  
12 view of, among other things, the significant cash benefits it will provide to Settlement Class  
13 Members and the avoidance of the uncertainties, burden, risk, and expense of further litigation  
14 against the Settling Defendant. Plaintiffs and Lead Counsel are mindful of the inherent problems  
15 of proof of, and possible defenses to, the federal securities law violations asserted in the Action,  
16 including, but not limited to, proof of the Settling Defendant's state of mind, causation, and  
17 damages, particularly in light of the Court's prior Order dismissing the Action as it had been  
18 previously alleged in the FAC and the arguments raised in Shkreli's pending motion to dismiss  
19 the SAC. Based on the forgoing, Plaintiffs and Lead Counsel have concluded that the terms and  
20 conditions of this Stipulation confer substantial benefits upon the Settlement Class; are fair,  
21 reasonable and adequate to the Settlement Class; and that it is in the best interests of the  
22 Settlement Class to settle the claims raised in the Action, as they were alleged against Defendant  
23 Shkreli, pursuant to the terms and provisions of this Stipulation.

## 24 **III. SETTLING DEFENDANT'S DENIALS OF LIABILITY**

25 The Settling Defendant has denied and continues to deny that he has violated the federal  
26 securities laws or any other laws or has otherwise misled investors as alleged in the Action. He  
27 has denied and continues to deny specifically each and all of the claims alleged in the Action; all  
28 charges of wrongdoing or liability against him arising out of any of the conduct, statements, acts

1 or omissions alleged, or that could have been alleged, in the Action; the allegations that he made  
2 any material misstatements or omissions; that any Settlement Class Member has suffered  
3 damages; that the prices of KaloBios securities were artificially inflated by reason of the alleged  
4 misrepresentations or omissions by him; that the Settlement Class Members were harmed by the  
5 conduct alleged in the Action; or that he knew of or was reckless with respect to the alleged  
6 misconduct. In addition, the Settling Defendant maintains that he has meritorious defenses to all  
7 claims alleged in the Action.

8 Nonetheless, taking into account the uncertainty, risks, and costs inherent in any litigation,  
9 especially in complex cases such as this Action, the Settling Defendant has concluded that further  
10 conduct of the Action could be protracted, burdensome, expensive, and distracting. He has,  
11 therefore, determined that it is desirable and beneficial to him that the Action be settled in the  
12 manner and upon the terms and conditions set forth in this Stipulation. As set forth in ¶44, below,  
13 and pursuant to the Federal Rules of Evidence, this Stipulation shall in no event be construed as  
14 or deemed to be evidence of an admission or concession by the Settling Defendant with respect to  
15 any claim of any fault or liability or wrongdoing or damage.

16 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

17 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among  
18 Plaintiffs (for themselves and all Settlement Class Members), on the one hand, and the Settling  
19 Defendant, on the other hand, by and through their respective counsel or attorneys of record, that,  
20 subject to the approval of the Court, in consideration of the benefits flowing to them from the  
21 Settlement set forth herein, the Action and the Released Claims shall be finally and fully  
22 compromised, settled, and released, and the Action shall be dismissed with prejudice upon and  
23 subject to these terms and conditions set forth herein:

24 **DEFINITIONS**

25 1. In addition to the other defined terms herein, the following definitions shall apply  
26 in this Stipulation:

27 (a) “Authorized Claimant” means a Settlement Class Member who submits  
28 a timely and valid Proof of Claim form to the Settlement Administrator, in accordance with the

1 requirements established by the Court, which is approved for payment from the Settlement Fund.

2 (b) "Claimant" means a Settlement Class Member who submits a Proof of  
3 Claim to the Settlement Administrator seeking to share in the proceeds of the Settlement Fund.

4 (c) "Defendant Claims" means any and all actual and potential claims,  
5 counterclaims, and bases for relief, whether known or Unknown Claims, that the Settling  
6 Defendant could have raised in the Action against the Plaintiffs or Lead Counsel including but not  
7 limited to claims arising under Fed. R. Civ. P. 11 or any other claims seeking reimbursement of  
8 costs, expenses, or attorneys' fees, but excepting claims to enforce this Settlement.

9 (d) "Effective Date" means the date upon which the Settlement  
10 contemplated by this Stipulation shall become effective, as set forth in ¶39 below.

11 (e) "Escrow Account" means the escrow account or accounts established in  
12 a federally chartered bank designated by Lead Counsel to be controlled by such bank as the  
13 Escrow Agent for the benefit of the Settlement Class, and to which the Settlement Consideration  
14 shall be wired, transferred, or otherwise paid pursuant to ¶7 below.

15 (f) "Escrow Agent" means The Huntington National Bank.

16 (g) "Final" means an order or judgment as to which there is no pending  
17 appeal, stay, motion for reconsideration or motion to vacate or similar request for relief, and as to  
18 which the period of time for a party to seek any such appeal, stay, motion for reconsideration, or  
19 motion to vacate or similar request for relief has expired, or if any such appeal, stay, motion for  
20 reconsideration, or motion to vacate or similar request has been filed, after such appeal, stay,  
21 motion for reconsideration, or motion to vacate or similar request has been denied and the order  
22 or judgment has been upheld in all material respects and is no longer subject to review.

23 (h) "Judgment" means the Judgment and Order of Final Approval to be  
24 entered by the Court following the settlement fairness hearing ("Settlement Hearing") approving  
25 the Settlement, certifying the Settlement Class for settlement purposes only, approving the release  
26 of the Settled Claims, and dismissing the Settled Claims with prejudice and without costs to any  
27 party, in the form attached hereto as Exhibit E or in similar form adopted by the Court.

28 (i) "MOU" means the Memorandum of Understanding executed by the  
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1 parties on February 6, 2018.

2 (j) “Net Settlement Fund” means the Settlement Fund, less all fees and  
3 expenses awarded by the Court to Lead Counsel (or any other counsel designated by Lead  
4 Counsel), any award to the Plaintiffs, any Taxes, and any notice and administration costs.

5 (k) “Notice” means the Notice of Proposed Settlement of Class Action,  
6 Motion for Attorneys’ Fees and Expenses, and Notice of Settlement Fairness Hearing, in all  
7 material respects in the form attached hereto as Exhibit B1 (long form), to which Settlement Class  
8 Members will be directed for viewing on the Settlement Administrator’s website, and Exhibit B2  
9 (short form), which mirrors the short form notice previously approved by the Court in conjunction  
10 with the settlement with the Non-Shkreli Defendants and which is to be sent to Settlement Class  
11 Members.

12 (l) “Plan of Allocation” means the plan for allocating the Net Settlement  
13 Fund, as set forth in Exhibit B, or such other plan of allocation as the Court may approve.

14 (m) “Preliminary Approval Order” means the order, substantially in the form  
15 attached hereto as Exhibit A, to be entered by the Court that will, for the limited purposes of this  
16 Settlement, approve this Action to proceed as a class action, preliminarily approve the Settlement  
17 and direct notice to be provided to the Settlement Class.

18 (n) “Proof of Claim” means the Proof of Claim and Release Form in all  
19 material respects in the form attached hereto as Exhibit D.

20 (o) “Publication Notice” means the Summary Notice of Pendency and  
21 Proposed Settlement of Action and Settlement Hearing, substantially in the form attached as  
22 Exhibit C.

23 (p) “Recognized Claim” means the amount of an Authorized Claimant’s  
24 loss that is determined by the Settlement Administrator to be compensable under the Plan of  
25 Allocation.

26 (q) “Released Parties” means Defendant Shkreli, his immediate family  
27 members, his successors and assigns, and his insurers.

28 (r) “Settled Claims” means the Settlement Class Claims and the Defendant



1 Claims.

2 (s) “Settlement” means the settlement contemplated by this Stipulation.

3 (t) “Settlement Administrator” means the firm of Strategic Claims Services  
4 which shall administer the Settlement, including sending a short-form mailed Notice to  
5 Settlement Class Members in the form of Exhibit B2 hereto, arranging for publication of Notice  
6 in the form of Exhibit C hereto, arranging for a dedicated webpage on which will be posted the  
7 Stipulation of Settlement and all its Exhibits including the long-form Notice in the form of  
8 Exhibit B1 and the Proof of Claim in the form of Exhibit D, processing claims, and performing  
9 such other administrative functions as are required under this Stipulation.

10 (u) “Settlement Administration Account” means an interest bearing account  
11 to be maintained by the Settlement Administrator for payment of the expenses of administering  
12 the Settlement.

13 (v) “Settlement Class” means, for purposes of this Settlement only, all  
14 persons or entities who purchased or otherwise acquired the common stock of KaloBios between  
15 November 19, 2015 and December 16, 2015, both dates inclusive, seeking to recover damages  
16 caused by the Settling Defendant’s alleged violations of the federal securities laws. Excluded  
17 from the Settlement Class are the Settling Defendant and his immediate family members; former  
18 Defendant KaloBios and its successors, assigns, officers, directors, subsidiaries, affiliates, and  
19 employees, including without limitation Ted W. Love, Denise Gilbert, Laurie Smaldone Alsup,  
20 Gary Lyons, Robert A. Baffi, Raymond M. Withy, Charles Democko, Don Joseph, Geoffrey  
21 Yarranton, Judy Alaura, Priyanka Ankola, Deborah Brown, Mark Camarena, Blair Evans,  
22 Jennifer Fernando, Morgan Lam, Wendy Lin, Tom Selph, Ted Shih, and Mirella Villa del Toro;  
23 former Defendants Martell and Cross and their immediate family members; Shkreli’s affiliates  
24 and the other members of his investor group who acquired roughly 70% of KaloBios stock as  
25 announced by KaloBios: David Moradi (“Moradi”), Anthion Partners II LLC, Marek Biestek  
26 (“Biestek”); and those individuals who otherwise acquired KaloBios stock and/or were appointed  
27 as KaloBios officers and directors in conjunction with Shkreli’s takeover of the company,  
28 including Moradi, Biestek, Tony Chase, Tom Fernandez, and Michael Harrison. The Settling

1 Defendant shall assist in identifying the members of his immediate family to be excluded from  
2 the Settlement Class.

3 (w) "Settlement Class Claims" means any and all claims, both known and  
4 Unknown Claims, alleged or which could have been alleged or pled or which could have been  
5 pled in the Action against the Settling Defendant or any of the Released Parties, for any alleged  
6 injury to a Settlement Class Member arising from the facts and circumstances at issue in the  
7 Action or related in any way to Shkreli's tenure at KaloBios, alleged misstatements or omissions  
8 made by Shkreli, and transactions by any Settlement Class Member in KaloBios stock, whether  
9 known or Unknown Claims, whether direct or for indemnification, contribution or otherwise, and  
10 whether arising under state, federal, or common law, and including any claim for recovery of  
11 liability to the Settlement Class or its members for any costs, expenses or attorneys' fees, but  
12 excepting claims to enforce this Settlement. "Settlement Class Member" means a person or entity  
13 that is a member of the Settlement Class that does not exclude himself, herself or itself by filing a  
14 request for exclusion in accordance with the requirements set forth in the Notice.

15 (x) "Settlement Class Period" means the period of November 19, 2015  
16 through December 16, 2015 (both dates inclusive).

17 (y) "Settlement Consideration" means one million five hundred thousand  
18 dollars (\$1,500,000.00) to be funded by XL Specialty Insurance Company ("XL") on behalf of  
19 the Settling Defendant within fifteen business (15) days after the Court grants preliminary  
20 approval of the Settlement. For the avoidance of doubt, other than the Settlement Consideration,  
21 no other funds for a settlement of the Action shall be forthcoming under any circumstances from  
22 Settling Defendant and/or his insurance carriers, including but not limited to XL.

23 (z) "Settlement Fund" means the Settlement Consideration plus any and all  
24 interest accrued thereon in the Escrow Account.

25 (aa) "Settlement Fund Distribution Order" means the order approving the  
26 Settlement Administrator's administrative determinations concerning the acceptance and rejection  
27 of the claims submitted herein; approving of any fees and expenses not previously applied for,  
28 including the fees and expenses of the Settlement Administrator; and directing distribution of the

1 Net Settlement Fund to the Authorized Claimants.

2 (bb) "Settling Defendant" means Defendant Shkreli.

3 (cc) "Settling Parties" means Plaintiffs, on behalf of themselves and the  
4 Settlement Class Members, and the Settling Defendant.

5 (dd) "Taxes" means: (i) all federal, state, and/or local taxes of any kind on  
6 any income earned by the Settlement Fund; and (ii) the reasonable and necessary costs and  
7 expenses incurred in connection with determining the amount of, and paying, any taxes owed by  
8 the Net Settlement Fund (including, without limitation, the reasonable and necessary costs and  
9 expenses of tax attorneys and accountants).

10 (ee) "Unknown Claims" means (i) any and all Settlement Class Claims that  
11 Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its  
12 favor at the time of the release of the Released Parties and the Settling Defendant, which if known  
13 by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement;  
14 and (ii) and any and all Defendant Claims that the Settling Defendant does not know or suspect to  
15 exist in his favor, which if known by him might have affected his decision(s) with respect to the  
16 Settlement. With respect to the Settled Claims, the Settling Parties stipulate and agree that upon  
17 the Effective Date, the Plaintiffs and the Settling Defendant shall expressly waive, and each  
18 Settlement Class Member shall be deemed to have waived, and by operation of the Judgment  
19 shall have expressly waived any and all provisions, rights and benefits conferred by any law of  
20 any state or territory of the United States or principle of common law, that is similar, comparable,  
21 or equivalent to Cal. Civ. Code § 1542, which provides:

22 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
23 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
24 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**  
25 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**  
26 **OR HER SETTLEMENT WITH THE DEBTOR.**

27 The Settling Parties acknowledge, and Settlement Class Members by operation of law shall be  
28 deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition

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1 of Settlement Class Claims and Defendant Claims was separately bargained for and was a key  
2 element of the Settlement.

3 **CAFA NOTICE**

4 2. Pursuant to the Class Action Fairness Act (“CAFA”), no later than ten (10)  
5 calendar days after the Stipulation is filed with the Court, counsel for the Settling Defendant shall  
6 serve proper notice of the Settlement upon the United States Attorney General and each State  
7 Attorney General. Simultaneously, the Settling Defendant shall provide a copy of such notice as  
8 well as proof of service of such notice to Lead Counsel.

9 **CLASS CERTIFICATION**

10 3. For the sole purpose of the Settlement, the Settling Defendant stipulates, agrees,  
11 and consents to: (i) certification of the Action as a class action pursuant to Fed. R. Civ. P. 23(a)  
12 and 23(b)(3); (b) appointment of Plaintiffs as class representatives; and (c) appointment of Lead  
13 Counsel as class counsel pursuant to Fed. R. Civ. P. 23(g). Following execution of this  
14 Stipulation, Plaintiffs, with the consent of the Settling Defendant, shall apply to the Court for  
15 entry of the Preliminary Approval Order in the form attached as Exhibit A hereto, which will  
16 certify the Action to proceed as a class action for settlement purposes only. The Settling  
17 Defendant shall have the right to withdraw from the Stipulation (specifically including the  
18 provisions in this Paragraph regarding class certification and appointment of class representatives  
19 and class counsel) in the event that the Settlement does not become Final, in which case and at  
20 which point the parties would revert to their positions in the Action immediately preceding their  
21 execution of the MOU, as if the MOU, this Stipulation, and the Settlement had never occurred,  
22 and the parties hereto shall work together to arrive at a mutually agreeable schedule for resuming  
23 litigation of the Action in light of such developments.

24 **RELEASE OF CLAIMS**

25 4. The Settlement obligations incurred pursuant to this Stipulation shall be in full and  
26 final disposition of the Action as to the Settling Defendant, and shall fully and finally release any  
27 and all Settled Claims. The Settlement shall resolve all outstanding claims in the Action.

28 5. Upon the Effective Date of this Settlement, Plaintiffs and Settlement Class

1 Members (whether or not they submit a Proof of Claim or share in the Settlement Fund), on  
2 behalf themselves and their heirs, executors, administrators and assigns, and any person(s) they  
3 represent, shall be deemed by this Settlement to, and shall, release, waive, dismiss, and forever  
4 discharge the Settlement Class Claims, and shall be deemed by this Settlement to, and shall be  
5 forever enjoined from prosecuting each and every one of the Settlement Class Claims. It is an  
6 important element to the Settling Defendant's participation in this Settlement that he and the  
7 Released Parties obtain the broadest possible release from liability to any Plaintiff or Settlement  
8 Class Member relating to the Settlement Class Claims, and it is the intention of the Settling  
9 Parties that any liability of the Settling Defendant and the Released Parties relating to the  
10 Settlement Class Claims be eliminated.

11 6. Upon the Effective Date of this Settlement, the Settling Defendant, on behalf of  
12 himself and his heirs, executors, administrators, successors and assigns, and any person(s) they  
13 represent, shall be deemed by this Settlement to, and shall release, waive, dismiss, and forever  
14 discharge the Defendant Claims, and shall be deemed by this Settlement to, and shall be forever  
15 enjoined from prosecuting each and every one of the Defendant Claims. It is likewise an  
16 important element to Plaintiffs' and Lead Counsel's participation in this Settlement that they, the  
17 Settlement Class members, and their attorneys, agents, experts, and investigators obtain the  
18 broadest possible release from liability to the Settling Defendant relating to the Defendant  
19 Claims, and it is the intention of the Settling Parties that any such liability relating to the  
20 Defendant Claims be eliminated.

### 21 **THE SETTLEMENT CONSIDERATION**

22 7. In full and complete settlement of the Settlement Class Claims, the Settling  
23 Defendant shall cause XL to pay on behalf of the Settling Defendant, the Settlement  
24 Consideration to the Escrow Account, as follows: one million five hundred thousand dollars  
25 (\$1,500,000.00) within fifteen business (15) days after the Court grants preliminary approval of  
26 the Settlement. The Escrow Agent shall provide complete wire transfer or other similar  
27 instructions to the Settling Defendant's counsel at least fifteen (15) business days prior to the  
28 date of such payment. Lead Counsel or the Escrow Agent shall provide the name, address and

1 telephone number of both the payee and the recipient of the Settlement Consideration and a  
2 properly completed Form W-9 for the payee as soon as practicable after the execution of this  
3 Agreement, but in no event later than fifteen (15) business days prior to the date of such payment.

4 8. The Settlement Fund shall be used to pay fees and expenses awarded by the Court  
5 to Lead Counsel for distribution by Lead Counsel in its discretion among itself and other  
6 plaintiffs' counsel involved in the Action, any compensatory award to the Plaintiffs, any Taxes,  
7 and any notice and administration costs (subject to the limits set forth in ¶16). The remaining  
8 balance shall be the Net Settlement Fund and shall be distributed to Authorized Claimants as  
9 provided herein in ¶¶27-30.

10 9. The obligations incurred pursuant to this Stipulation shall be in full and final  
11 disposition and settlement of all Settled Claims and shall resolve all claims pled in the Action.  
12 All payments made to Authorized Claimants pursuant to the Plan of Allocation as approved by  
13 the Court, the fees and expenses awarded by the Court to Lead Counsel for distribution by Lead  
14 Counsel in its discretion among itself and other plaintiffs' counsel involved in the Action, and any  
15 compensatory award to the Plaintiffs as awarded by the Court, and all administrative and other  
16 approved expenses of the Settlement, including Taxes, shall be paid from the Settlement Fund.  
17 The Settlement Consideration is the only monetary responsibility under the Settlement, and  
18 members of the Settlement Class who do not timely seek to exclude themselves from the  
19 Settlement Class shall look solely to the Net Settlement Fund for satisfaction of any and all  
20 Settled Claims as against the Settling Defendant and/or his insurance carriers (including XL).

21 10. The Settlement Fund shall be deemed to be in the custody of the Court and shall  
22 remain subject to the jurisdiction of the Court until such time as the Settlement Fund is distributed  
23 pursuant to this Stipulation and/or further order of the Court. Until such time as the Settlement  
24 and Judgment become Final, the Settlement Fund may only be invested in United States Treasury  
25 Bills with a maturity of 90 days or less in an account held at a nationally recognized financial  
26 institution. Once the Settlement and Judgment become final, there shall be no reversion  
27 whatsoever of any of the Settlement Consideration to the Settling Defendant or XL.

28 **USE AND ADMINISTRATION OF THE ESCROW ACCOUNT**

1           11.     The Escrow Account will, to the extent possible, be a “Qualified Settlement Fund”  
2 within the meaning of Treasury Regulation § 1.468B-1. The Escrow Agent shall be solely  
3 responsible for ensuring that the Escrow Account complies with the requirements and regulations  
4 governing Qualified Settlement Funds, for filing any tax returns for the Settlement Fund, and for  
5 paying all Taxes owed with respect to the Settlement Fund.

6           12.     The Escrow Agent will bear all responsibility and liability for managing the  
7 Settlement Fund for the benefit of the Settlement Class, and cannot assign or delegate its  
8 responsibilities without approval of Lead Counsel. Statements of account will be provided to  
9 Lead Counsel on a monthly basis until the Judgment becomes Final.

10          13.     All interest on the Settlement Fund will accrue for the benefit of the Settlement  
11 Class, so long as the Settlement becomes Final, until distribution of the Net Settlement Fund is  
12 made to the Settlement Class after the Judgment becomes Final, and none of the Released Parties,  
13 the Settling Defendant, XL, or their counsel shall have any supervisory authority or responsibility  
14 with respect to the Escrow Account.

15          14.     After the Judgment becomes Final, all costs and Taxes shall be paid out of the  
16 Escrow Account, and neither the Settling Defendant nor any of the Released Parties and XL, nor  
17 their counsel, shall have any supervisory authority or responsibility with respect to such  
18 payments. Any remaining reasonable and necessary costs of administration, notice to the  
19 Settlement Class, and Taxes shall be paid out of the Settlement Administration and Escrow  
20 Accounts without further order of the Court. Under no circumstances shall Plaintiffs or Lead  
21 Counsel have any responsibility for such costs.

22          15.     In the event the Settlement and Judgment do not become Final or the Settlement is  
23 terminated as provided herein, within ten (10) business days of entry of the order rendering the  
24 Settlement and Judgment non-Final or notice of the Settlement being terminated, all monies then  
25 held in the Escrow Account, including interest earned but less any actual notice costs and related  
26 administrative expenses paid or incurred before notice of termination or non-approval, shall be  
27 returned to XL. Under those circumstances, Lead Counsel and its partners shall undertake to  
28 return those amounts by taking all steps necessary to cause the Escrow Agent to make the

1 foregoing repayments. Plaintiffs and the Settlement Class shall have no responsibility for the  
2 return of such consideration. Once the Settlement is approved by the Court and such approval is  
3 not subject to further review on appeal, none of the Settlement Consideration shall be paid to XL  
4 or the Settling Defendant.

5 **USE AND ADMINISTRATION OF SETTLEMENT ADMINISTRATION ACCOUNT**

6 16. Upon deposit in the Escrow Account of the Settlement Consideration, the Escrow  
7 Agent may transfer one hundred fifty thousand dollars (\$150,000.00) from the Escrow Account to  
8 the Settlement Administration Account in order to pay reasonable and necessary notice and  
9 administration costs related to the Settlement. No other disbursements from the Escrow Account  
10 related to the Settlement will occur until the Judgment becomes Final absent agreement of the  
11 Settling Parties and approval from the Court.

12 17. After the Judgment becomes Final, any remaining monies in the Settlement  
13 Administration Account shall be transferred back to the Escrow Account. In the event the  
14 Settlement and Judgment do not become Final or the Settlement is terminated as provided herein,  
15 within ten (10) business days of entry of the order rendering the Settlement and Judgment non-  
16 Final or notice of the Settlement being terminated, all monies then held in the Settlement  
17 Administration Account, including interest earned, shall be returned to XL, except for any monies  
18 paid for administration costs, including notice costs and Taxes. Under those circumstances, Lead  
19 Counsel and its partners shall undertake to return those amounts by taking take all steps necessary  
20 to cause the Escrow Agent to make the foregoing repayments. Plaintiffs and the Settlement Class  
21 shall have no responsibility for the return of such consideration. Once the Settlement becomes  
22 Final, no monies shall revert to XL or the Settling Defendant.

23 18. Without prior approval from the Court, the Settlement Administrator may pay  
24 from the Settlement Administration Account the reasonable and necessary costs and expenses  
25 associated with administering the Settlement, including without limitation identifying and  
26 notifying members of the Settlement Class.

27 **PLAN OF ALLOCATION**

28 19. The Settlement Administrator shall administer the Settlement subject to the

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1 jurisdiction of the Court and pursuant to this Stipulation and the Plan of Allocation. The  
2 Plaintiffs and Lead Counsel shall be solely responsible for formulation of the Plan of Allocation.

3 20. The Plan of Allocation proposed in the Notice, as set forth in Exhibit B1 hereto  
4 and as accessible via the information provided in Exhibit B2 hereto, is not a necessary term of  
5 this Stipulation or the Settlement, and any change, modification, or alteration to the Plan of  
6 Allocation by the Court shall not be grounds for termination of the Settlement. The Plan of  
7 Allocation is to be considered by the Court separately from its determination of the fairness,  
8 reasonableness, and adequacy of the Settlement as set forth in the Stipulation.

### 9 **ADMINISTRATION OF THE SETTLEMENT**

10 21. Any Settlement Class Member who does not submit a timely and valid Proof of  
11 Claim will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will  
12 otherwise be bound by all of the terms in this Stipulation and the Settlement, including the terms  
13 of the Judgment to be entered in the Action and the releases provided for herein, and will be  
14 barred from bringing any action against the Released Parties concerning the Settled Class Claims.

15 22. The Settling Parties believe that considerable efficiencies can be achieved in the  
16 administration of this Settlement, both to reduce costs and to expedite the approval and  
17 distribution processes attendant to the Settlement. The Settlement Class Period at issue in this  
18 Settlement entirely falls within the class period of the previous partial settlement in this Action  
19 with the Non-Shkreli Defendants – indeed, it is a single day shorter. Former Defendant KaloBios  
20 previously produced its available information with respect to the identification of Settlement  
21 Class Members from its shareholder transfer records. The Settlement Administrator already  
22 mailed notices to brokerages and similar institutions and engaged in customary efforts to track  
23 down Settlement Class Members and to correct any bad or outdated addresses. The foregoing  
24 steps should greatly simplify the Settlement Administrator’s job in identifying and notifying  
25 Settlement Class Members for the instant Settlement. The Settling Defendant shall otherwise  
26 assist in identifying the members of his immediate family who are to be excluded from the  
27 Settlement Class per the terms of the MOU and this Stipulation. The Settling Defendant and the  
28 Released Parties shall otherwise not have any responsibility for the administration of the

1 Settlement.

2 23. For purposes of determining the extent, if any, to which a Settlement Class  
3 Member shall be entitled to be treated as an Authorized Claimant, the following conditions  
4 (subject to Court order) shall apply:

5 (a) Each Settlement Class Member will be informed of this Settlement  
6 through the mailed short-form Notice (Exhibit B2), the Publication Notice (Exhibit C), and the  
7 website-posted long-form Notice (Exhibit B1) and will be informed that all proofs of claim  
8 previously submitted in conjunction with the partial settlement between Plaintiffs and the Non-  
9 Shkreli Defendants will be deemed to have submitted a timely and valid Proof of Claim for this  
10 Settlement and they need not take further action, unless they wish to be excluded from this  
11 Settlement by timely filing a proper request for exclusion. For all such Settlement Class  
12 Members, the Settlement Administrator must simply examine the prior-filed claim and exclude  
13 from the calculation of Recognized Loss any potential damages derived from purchases of  
14 KaloBios stock on November 18, 2015 (the one non-overlapping day between the Settlement  
15 Class Period at issue in this Settlement and the prior class period at issue in the previous  
16 settlement with the Non-Shkreli Defendants).

17 (b) Otherwise, any Settlement Class Member who did not already submit a  
18 proof of claim in the prior settlement between Plaintiffs and the Non-Shkreli Defendants shall be  
19 required to submit a valid Proof of Claim, in the form attached hereto as Exhibit D, supported by  
20 such documents as are designated therein, including proof of the transactions claimed and the  
21 losses incurred thereon, or such other documents or proof as the Settlement Administrator, in its  
22 discretion, may deem acceptable. All new Proofs of Claim must be submitted by the date  
23 specified in the Notice. Any Settlement Class Member who did not previously submit a proof of  
24 claim in the prior partial settlement with the Non-Shkreli Defendants (as addressed by the  
25 preceding paragraph (a)) and who fails to submit a Proof of Claim by such date shall be forever  
26 barred from receiving any payment pursuant to the Settlement and this Stipulation, but shall in all  
27 other respects be bound by all of the terms of this Stipulation and the Settlement including the  
28 terms of the Judgment to be entered in the Action and the releases provided for herein, and will be

1 barred from bringing any action against the Released Parties concerning the Settled Class Claims.  
2 Provided that it is received before the motion for the Settlement Fund Distribution Order is filed,  
3 a Proof of Claim shall be deemed to have been submitted when posted, if received with a  
4 postmark indicated on the envelope and if mailed by First-Class mail and addressed in accordance  
5 with the instructions provided in the Notice. In all other cases, the Proof of Claim shall be  
6 deemed to have been submitted when actually received by the Settlement Administrator.

7 (c) Each Proof of Claim, including those Proofs of Claims previously  
8 submitted, shall be reviewed by the Settlement Administrator, who shall determine in accordance  
9 with this Stipulation the extent, if any, to which each Claimant is an Authorized Claimant. As  
10 regards the prior-submitted proofs of claim in the earlier settlement with the Non-Shkreli  
11 Defendants, which shall be deemed timely submitted as per paragraph (a) above, the Settlement  
12 Administrator need only re-examine them to verify that no portion of their Recognized Loss is  
13 based on trades made on November 18, 2015 (the one non-overlapping date between the prior  
14 settlement with the Non-Shkreli Defendants and this Settlement) and, if necessary, to exclude  
15 stock purchases made on November 18, 2015 from consideration and to recalculate the  
16 Recognized Loss now.

17 (d) The administrative determinations of the Settlement Administrator  
18 accepting or rejecting claims shall be presented to the Court on notice to the Settling Parties, for  
19 approval by the Court in the Settlement Fund Distribution Order.

20 24. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court  
21 with respect to the Claimant's claim, and the claim will be subject to investigation and discovery  
22 under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall  
23 be limited to that Claimant's status as a Settlement Class Member and the validity of the amount  
24 of the Claimant's claim. No discovery shall be allowed on the merits of the Action or Settlement  
25 in conjunction with the processing of the Proofs of Claim.

26 25. Payment pursuant to this Stipulation shall be deemed final and conclusive against  
27 all Settlement Class Members. All Settlement Class Members whose claims are not approved by  
28 the Court shall be barred from participating in the distribution from the Settlement Fund, but

1 otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the  
2 terms of the Judgment to be entered in this Action and the releases provided for herein, and will  
3 be barred from bringing any action against the Released Parties concerning the Settlement Class  
4 Claims.

5 26. All proceedings with respect to the administration, processing, and determination  
6 of claims and all controversies relating thereto, including disputed questions of law and fact with  
7 respect to the validity of claims, shall be subject to the jurisdiction of this Court.

### 8 **DISTRIBUTION OF THE SETTLEMENT**

9 27. The Settlement Administrator shall determine and allocate to each Authorized  
10 Claimant that Authorized Claimant's proportionate share of the Settlement Fund based on each  
11 Authorized Claimant's Recognized Claim compared to the total Recognized Claims of all  
12 Authorized Claimants. The Settling Defendant and the Released Parties shall have no  
13 involvement in reviewing, challenging, or approving the Proofs of Claim or in distributing the  
14 Net Settlement Fund.

15 28. After the Effective Date, Lead Counsel shall apply to the Court, on notice to the  
16 Parties, for the Settlement Fund Distribution Order.

17 29. The Settlement Fund shall be distributed to the Authorized Claimants, pursuant to  
18 the Settlement Fund Distribution Order, only after the Effective Date and after:

- 19 (a) All Claims have been processed;
- 20 (b) All matters with respect to attorneys' fees, costs, and disbursements  
21 have been resolved by the Court, and such resolution by the Court is Final; and
- 22 (c) All costs of administration have been paid.

23 30. The Settlement Administrator will use its best efforts to administer and distribute  
24 the entirety of the Net Settlement Fund to the extent that it is equitably and economically feasible.  
25 If there is any balance remaining in the Net Settlement Fund after the initial distribution of the  
26 Net Settlement Fund, such remaining balance shall then be donated to an appropriate non-profit  
27 organization selected by Lead Counsel, in which Lead Counsel shall not have any financial  
28 interest or other affiliation. Under no circumstances shall the Settling Defendant or XL have any

1 interest whatsoever in such remaining balance.

2 **ATTORNEYS' FEES AND EXPENSES**

3 31. Lead Counsel will apply to the Court for an award of attorneys' fees, as well as  
4 reimbursement of expenses, in amounts to be determined by Lead Counsel as described in the  
5 Notice attached as Exhibit B1 hereto or via the information accessible via the Notice attached as  
6 Exhibit B2 hereto and via the Publication Notice attached as Exhibit C hereto.

7 32. Upon Court approval of an award of attorneys' fees and expenses, such award (the  
8 "Fee and Expense Award") shall be paid to Lead Counsel, for distribution by Lead Counsel in its  
9 discretion among itself and other plaintiffs' counsel that were involved in the Action, solely from  
10 the Settlement Fund. Such award shall be paid ten (10) calendar days after entry of (a) the  
11 Court's order granting the Fee and Expense Award and (b) the Judgment.

12 33. If the Effective Date does not occur or if this Stipulation is terminated, then any  
13 Fee and Expense Award is no longer payable. In the event that any portion of the Fee and  
14 Expense Award has already been paid from the Settlement Fund, Lead Counsel and all other  
15 plaintiffs' counsel to whom Lead Counsel has distributed payments shall within ten (10) business  
16 days from the event which precludes the Effective Date from occurring or the termination of the  
17 Stipulation, refund to the Settlement Fund the Fee and Expense Award paid to Lead Counsel and,  
18 if applicable, distributed to other plaintiffs' counsel.

19 34. If the Fee and Expense Award is reduced or reversed on appeal, Lead Counsel and  
20 all other plaintiffs' counsel to whom Lead Counsel has distributed payments shall within ten (10)  
21 business days from the date of a Final order by the Court of Appeals or the Supreme Court  
22 directing such reduction or reversal, make such refunds as are required by such Final order, and  
23 such funds shall be distributed by the Escrow Agent to the Settlement Class in the manner  
24 directed in the Final order.

25 35. The procedure for and the allowance or disallowance by the Court of any  
26 application by Lead Counsel for attorneys' fees and expenses to be paid out of the Settlement  
27 Consideration is not a necessary term of the Settlement or this Stipulation and it is not a condition  
28 of this Stipulation that any particular application for attorneys' fees or expenses be approved.

1 Moreover, the provisions in ¶¶31-35 herein, and in particular the figures for attorneys' fees and  
2 expenses in ¶31, were agreed to after all other substantive provisions were finalized.

3 **TERMS OF ORDER FOR NOTICE AND HEARING AND ENTRY OF JUDGMENT**

4 36. Promptly after this Stipulation has been fully executed, Lead Counsel shall apply  
5 to the Court for entry of the Preliminary Approval Order by submitting the fully executed  
6 Stipulation together with its Exhibits to the Court and shall request that the Court enter the  
7 Preliminary Approval Order, substantially in the form of Exhibit A, approve the mailing of the  
8 Notice, publication of the Publication Notice, and website posting of the long-form Notice,  
9 substantially in the form of Exhibits A, B2, and B1, respectively.

10 37. Any Settlement Class Member who fails to comply with any of the provisions of  
11 ¶¶21, 23-25 of this Stipulation shall waive and forfeit any and all rights he, she or it may  
12 otherwise have to appear separately at the Settlement Hearing and/or to object to the Settlement  
13 or to this Stipulation, and shall be bound by all the terms of the Settlement and this Stipulation,  
14 and by all proceedings, orders and judgments in the Action.

15 **TERMS OF ORDER AND JUDGMENT**

16 38. If the Settlement contemplated by this Stipulation is approved by the Court,  
17 counsel for the Settling Parties shall request that the Court enter the Judgment.

18 **EFFECTIVE DATE OF SETTLEMENT, WAIVER, OR TERMINATION**

19 39. The Effective Date of Settlement shall be the date when all of the following shall  
20 have occurred:

21 (a) Approval by the Court of the Settlement, following the period set forth  
22 for notice under CAFA, and following notice to the Settlement Class and the Settlement Hearing,  
23 as prescribed by Fed. R. Civ. P. 23;

24 (b) Entry by the Court of the Judgment, which has become Final, or in the  
25 event that the Court enters an order of judgment not in all material respects in the form of the  
26 Judgment and none of the Settling Parties elects to terminate this Settlement, the date that such  
27 alternative judgment becomes Final.

28 40. Each of the Settling Parties shall have the right to terminate its participation in this  
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1 Settlement by providing written notice of its election to do so (“Termination Notice”) to counsel  
2 for the other Settling Parties hereto within thirty (30) days of any of the following:

3 (a) The Court’s declining to enter the Preliminary Approval Order in any  
4 material respect;

5 (b) The Court’s refusal to approve this Stipulation in any material respect;

6 (c) The Court’s declining to enter the Judgment in any material respect;  
7 provided, however, that this Settlement is expressly not conditioned on the Court’s approval of  
8 the proposed Plan of Allocation, nor on the Court’s approval of Lead Counsel’s application for  
9 attorneys’ fees or expenses, nor on the Court’s approval of any compensatory award to Plaintiffs,  
10 and any change in the Judgment relating to these items shall not be considered a material change;  
11 or

12 (d) The Judgment does not become Final.

13 41. In the event of a termination (whether under ¶40 or ¶42), the Stipulation and  
14 releases provided for therein shall become null and void and of no further force and effect (except  
15 for ¶¶15, 17, 33, 34, 40, 42, 44, 58, and 59, which shall survive the termination), and the Settling  
16 Parties shall be deemed to have reverted to their respective positions as they existed prior to the  
17 execution of the MOU, the execution of the Stipulation, and the entry of any orders pursuant to  
18 the Stipulation. The Parties shall thereafter proceed in all respects as if the Stipulation and any  
19 related orders had not been entered and shall jointly ask the Court to reschedule the oral argument  
20 on Defendant Shkreli’s second motion to dismiss, which they had asked the Court to vacate in  
21 light of the Settlement.

22 **OPT-OUT TERMINATION RIGHT, CONFIDENTIALITY**

23 42. The Settling Parties, by and through their respective counsel, previously executed  
24 the MOU, which in ¶11 sets forth certain conditions under which this Stipulation may be  
25 withdrawn or terminated at the sole discretion of the Settling Defendant if the number of shares  
26 held by members of the Settlement Class who opt-out of the Settlement exceeds a minimum  
27 threshold, with such minimum threshold identified therein. The MOU shall not be filed with the  
28 Court, except that the substantive contents of its ¶11 may be brought to the attention of the Court,

1 *in camera*, in the event of a dispute between the Settling Parties or if so requested or as otherwise  
2 ordered by the Court.

3 43. The Settling Parties will otherwise keep the terms of ¶11 of the MOU in the  
4 strictest confidentiality.

5 **USE OF THIS STIPULATION**

6 44. This Stipulation, whether or not consummated, and any statements made or  
7 proceedings taken pursuant to it are not, shall not be deemed to be, and may not be argued to be  
8 or offered or received:

9 (a) Against the Settling Defendant as evidence of, or construed as evidence  
10 of any presumption, concession, or admission by the Settling Defendant with respect to the truth  
11 of any fact alleged by the Plaintiffs in this Action or the validity of any claim that has been or  
12 could have been asserted against the Settling Defendant in this Action, or the deficiency of any  
13 defense that has been or could have been asserted in the Action, or of any wrongdoing or liability  
14 by the Settling Defendant.

15 (b) Against the Settling Defendant as evidence of, or construed as evidence  
16 of any presumption, concession, or admission of any fault, misrepresentation, or omission with  
17 respect to any statement or written document approved or made by the Settling Defendant, or  
18 against the Plaintiffs or any Settlement Class Member as evidence of, or construed as evidence of  
19 any infirmity of the claims alleged by the Plaintiffs in the Action.

20 (c) Against the Settling Defendant, the Plaintiffs, or any Settlement Class  
21 Member as evidence of, or construed as evidence of any presumption, concession, or admission  
22 by the Settling Defendant, the Plaintiffs, or any Settlement Class Member with respect to any  
23 liability, negligence, fault, or wrongdoing as against the Settling Defendant, the Plaintiffs, or any  
24 Settlement Class Member in any other civil, criminal, or administrative action or proceeding,  
25 other than such proceedings as may be necessary to effectuate the provisions of this Stipulation,  
26 provided, however, that if this Stipulation is approved by the Court, the Settling Defendant, the  
27 Plaintiffs, and any Settlement Class Member may refer to it to effectuate the liability protection  
28 granted them hereunder;



1 (d) Against the Settling Defendant as evidence of, or construed as evidence  
2 of any presumption, concession, or admission by any of them that the Settlement Consideration  
3 represents the amount which could or would have been received after trial of the Action against  
4 him;

5 (e) Against the Plaintiffs or any Settlement Class Member as evidence of, or  
6 construed as evidence of any presumption, concession, or admission by any of the Plaintiffs or  
7 any Settlement Class Member that any of their claims are without merit, or that any defenses  
8 asserted by the Settling Defendant or any former defendants in the Action have any merit, or that  
9 damages recoverable in the Action would not have exceeded the Settlement Fund; and

10 (f) As evidence of, or construed as evidence of any presumption,  
11 concession, or admission that class certification is appropriate in this Action, except for purposes  
12 of this Settlement.

13 **MISCELLANEOUS PROVISIONS**

14 45. All of the Exhibits attached hereto are hereby incorporated herein by reference as  
15 though fully set forth herein. Notwithstanding the foregoing, in the event of a conflict or  
16 inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto,  
17 the terms of this Stipulation shall prevail.

18 46. The Settling Parties intend the Settlement to be a final and complete resolution of  
19 all disputes which have been asserted, could have been asserted, or could be asserted by Plaintiffs  
20 or the Settlement Class Members against the Settling Defendant and all Released Parties  
21 concerning the Settled Class Claims and against the Plaintiffs and Settlement Class Members by  
22 the Settling Defendant concerning the Defendant Claims. Accordingly, Settling Parties agree not  
23 to assert in any forum that the litigation was brought by Plaintiffs or defended by the Settling  
24 Defendant in bad faith or without a reasonable basis. The Settling Parties shall assert no claims  
25 of any violation of Fed. R. Civ. P. 11 relating to the prosecution, defense, or settlement of this  
26 Action. Moreover, none of the Settling Parties shall seek any cost-shifting claims against the  
27 other. The Settling Parties agree that the Settlement Consideration and the other terms of the  
28 Settlement were negotiated at arm's length in good faith by the Settling Parties, including during

1 numerous telephonic and face-to-face sessions, as described herein above, and reflect a settlement  
2 that was reached voluntarily after consultation with experienced legal counsel.

3 47. This Stipulation may not be modified or amended except by a writing signed by all  
4 signatories hereto or their successors-in-interest, nor may a Settling Party be deemed to have  
5 waived any provision (including this provision) except by a writing signed by that Settling Party  
6 or its successor-in-interest.

7 48. Neither the Settlement Class Members nor the Settling Defendant shall be bound  
8 by the Stipulation if the Court modifies material terms thereof, provided, however, that it shall not  
9 be a basis for Settlement Class Members to terminate the Settlement if the Court modifies any  
10 proposed Plan of Allocation or criteria for allocation of the Net Settlement Fund amongst  
11 Settlement Class Members, or the Plan of Allocation is modified on appeal. Nor shall it be a  
12 basis to terminate the Stipulation if the Court disapproves of or modifies the terms of this  
13 Stipulation with respect to the distribution of the Net Settlement Fund. Nor shall it be a basis to  
14 terminate the Stipulation if the Court denies, in whole or in part, Lead Counsel's application for  
15 attorneys' and expenses.

16 49. Lead Counsel, on behalf of the Settlement Class, is expressly authorized by  
17 Plaintiffs to take all appropriate action required or permitted to be taken by the Settlement Class  
18 pursuant to the Stipulation to effectuate its terms and also is expressly authorized to enter into any  
19 modifications or amendments to the Stipulation on behalf of the Settlement Class which it deems  
20 appropriate.

21 50. Plaintiffs and Lead Counsel represent and warrant that none of Plaintiffs' claims or  
22 causes of action referred to in this Action or this Stipulation has been assigned, encumbered, or in  
23 any manner transferred in whole or in part.

24 51. Each counsel or other person executing the Stipulation or any of its Exhibits on  
25 behalf of any Settling Party hereby warrants and represents that such person has the full authority  
26 to do so and that they have the authority to take appropriate action required or permitted to be  
27 taken pursuant to the Stipulation to effectuate its terms.

28 52. The headings herein are used for the purpose of convenience only and are not

1 meant to have legal effect.

2 53. The administration and consummation of the Settlement as embodied in this  
3 Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction for the  
4 purpose of entering orders providing for awards of attorneys' fees and expenses to Lead Counsel  
5 (including for distribution among any other plaintiffs' counsel) and enforcing the terms of this  
6 Stipulation.

7 54. The waiver by one Settling Party of any breach of this Stipulation by any other  
8 Settling Party shall not be deemed a waiver by the waiving Settling Party of any other prior or  
9 subsequent breach of this Stipulation or a waiver by any other Settling Party of any breach of this  
10 Stipulation.

11 55. Other than the agreement set forth in ¶11 of the MOU regarding the threshold for  
12 termination in the event of a high opt out rate, this Stipulation and its exhibits constitute the entire  
13 agreement among the Settling Parties concerning this Settlement, and no representations,  
14 warranties, or inducements have been made by any Settling Party concerning this Stipulation and  
15 its exhibits other than those contained, memorialized, or referenced in such documents.

16 56. This Stipulation may be executed in one or more counterparts, and the counterparts  
17 when executed may be made into a composite which shall constitute one integrated original  
18 agreement.

19 57. This Stipulation shall be binding upon, and inure to the benefit of, the Settling  
20 Parties hereto and their successors, heirs and assigns.

21 58. The construction, interpretation, operation, effect, and validity of this Stipulation,  
22 and all documents necessary to effectuate it, shall be governed by the internal laws of the State of  
23 California without regard to conflicts of laws, except to the extent that federal law requires that  
24 federal law govern.

25 59. Any dispute regarding the interpretation or terms of this Stipulation shall be  
26 submitted to mediator Jed Melnick, Esq. of JAMS mediation services, who shall promptly  
27 mediate the resolution of such dispute. If such mediation fails to produce an agreed resolution, or  
28 if the Settling Parties cannot agree upon a mediator, the dispute shall be submitted to the Court.

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

6           61.     The Settling Parties warrant that, in entering into this Settlement, they relied solely  
7 upon their own knowledge and investigation, and not upon any promise, representation, warranty,  
8 or other statement by any other Settling Party, not expressly contained in this Stipulation or any  
9 of the incorporated Settlement documents.

10          62.     Lead Counsel and the Settling Defendant’s counsel agree to cooperate fully with  
11 one another in seeking Court approval of the Preliminary Approval Order, the Stipulation and this  
12 Settlement, and to use best efforts to promptly agree upon and execute all such other  
13 documentation as may be reasonably required to obtain final approval by the Court of the  
14 Settlement.

15          63.     No part of the Settlement Consideration shall be allocated to the settlement of any  
16 other action, including without limitation *Gregory Rea et al. v. KaloBios Pharmaceuticals, Inc.*,  
17 Adv. Case No. 16-50001-LSS (Bankr. D. Del.) (the “PIPES Litigation”), any derivative action, or  
18 any other current or future lawsuit arising from the facts and circumstances at issue in the Action,  
19 nor shall any part of the Settlement Consideration be paid to any counsel in such actions. Neither  
20 shall any part of the Settlement Consideration be used to pay Defendant Shkreli’s debts or monies  
21 owed, whether to his litigation or trial counsel, to government tax authorities, to other secured or  
22 unsecured creditors, or otherwise.

23          64.     No person shall have any claim against Plaintiffs, Lead Counsel, other plaintiffs’  
24 counsel who performed work on the Action, the Settlement Administrator, the Escrow Agent or  
25 any other agent designated by Lead Counsel based on distribution determinations or claim  
26 rejections made substantially in accordance with this Stipulation and the Settlement, the Plan of  
27 Allocation, or further orders of the Court, except in the case of fraud or willful misconduct. No  
28 person shall have any claim under any circumstances against the Settling Defendant or the

1 Released Parties, based on any distributions, determinations, claim rejections or the design, terms  
2 or implementation of the Plan of Allocation.

3 65. The parties hereto request that the Action be and remain stayed against the Settling  
4 Defendant, including any obligations to present oral argument on his second motion to dismiss,  
5 until such time as this Court rules on Plaintiffs' motion for final approval. All dollar amounts in  
6 this Stipulation are in U.S. dollars.

7 66. The construction, interpretation, operation, effect and validity of this Stipulation  
8 and any ancillary documents necessary to effectuate it shall be governed by, construed, and  
9 enforced in accordance with the internal, substantive laws of the State of California without  
10 giving effect to that State's choice or conflicts-of-laws principles, except to the extent that federal  
11 law requires that federal law governs. Subject to the provisions of ¶¶58-59 any dispute relating to  
12 this Stipulation shall be brought exclusively in the United States District Court for the Northern  
13 District of California, and each of the Parties agrees not to contest subject matter jurisdiction,  
14 personal jurisdiction or assert that such forum is inconvenient for any such dispute brought in this  
15 Court. This is a mandatory forum selection clause.

16 67. If any Settling Party is required to give notice to any other Settling Party under this  
17 Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon  
18 receipt of hand-delivery, overnight courier, emailed PDF, or facsimile transmission with  
19 confirmation of receipt. Notice shall be provided as follows:

20 If to Lead Counsel

21 Mathew L. Tuccillo  
22 POMERANTZ LLP  
23 600 Third Avenue  
24 New York, NY 10016  
25 Tel: (212)-661-1100  
26 Fax: (212)-661-8665  
27 mltuccillo@pomlaw.com  
28

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If to Counsel for Settling Defendant:

Scott L. Vernick  
William H. Stassen  
Peter C. Buckley  
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2000 Market Street, 20<sup>th</sup> Floor  
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*Attorneys for Settling Defendant Martin Shkreli*

Dated: March 21, 2018

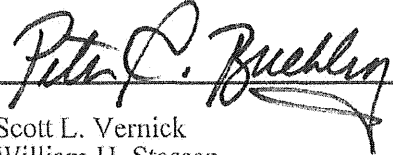
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*Counsel for Lead Plaintiffs and Plaintiff  
Isensee and Lead Counsel for the  
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