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David H. Yamasaki

Chief Executive Officer/Clerk

Superior Court of CA, County of Santa Clara

Case #1-13-CV-243259 Filing #G-63375

By C. Pinacate, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

IN RE AFFYMAX, INC. SHAREHOLDER
DERIVATIVE LITIGATION

) Lead Case No. 113CV243259

) (Consolidated with Case No. 113CV243962)

This Document Relates To:

ALL ACTIONS.

) STIPULATION OF SETTLEMENT

) Judge: Hon. Peter H. Kirwan

) Dept.: 1

) Date Action Filed: March 19, 2013

STIPULATION OF SETTLEMENT

This Stipulation of Settlement, dated May 29, 2014 (the "Stipulation"), is made and entered into by and among the following Settling Parties,¹ by and through their respective counsel of record: (i) plaintiffs Christopher Scott and Michael Markland ("Plaintiffs"), individually and derivatively on behalf of nominal defendant Affymax, Inc. ("Affymax" or the "Company"); (ii) John A. Orwin, Robert F. Venteicher, Jeffrey H. Knapp, Anne-Marie Duliege, Herb Cross, Kathleen Laporte, Ted W. Love, Daniel K. Spiegelman, John P. Walker, Christine Van Heek, Keith R. Leonard, Jr., and Hollings C. Renton (collectively, the "Individual Defendants"); and (iii) nominal defendant Affymax. The Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, subject to the terms and conditions set forth herein.

I. FACTUAL BACKGROUND

1. Overview of the Company's Unique Circumstances

Affymax is a biopharmaceutical company that develops drugs for the treatment of life-threatening conditions. On February 23, 2013, Affymax issued a press release announcing a nationwide voluntary recall of OMONTYS® (peginesatide) Injection ("OMONTYS"). OMONTYS was Affymax's core product. Shortly after the recall, Affymax laid off 75% of its workforce and announced that it was considering strategic alternatives, including a wind-down of operations. On May 28, 2013, The NASDAQ Stock Market delisted Affymax.

2. Procedural Posture

On March 19, 2013, plaintiff Christopher Scott ("Scott") filed a shareholder derivation action, captioned *Scott v. Orwin*, Case No. 113CV243259, in the Superior Court of the State of California, County of Santa Clara (the "Court"), on behalf of Affymax, alleging, amongst other things, breaches of fiduciary duty by the Individual Defendants relating to their alleged misrepresentation of the safety and efficacy, among other things, of OMONTYS (the "*Scott Action*"). Specifically, plaintiff Scott alleged that the Individual Defendants, inter alia: (i)

¹ All capitalized terms not otherwise defined are defined in Section IV.1.

1 disregarded red flags alerting them of hypersensitivity (or allergic) reaction experienced by
2 patients using OMONTYS during the drug's Phase 3 clinical trials; (ii) failed to implement
3 additional testing to develop a better understanding of the issues and determine the root cause of
4 the reaction; and (iii) failed to disclose the full extent of the safety issues associated with using
5 OMONTYS and instead consistently touted the Company's business prospects in order to drive
6 up the stock price of Affymax.

7 On April 2, 2013, plaintiff Michael Markland ("Markland") filed a shareholder derivation
8 action, captioned *Markland v. Orwin*, Case No. 113CV243962, in the Court, alleging
9 substantively similar wrongdoings as the *Scott* Action (the "*Markland* Action").

10 On April 18, 2013, the Court issued an order deeming the *Scott* Action complex.

11 On May 29, 2013, the parties submitted a joint stipulation to consolidate the *Scott* Action
12 and the *Markland* Action, and to designate Robbins Arroyo LLP and Holzer & Holzer, LLC² as
13 Co-Lead Counsel for Plaintiffs in the consolidated action. On May 31, 2013, pursuant to the
14 stipulation, the Court entered an order consolidating the *Scott* Action and *Markland* Action into
15 the above-captioned consolidated state derivative action (the "Action") and appointing Robbins
16 Arroyo LLP and Holzer & Holzer, LLC as Co-Lead Counsel.

17 On June 19, 2013, Plaintiffs served Defendants with an informal request for documents.
18 Plaintiffs agreed to enter into a reasonable confidentiality agreement in exchange for the
19 production of certain documents in support of settlement. Pursuant to Plaintiffs' request, on July
20 16, 2013, Defendants produced and Plaintiffs reviewed hundreds of pages of responsive
21 documents. Counsel for plaintiff Scott also sent a settlement demand letter to counsel for
22 Defendants in order to explore whether early settlement negotiations were possible and in the
23 Company's best interests.

24 Shortly thereafter, the parties met and conferred concerning the most efficient manner in
25 which to litigate the derivative claims brought on Affymax's behalf. The parties agreed that,

26
27 ² Formerly known as Holzer Holzer & Fistel LLC.

1 given the unique circumstances, the best interests of the Company and efficient and effective
2 case management would best be served by deferring all proceedings and continuing all
3 responsive dates in order to monitor the ruling on defendants' motion to dismiss the related
4 federal securities class action pending before the U.S. District Court for the Northern District of
5 California (the "Federal Court") captioned *Bartelt v. Affymax, Inc.*, Case No. 3:13-cv-01025-
6 WHO (the "Securities Class Action"). The parties filed a stipulation and proposed order to that
7 effect on August 2, 2013 (the "August 2, 2013 Stipulation") and the Court entered the order on
8 August 6, 2013.

9 On January 21, 2014, the Federal Court entered an order granting in part and denying in
10 part the motion to dismiss the Securities Class Action. Consistent with the August 2, 2013
11 Stipulation, the Plaintiffs and Defendants resumed their ongoing meet and confer efforts. On
12 January 30, 2014, the parties stipulated, that given the unique circumstances of this case, the best
13 interests of the Company and the Court would be further served by staying the Action pending
14 resolution of the Securities Class Action (the "January 30, 2014 Stipulation"). In addition, the
15 January 30, 2014 Stipulation provided that if document discovery were to move forward in the
16 Securities Class Action, Defendants would provide Plaintiffs with the documents produced in the
17 Securities Class Action. The Court entered an order to this effect on January 31, 2014.

18 On February 25, 2014, consistent with the January 30, 2014 Stipulation, Defendants
19 produced certain documents pursuant to an agreement to keep the documents confidential and for
20 settlement purposes only.

21 **3. Mediation Efforts**

22 Shortly thereafter, on March 3, 2014, the Settling Parties agreed to participate in
23 mediation with the Honorable Layn R. Phillips (Ret.) (the "Mediator").

24 The parties submitted comprehensive briefs to the Mediator, outlining their positions, and
25 their claims and defenses in the Action on April 25, 2014. Then, on May 8, 2014, the parties
26 participated in an all-day, in-person mediation session with the Mediator.

27 On May 8, 2014, after arm's-length negotiations with the assistance and involvement of
28 the Mediator, the Settling Parties were able to reach an agreement-in-principle to resolve the

1 Action. As a result of these negotiations, the Settling Parties reached an agreement to settle the
2 Action upon the terms and subject to the conditions set forth in this Stipulation (the
3 "Settlement").

4 **II. PLAINTIFFS' CLAIMS AND THE BENEFITS OF SETTLEMENT**

5 Plaintiffs believe that the Action has substantial merit, and Plaintiffs' entry into the
6 Stipulation and Settlement is not intended to be and shall not be construed as an admission or
7 concession concerning the relative strength or merit of the claims alleged in the Action.
8 However, Plaintiffs and Plaintiffs' Counsel recognize and acknowledge the unique and difficult
9 circumstances the Company is currently facing. Plaintiffs and their counsel also acknowledge
10 the significant risk, expense, and length of continued proceedings necessary to prosecute the
11 Action against the Individual Defendants through trial and through possible appeals. Plaintiffs'
12 Counsel also have taken into account the uncertain outcome and the risk of any litigation,
13 especially in complex cases such as the Action, as well as the difficulties and delays inherent in
14 such litigation. Plaintiffs' Counsel are also mindful of the inherent problems of establishing
15 demand futility, and the possible defenses to the claims alleged in the Action.

16 Plaintiffs' Counsel have conducted extensive investigation, including, inter alia: (i)
17 reviewing Affymax's press releases, public statements, U.S. Securities and Exchange
18 Commission ("SEC") filings, and securities analysts' reports and advisories about the Company;
19 (ii) reviewing media reports about the Company; (iii) researching the applicable law with respect
20 to the claims alleged in the Action and the potential defenses thereto; (iv) preparing and filing
21 derivative complaints; (v) conducting damages analyses; (vi) participating in informal
22 conferences with Defendants' Counsel regarding the specific facts of the cases, the perceived
23 strengths and weaknesses of the cases, and other issues in an effort to facilitate negotiations and
24 fact gathering; (vii) reviewing and analyzing relevant documents in the Securities Class Action—
25 including the motion to dismiss briefing and the Federal Court's order granting in part and
26 denying in part the defendants' motion to dismiss—and evaluating the merits of, and the
27 defendants' potential liability in connection with, the Securities Class Action; (viii) submitting
28 comprehensive briefs prior to mediation, outlining their position, and their claims in the Action;

(ix) actively participating in an in-person, full-day mediation to assist in securing, among other things, the settlement of the Securities Class Action; and (x) negotiating this Settlement with Defendants. Based on Plaintiffs' Counsel's thorough review and analysis of the relevant facts and difficult circumstances, allegations, defenses, and controlling legal principles, Plaintiffs' Counsel believe that the Settlement set forth in the Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon Affymax and its shareholders. Based on their evaluation, Plaintiffs, their counsel and Affymax have determined that the Settlement is in the best interests of Affymax and its shareholders and have agreed to settle the Action upon the terms and subject to the conditions set forth herein.

III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

The Individual Defendants have denied and continue to deny each and all of the claims, contentions, and allegations made against them or that could have been made against them in the Action, and believe the Action has no merit. The Individual Defendants have expressly denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action. The Individual Defendants assert that they have satisfied their fiduciary duties and have acted in good faith and in the best interest of Affymax and its shareholders at all relevant times. Defendants have thus entered into the Stipulation to avoid the continuing additional expense, inconvenience, and distraction of the Action, as well as the risks and uncertainty inherent in any lawsuit. Defendants believe that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation because, among other things, it will allow the Company to pursue alternatives in the best interests of its shareholders that may not be possible without this Settlement. Further, Affymax, through its Board of Directors, acknowledges that the Settlement is fair, reasonable, and adequate, and in the best interests of Affymax and its shareholders.

Neither this Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referred or attached to this Stipulation, nor any action taken to carry out this Stipulation, is, may be construed as, or may be used as evidence of the validity of any of the

1 Released Claims or an admission by or against the Individual Defendants of any fault,
2 wrongdoing, or concession of liability whatsoever.

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

4 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
5 undersigned counsel for the Settling Parties herein, in consideration of the benefits flowing to the
6 parties from the Settlement, and subject to the approval of the Court, that the claims asserted in
7 the Action and the Released Claims shall be finally and fully compromised, settled, and released,
8 and the Action shall be dismissed with prejudice and with full preclusive effect as to all Settling
9 Parties, upon and subject to the terms and conditions of the Stipulation, as set forth below.

10 **1. Definitions**

11 As used in the Stipulation, the following terms have the meanings specified below:

12 1.1 "Action" means the derivative actions that were consolidated and styled as *In re*
13 *Affymax, Inc. Shareholder Derivative Litigation*, Lead Case No. 113CV243259 (Cal. Super. Ct. –
14 Santa Clara Cnty. May 31, 2013).

15 1.2 "Co-Lead Counsel" means Robbins Arroyo LLP and Holzer & Holzer, LLC.

16 1.3 "Court" means Superior Court of the State of California, County of Santa Clara.

17 1.4 "Current Affymax Shareholders" means any Person who owned Affymax
18 common stock as of the date of the execution of the Stipulation, excluding the Individual
19 Defendants, the officers and directors of Affymax, members of their immediate families, and
20 their legal representatives, heirs, successors, or assigns, and any entity in which Individual
21 Defendants have or had a controlling interest.

22 1.5 "Defendants" means, collectively, nominal defendant Affymax, John A. Orwin,
23 Robert F. Venteicher, Jeffrey H. Knapp, Anne-Marie Duliege, Herb Cross, Kathleen Laporte,
24 Ted W. Love, Daniel K. Spiegelman, John P. Walker, Christine Van Heek, Keith R. Leonard, Jr.,
25 and Hollings C. Renton.

26 1.6 "Defendants' Counsel" means Cooley LLP.

27 1.7 "Federal Court" means U.S. District Court for the Northern District of California.
28

1 1.8 "Effective Date" means the date by which the events and conditions specified in
2 paragraph 6.1 of the Stipulation have been met and have occurred.

3 1.9 "Final" means the date upon which the last of the following shall occur with
4 respect to the Judgment approving the Stipulation, substantially in the form of Exhibit D attached
5 hereto: (i) the expiration of the time to file a notice of appeal from the Judgment; or (ii) if an
6 appeal has been filed, the court of appeals has either affirmed the Judgment or dismissed that
7 appeal and the time for any reconsideration or further appellate review has passed; or (iii) if a
8 higher court has granted further appellate review, that court has either affirmed the underlying
9 Judgment or affirmed the court of appeal's decision affirming the Judgment or dismissing the
10 appeal.

11 1.10 "Individual Defendants" means John A. Orwin, Robert F. Venteicher, Jeffrey H.
12 Knapp, Anne-Marie Duliege, Herb Cross, Kathleen Laporte, Ted W. Love, Daniel K.
13 Spiegelman, John P. Walker, Christine Van Heek, Keith R. Leonard, Jr., and Hollings C. Renton.

14 1.11 "Judgment" means the Order and Final Judgment to be rendered by the Court,
15 substantially in the form attached hereto as Exhibit D.

16 1.12 "Affymax" or the "Company" means nominal defendant Affymax, Inc., a
17 Delaware corporation, and its affiliates, subsidiaries, predecessors, successors, and assigns.

18 1.13 "Notice" means the Notice of Proposed Settlement and Settlement Hearing,
19 substantially in the form attached hereto as Exhibit C.

20 1.14 "Person" means an individual, corporation, limited liability corporation,
21 professional corporation, partnership, limited partnership, limited liability partnership,
22 association, joint stock company, estate, legal representative, trust, unincorporated association,
23 government or any political subdivision or agency thereof and any business or legal entity and
24 their spouses, heirs, predecessors, successors, representatives, or assignees.

25 1.15 "Plaintiffs" means collectively, Christopher Scott and Michael Markland.

26 1.16 "Plaintiffs' Counsel" means, collectively, any counsel who has appeared at any
27 time for any of the Plaintiffs in the Action, including Co-Lead Counsel.
28

1 1.17 "Related Persons" means: (i) with regard to each Individual Defendant, the
2 Individual Defendant's spouses, marital communities, immediate family members, heirs,
3 executors, personal representatives, estates, administrators, trusts, predecessors, successors, and
4 assigns or other individual or entity in which any Individual Defendant has a controlling interest,
5 and each and all of their respective past and present officers, directors, employees, agents,
6 affiliates, parents, subsidiaries, divisions, attorneys, accountants, auditors, advisors, insurers, co-
7 insurers, re-insurers, heirs, executors, personal representatives, estates, administrators, trusts,
8 predecessors, successors, and assigns; and each of the Individual Defendant's present and former
9 attorneys, legal representatives, insurers, and assigns in connection with the Action; and (ii) with
10 regard to Affymax, all past or present agents, officers, directors, attorneys, accountants, auditors,
11 advisors, insurers, co-insurers, reinsurers, partners, controlling shareholders, joint venturers,
12 related or affiliated entities, advisors, employees, affiliates, predecessors, successors, parents,
13 subsidiaries, insurers, and assigns for Affymax and all such Persons of any entity in which
14 Affymax has a controlling interest.

15 1.18 "Released Claims" means any and all suits, claims, debts, demands (whether
16 written or oral), rights, liabilities, damages, promises, controversies, costs, expenses, attorneys'
17 fees, losses of any sort whatsoever, and causes of action of every nature and description
18 whatsoever, including both known and Unknown Claims (as defined in ¶1.25 below), whether or
19 not concealed or hidden, asserted or that could have been asserted by any shareholder on behalf
20 of Affymax, or by Affymax, against any Released Person that arise out of or relate to: (i) the
21 allegations asserted in the Action or to the matters and occurrences that were alleged in the
22 Action; or (ii) the Settlement, defense or resolution of the Action, except for any claims to
23 enforce the Settlement. Excluded from the term "Released Claims" are the claims alleged in the
24 Securities Class Action.

25 1.19 "Released Persons" means collectively, Affymax and each of the Individual
26 Defendants and their Related Persons. "Released Person" means, individually, any of the
27 Released Persons and/or their respective Related Persons.
28

1 1.20 "Releasing Persons" means Plaintiffs (both individually and derivatively on
2 behalf of Affymax), all other Current Affymax Shareholders, Plaintiffs' Counsel, and Affymax.

3 "Releasing Person" means, individually, any of the Releasing Persons.

4 1.21 "Securities Class Action" means the federal securities fraud class action pending
5 before the U.S. District Court for the Northern District of California, captioned *Bartelt v.*
6 *Affymax, Inc.*, Case No. 3:13-cv-01025-WHO.

7 1.22 "Settlement" means the settlement and compromise of the Action as provided for
8 herein.

9 1.23 "Settlement Hearing" means the hearing or hearings at which the Court will
10 review the adequacy, fairness, and reasonableness of the Settlement.

11 1.24 "Settling Parties" or "Parties" means, collectively, each and all of the Plaintiffs
12 (on behalf of themselves and derivatively on behalf of Affymax) and Defendants. "Settling
13 Party" or "Party" means, individually, any of the Settling Parties.

14 1.25 "Unknown Claims" means any claim(s) which any of Plaintiffs, Affymax, or
15 Current Affymax Shareholders do not know of or suspect to exist in his, her, or its favor at the
16 time of the release of the Released Persons. With respect to any and all Released Claims, the
17 Settling Parties agree that upon the Effective Date, the Settling Parties expressly waive and each
18 of the Current Affymax Shareholders shall be deemed to have, and by operation of the Judgment
19 shall have, expressly waived the provisions, rights, and benefits conferred by or under California
20 Civil Code section 1542, or any other law of the United States or any state or territory of the
21 United States, or foreign jurisdiction, or principle of common law, which is similar, comparable,
22 or equivalent to section 1542, which provides:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
25 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.

26 The Settling Parties acknowledge, and the Current Affymax Shareholders shall be deemed by
27 operation of the Judgment to have acknowledged, that they may hereafter discover facts in
28 addition to or different from those now known or believed to be true by them, with respect to the

1 subject matter of the Released Claims, but it is the intention of the Settling Parties, and by
2 operation of the Judgment for Current Affymax Shareholders to be deemed, to completely, fully,
3 finally, and forever compromise, settle, release, discharge, and extinguish any and all Released
4 Claims, known or unknown, suspect or unsuspected, contingent or absolute, accrued or
5 unaccrued, apparent or unapparent, hidden or concealed, which do now exist, or heretofore
6 existed, or may hereafter exist, and without regard to the subsequent discovery of additional or
7 different facts. The Settling Parties acknowledge, and the Current Affymax Shareholders shall
8 be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was
9 separately bargained for and is a key element of the Stipulation of which this release is a part.

10 **2. Terms of the Settlement**

11 2.1 Defendants acknowledge that the Action materially assisted the Company in
12 securing \$6.5 million in insurance proceeds to settle the Securities Class Action.

13 2.2 As a result of the filing, prosecution, and settlement of the Action, Affymax shall,
14 within thirty calendar days after the Effective Date, formally express and/or implement and
15 maintain in substance the corporate governance reforms, additions, amendments, or
16 formalizations identified in section I.A of Exhibit A, attached hereto, for a period of no less than
17 five years. All other provisions set forth in Exhibit A shall be implemented and maintained for a
18 period of no less than five years if Affymax reintroduces OMONTYS to the market or initiates
19 plans to develop any new drug, medical device, product, or other related venture and Affymax
20 continues to be a publicly traded company. Affymax, through its Board of Directors,
21 acknowledges and agrees that the securing of the proceeds set forth in paragraph 2.1 and the
22 corporate governance reforms, additions, amendments, or formalizations identified in Exhibit A
23 attached hereto confer substantial benefits upon Affymax and its shareholders. Affymax,
24 through its Board of Directors, also acknowledges that the prosecution and settlement of the
25 Action were the sole factors in their decision to adopt and/or implement the corporate
26 governance reforms set forth in Exhibit A.

1 **3. Approval and Notice**

2 3.1 Promptly after execution of the Stipulation, Plaintiffs shall submit the Stipulation
3 together with its exhibits to the Court and shall apply for entry of an order (the "Preliminary
4 Approval Order"), substantially in the form of Exhibit B attached hereto, requesting: (i)
5 preliminary approval of the Settlement set forth in this Stipulation; (ii) approval of the form and
6 manner of providing notice of the Settlement to Current Affymax Shareholders; and (iii) a date
7 for the Settlement Hearing.

8 3.2 Notice to Current Affymax Shareholders shall consist of a Notice of Proposed
9 Settlement and Settlement Hearing ("Notice"), which includes the general terms of the
10 Settlement set forth in the Stipulation and the date of the Settlement Hearing, substantially in the
11 form attached hereto as Exhibit C.

12 3.3 Affymax shall undertake the administrative responsibility for giving notice to
13 Current Affymax Shareholders and shall be solely responsible for paying the costs and expenses
14 related to providing such notice to its shareholders. Within ten business days after the entry of
15 the Preliminary Approval Order, Affymax shall post a copy of the Notice and Stipulation on the
16 Company website, and shall file a Current Report on Form 8-K with the SEC that includes the
17 Notice and Stipulation. If additional notice is required by the Court, then the cost and
18 administration of such additional notice will be borne by Affymax and/or its insurers. The
19 Settling Parties believe the content and manner of the notice, as set forth in this paragraph,
20 constitutes adequate and reasonable notice to Affymax shareholders pursuant to applicable law
21 and due process. Prior to the Settlement Hearing, Defendants' Counsel shall file with the Court
22 an appropriate affidavit or declaration with respect to filing and posting the Notice.

23 3.4 Pending the Court's determination as to final approval of the Settlement, Plaintiffs
24 and Releasing Persons are barred and enjoined from commencing, prosecuting, instigating, or in
25 any way participating in the commencement or prosecution of: (i) any action asserting any
26 Released Claim against any of the Released Persons; and/or (ii) all claims arising out of, relating
27 to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the
28 Action or the Released Claims.

1 **4. Attorneys' Fees and Reimbursement of Expenses**

2 4.1 In recognition of the substantial benefits conferred upon Affymax as a direct
3 result of the prosecution and Settlement of the Action, and subject to Court approval, Affymax's
4 Board of Directors agrees to cause Affymax and/or Defendants' insurers to pay, or cause to be
5 paid, to Plaintiffs' Counsel the agreed-to amount of \$375,000 (the "Fee and Expense Amount").
6 The Fee and Expense Amount, as approved by the Court, shall constitute final and complete
7 payment for Plaintiffs' Counsel's fees and expenses that have been incurred or will be incurred in
8 connection with the Action. The Fee and Expense Amount shall be funded to Robbins' Arroyo
9 LLP as receiving agent for Plaintiffs' Counsel within ten business days of the entry of the
10 Judgment.

11 4.2 In the event that the Judgment fails to become Final as defined in paragraph 1.9
12 herein, then it shall be the obligation of Plaintiffs' Counsel to make appropriate refunds or
13 repayments to Affymax's and/or Defendants' insurers of any attorneys' fees and expenses
14 previously paid within fifteen business days of receiving notice from Defendants' Counsel or
15 from a court of appropriate jurisdiction.

16 **5. Releases**

17 5.1 Upon the Effective Date, the Releasing Persons shall be deemed to have fully,
18 finally, and forever released, relinquished, and discharged the Released Claims (including
19 Unknown Claims) against the Released Persons. Nothing herein shall in any way impair or
20 restrict the rights of any Settling Party to enforce the terms of the Stipulation or the Judgment.

21 5.2 Except as set forth in paragraph 5.3 below, upon the Effective Date, each of the
22 Released Persons shall be deemed to have fully, finally, and forever released, relinquished, and
23 discharged Plaintiffs, Plaintiffs' Counsel, and Affymax from all claims (including Unknown
24 Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion,
25 settlement, or resolution of the Action or the Released Claims. Nothing herein shall in any way
26 impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation or the
27 Judgment.

1 5.3 Nothing in this Stipulation or in paragraph 5.2 above constitutes or reflects a
2 waiver or release of any rights or claims of Defendants against their insurers, or their insurers'
3 subsidiaries, predecessors, successors, assigns, affiliates, or representatives, including, but not
4 limited to, any rights or claims of Defendants under any directors' and officers' liability insurance
5 or other applicable insurance coverage maintained by the Company. Nothing in this Stipulation
6 or in paragraph 5.2 above constitutes or reflects a waiver or release of any rights or claims of the
7 Individual Defendants relating in any way to indemnification, whether under any written
8 indemnification or advancement agreement, or under the Company's charter, by-laws, or under
9 applicable law.

10 5.4 Defendants and their respective Related Persons shall have no responsibility for,
11 and no liability whatsoever with respect to, the fee allocation among Plaintiffs' Counsel.

12 **6. Conditions of Settlement; Effect of Disapproval, Cancellation, or**
13 **Termination**

14 6.1 The Effective Date of this Stipulation shall be conditioned on the occurrence of
15 all of the following events:

16 a. approval of the Settlement by Affymax's Board of Directors, which
17 Defendants' Counsel represent has already been accomplished;

18 b. entry of the Judgment, in all material respects in the form set forth as
19 Exhibit D annexed hereto, approving the Settlement, without awarding costs to any party, except
20 as provided herein;

21 c. the payment of the Fee and Expense Amount as approved by the Court;
22 and

23 d. the passing of the date upon which the Judgment becomes Final.

24 6.2 If any of the conditions specified above in paragraph 6.1 are not met, then the
25 Stipulation shall be canceled and terminated subject to paragraph 6.3, unless counsel for the
26 Settling Parties mutually agree in writing to proceed with the Stipulation.

27 6.3 If for any reason the Effective Date of the Stipulation does not occur, or if the
28 Stipulation is in any way canceled, terminated, or fails to become Final in accordance with its

1 terms: (i) all Settling Parties and Released Persons shall be restored to their respective positions
2 prior to execution of this Stipulation; (ii) all releases delivered in connection with the Stipulation
3 shall be null and void, except as otherwise provided for in the Stipulation; (iii) the Fee and
4 Expense Amount paid to Plaintiffs' Counsel shall be refunded and returned within fifteen
5 business days of said event plus interest earned with respect to such amount; and (iv) all
6 negotiations, proceedings, documents prepared, and statements made in connection herewith
7 shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an
8 admission by a Settling Party of any act, matter, or proposition, and shall not be used in any
9 manner for any purpose in any subsequent proceeding in the Action or in any other action or
10 proceeding. In such event, the terms and provisions of the Stipulation shall have no further force
11 and effect with respect to the Settling Parties and shall not be used in the Action or in any other
12 proceeding for any purpose.

13 **7. Bankruptcy**

14 7.1 In the event any proceedings by or on behalf of Affymax, whether voluntary or
15 involuntary, are initiated under any chapter of the United States Bankruptcy Code, including
16 any appointment of a receiver, for all or substantially all of the assets of Affymax ("Bankruptcy
17 Proceedings"), the Settling Parties agree to use their reasonable best efforts to obtain all
18 necessary orders, consents, releases, and approvals for effectuation of the Stipulation and Court
19 approval of the Settlement in a timely and expeditious manner. By way of example only, the
20 Settling Parties agree to cooperate in making applications and motions to the bankruptcy court
21 for relief from any stay, approval of the Settlement, authority to release funds, authority for the
22 Defendants' insurer(s) to disburse insurance proceeds consistent with the Stipulation, authority
23 to release claims and indemnify Released Persons, and authority for the Court to enter all
24 necessary orders and judgments, and any other Action reasonably necessary to effectuate the
25 terms of the Settlement.

26 7.2 If any Bankruptcy Proceedings by or on behalf of Affymax are initiated prior to
27 the payment of the Fee and Expense Amount as approved by the Court, the Settling Parties
28 shall agree to seek an order from the bankruptcy court presiding over such Bankruptcy

1 Proceedings: (i) either lifting the automatic stay for the limited purpose of authorizing such
2 payment, or finding that the payment of the Fee and Expense Amount as approved by the Court
3 by the Defendants' insurers under their respective policies or related compromise of coverage
4 does not violate the automatic stay; and (ii) authorizing or otherwise approving the payment of
5 the Fee and Expense Amount as approved by the Court by the Defendants' insurers under their
6 respective policies or related compromise of coverage such that it does not constitute a
7 preference, voidable transfer, fraudulent transfer, or similar transaction. In addition, in the
8 event of any Bankruptcy Proceedings by or on behalf of Affymax, the Settling Parties agree
9 that all dates and deadlines in the Action, if any, or any dates and deadlines associated with the
10 appeal of the Action, if any, will be extended for such periods of time as are necessary to use
11 reasonable efforts to obtain necessary orders, consents, releases, and approvals from the
12 bankruptcy court to carry out the terms and conditions of the Settlement.

13 **8. Miscellaneous Provisions**

14 8.1 The Settling Parties: (i) acknowledge that it is their intent to consummate this
15 Stipulation; and (ii) agree to act in good faith and cooperate to take all reasonable and necessary
16 steps to expeditiously implement the terms and conditions of the Stipulation.

17 8.2 In the event that any part of the Settlement is found to be unlawful, void,
18 unconscionable, or against public policy by a court of competent jurisdiction, the remaining
19 terms and conditions of the Settlement shall remain intact.

20 8.3 The Settling Parties intend this Settlement to be a final and complete resolution of
21 all disputes between them with respect to the Action. The Settlement comprises claims that are
22 contested and shall not be deemed an admission by any Settling Party as to the merits of any
23 claim, allegation, or defense. The Settling Parties and their respective counsel agree that at all
24 times during the course of the litigation, each has complied with the requirements of the
25 applicable laws and rules of the Court, including, without limitation, section 128.7 of the
26 California Code of Civil Procedure.

27 8.4 The Settling Parties agree that if any disputes arise related to the implementation
28 and enforcement of the terms of the Stipulation, said disputes are to be resolved by the Mediator

1 first by way of mediation, and if mediation is unsuccessful then by way of binding non-
2 appealable arbitration. If for any reason the Mediator is unavailable or has a conflict, the Settling
3 Parties shall agree on a substitute neutral so that this clause may be enforced without returning to
4 Court. If the Settling Parties cannot agree upon a substitute neutral they will jointly petition the
5 Mediator to select a neutral for them to enforce this clause.

6 8.5 Each of the Individual Defendants expressly denies and continues to deny all
7 allegations of wrongdoing or liability against himself or herself arising out of any conduct,
8 statements, acts, or omissions alleged, or which could have been alleged, in the Action. The
9 existence of or the provisions contained in the Stipulation shall not be deemed to prejudice in any
10 way the respective positions of the Settling Parties with respect to the Action, shall not be
11 deemed a presumption, a concession, or admission by any of the Settling Parties of any fault,
12 liability, or wrongdoing as to any facts, claims, or defenses that have been or might have been
13 alleged or asserted in the Action or with respect to any of the claims settled in the Action, or any
14 other action or proceeding, and shall not be interpreted, construed, deemed, invoked, offered, or
15 received in evidence or otherwise used by any person in the Action, or in any other action or
16 proceeding, whether civil, criminal, or administrative. The Released Persons may file the
17 Stipulation and/or the Judgment in any action that may be brought against them in order to
18 support a defense or counterclaim based on principles of res judicata, collateral estoppel, full
19 faith and credit, release, standing, good faith settlement, judgment bar or reduction or any other
20 theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settling
21 Parties may also file the Stipulation and documents executed pursuant and in furtherance thereto
22 in any action to enforce the Settlement and/or the Judgment.

23 8.6 The Stipulation may be modified or amended only by a writing signed by the
24 signatories hereto.

25 8.7 The Stipulation shall be deemed drafted equally by all Parties hereto.

26 8.8 No representations, warranties, or inducements have been made to any of the
27 Parties concerning the Stipulation or its exhibits other than the representations, warranties, and
28 covenants contained and memorialized in such documents.

1 8.9 Nothing in this Stipulation shall limit in any way Affymax's ability to liquidate its
2 assets, seek bankruptcy protection or other alternatives. Notwithstanding this and the terms set
3 forth in paragraphs 7.1 and 7.2, should Affymax take such action, the Settling Parties agree that
4 they will use all their reasonable efforts to effectuate the terms of the Settlement.

5 8.10 The Stipulation and the Settlement shall be binding upon, and inure to the benefit
6 of, the successors and assigns of the Settling Parties and Released Persons.

7 8.11 Each counsel or other Person executing the Stipulation or its exhibits on behalf of
8 any of the Parties hereby warrants that such Person has the full authority to do so.

9 8.12 The exhibits to this Stipulation are material and integral parts hereof and are fully
10 incorporated herein by this reference.

11 8.13 This Stipulation and the exhibits attached hereto constitute the entire agreement
12 among the Settling Parties with respect to the subject matter hereof and supersede all prior and
13 contemporaneous oral and written agreements and discussions.

14 8.14 In the event that there exists a conflict or inconsistency between the terms of this
15 Stipulation and the terms of any exhibit hereto, the terms of this Stipulation shall prevail.

16 8.15 The Stipulation may be executed in one or more counterparts, including by
17 signature transmitted by facsimile or e-mailed PDF files. Each counterpart, when so executed,
18 shall be deemed to be an original, and all such counterparts together shall constitute the same
19 instrument.

20 8.16 The Stipulation shall be considered to have been negotiated, executed and
21 delivered, and to be wholly performed, in the State of California, and the rights and obligations
22 of the Parties to the Stipulation shall be construed and enforced in accordance with, and
23 governed by, the internal, substantive laws of the State of California without giving effect to that
24 State's choice of law principles.

25 8.17 The Court shall retain jurisdiction with respect to implementation and
26 enforcement of the terms of the Stipulation, and the Settling Parties and their counsel submit to
27 the jurisdiction of the Court solely for purposes of implementing and enforcing the Settlement
28 embodied in the Stipulation.

1 IN WITNESS WHEREOF, the Settling Parties have caused the Stipulation to be
2 executed by their duly authorized attorneys.

3 Dated: May 29, 2014

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15 Dated: May 29, 2014

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