

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

LIAM KOZMA, derivatively and on behalf)
of NOVABAY PHARMACEUTICALS,)
INC. and individually and on behalf of all)
other similarly situated stockholders of)
NOVABAY PHARMACEUTICALS, INC.,)

Plaintiff,)

v.)

MARK M. SIECZKAREK, et al.,)

Defendants,)

And)

NOVABAY PHARMACEUTICALS, INC.)

Nominal Defendant.)

Case No. 16-cv-01254-SLR

STIPULATION OF SETTLEMENT

The parties to the above-captioned action (the “Action”), by and through their attorneys and subject to the approval of the Court, hereby enter into this Stipulation of Settlement dated July 28, 2017 (the “Stipulation”), which is intended to fully, finally, and forever resolve, discharge, release, and settle the Released Claims (as defined below) upon and subject to the terms and conditions herein (the “Settlement”). This Stipulation is entered into by and between (1) Plaintiff Liam Kozma (“Plaintiff”), on his own behalf and as representative of the Settlement Class (as defined below), (2) NovaBay Pharmaceuticals, Inc. (“NovaBay” or the “Company”), and (3) Defendants Mark M. Sieczkarek, Paul E. Freiman, Gail Maderis, Xinzhou Li, Xiaoyan Liu, Mijia Wu, Todd Zavodnick, T. Alex McPherson, Massimo Radaelli, Thomas J. Paulson, and

Justin M. Hall (collectively, with NovaBay, the “Defendants”). Plaintiff and Defendants are referred to herein as the “Parties.”

RECITALS

This Stipulation is entered into based on the following:

A. On April 18, 2016, NovaBay filed a Schedule 14A proxy statement (the “Proxy”) with the United States Securities and Exchange Commission (the “SEC”) and on May 7, 2016, NovaBay filed a supplement to the Proxy (the “Proxy Supplement”). In the Proxy and Proxy Supplement, NovaBay requested that its stockholders approve an amendment (the “Amendment”) to NovaBay’s 2007 Omnibus Incentive Plan (the “2007 Plan”) by which the aggregate number of shares reserved for issuance under the 2007 Plan (the “Aggregate Share Limit”) would be increased.

B. On May 26, 2016, NovaBay stockholders voted to approve the Amendment and increase the Aggregate Share Limit. The Parties disagree as to the sufficiency of the disclosures upon which that vote was based.

C. On December 19, 2016, Plaintiff commenced the above-captioned putative class action and shareholder derivative lawsuit (the “Action”) in the United States District Court for the District of Delaware (the “Court”). In the operative complaint (the “Complaint”), Plaintiff alleges that Defendants made certain misrepresentations in the Proxy and the Proxy Supplement relating to the proposed Amendment to the Aggregate Share Limit.

D. On February 3, 2017, counsel for the Parties spoke by telephone to discuss a potential settlement of the Action.

E. By letter dated February 14, 2017, Plaintiff’s counsel proposed certain terms for a potential settlement of the Action.

F. On March 6, 2017 and on March 13, 2017, respectively, counsel for the Parties again spoke by telephone to discuss the terms outlined in Plaintiff's counsel's February 14, 2017 letter. The Parties also corresponded by email on various dates. On March 24, 2017, the Parties reached an agreement in principle regarding the terms of a settlement of the Action.

G. Defendants deny all fault or liability alleged in the Action or otherwise in relation to the Proxy, the Proxy Supplement, the Amendment, the 2007 Plan, the Aggregate Share Limit, any disclosures made as part of or in connection with any of the foregoing, and any other matters related to the foregoing. Defendants further specifically deny that any ratification of the shareholder approval of the Amendment is required under any applicable rule, statute, regulation, or law. Defendants also further specifically deny that corporate governance enhancements or similar measures are required under any applicable rule, statute, regulation, or law. However, to avoid the substantial burden, expense, risk, inconvenience, and distraction of continued litigation, the Defendants consider it desirable to resolve fully and finally the claims made against them in the Action through the Settlement.

H. Plaintiff and his counsel have determined that a settlement of the Action on the terms reflected in this Stipulation is fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned Parties, that the Action shall be settled, subject to the approval of the Court pursuant to Rules 23 and 41 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

AGREEMENT

1. **Order Giving Notice to Settlement Class and Preliminarily Approving**

Settlement. As soon as practicable, Plaintiff shall apply to the Court for immediate entry of an order identical in substance to the form of the proposed Order Preliminarily Approving Derivative & Class Settlement attached hereto as Exhibit 1 (“Preliminary Approval Order”). The Preliminary Approval Order shall specifically include provisions that:

a. For purposes of the Settlement only, the Court shall find and determine that the Action may proceed as a non-opt-out class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of a class consisting of all current and former shareholders (whether of record or beneficial) of NovaBay common stock, including any and all of their respective successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns, and transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors and successors and assigns, who held NovaBay stock between the close of business on April 7, 2016 and the close of business on April 21, 2017, excluding Defendants, members of the immediate family of any Defendant, any entity in which a Defendant has or had a controlling interest, officers of NovaBay, and the legal representatives, heirs, successors or assigns of any such excluded person (the “Settlement Class” or “Class Members”), and further find and determine that Plaintiff and his counsel will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in this Action;

b. Preliminarily approve the Settlement set forth in this Stipulation;

c. Direct that notice be given to the Settlement Class of the pendency of the Action, of the certification of the Settlement Class, of the appointment of Levi &

Korsinsky LLP as Lead Counsel to represent the Settlement Class, and of the right of each Class Member to object to or otherwise be heard on the subject of the Settlement in the manner specified in paragraph 1(g) and 1(h) below;

d. Schedule a hearing to be held before the Court (“Final Settlement Hearing”) in order to determine: (i) whether the Settlement set forth in this Stipulation should be approved as fair, reasonable, and adequate; (ii) whether the class notice and notice methodology constituted due, adequate, and sufficient notice to all persons entitled to notice, and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law, and constituted the notice as directed by the Court in the Preliminary Approval Order, to apprise Class Members of (A) the pendency of the Action, (B) the nature and terms of the Settlement, (C) the Class Members’ right to object to the Settlement, and (D) the Class Members’ right to appear at the Final Settlement Hearing; (iii) whether a final judgment should be entered dismissing the claims of the Plaintiff and all other Class Members with prejudice, as contemplated by this Stipulation; (iv) whether the Court should enter a complete bar order, as set forth in the proposed Final Order and Judgment; (v) whether the Court should permanently bar and enjoin (A) all Class Members from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding (as well as a motion or complaint in intervention in this Action if the person or entity filing such motion or complaint in intervention purports to be acting as, on behalf of, for the benefit of, or derivatively for any of the above persons or entities) or order, in any jurisdiction or forum, that is based upon, arises out of, or relates to any Released Claim (as herein defined) as to any Released

Party (as herein defined), and (B) all persons and entities from filing, commencing, or prosecuting any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action) or other proceeding on behalf of any Class Member as to the Released Parties, if such other lawsuit is based upon, arises out of, or relates to any Released Claim, including any claim that is based upon, arises out of, or relates to the Action or the transactions and occurrences referred to in the Complaint; (vi) whether to approve the Fee and Expense Amount (as defined below) to Lead Counsel; and (vii) any other matters that the Court may deem appropriate;

e. Approve the form of Notice of Settlement of Class Action and Hearing thereon (“Notice of Hearing”) attached hereto as Exhibit 2, for mailing to Class Members in order to provide notice of the Final Settlement Hearing, and direct that NovaBay mail or cause to be mailed the Notice of Hearing to Class Members by first-class United States mail, postage prepaid, such mailing to occur within thirty (30) calendar days of entry of the Preliminary Approval Order, and direct that Lead Counsel shall post the Notice of Hearing and Stipulation on the website of Levi & Korsinsky LLP no later than ten (10) calendar days after entry of the Preliminary Approval Order;

f. Find that notice pursuant to subparagraph (e) above constitutes the notice as ordered by the Court in the Preliminary Approval Order, constitutes due and sufficient notice of the Settlement and the matters set forth in said notices to all persons entitled to receive notice, and fully satisfies the requirements of Federal Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law;

g. Provide that any objections by Class Members to the Settlement reflected in this Stipulation, including the Fee and Expense Amount, shall be heard at the Final Settlement Hearing, and that any papers submitted in support of said objections shall be received and considered by the Court in connection with the Final Settlement Hearing (unless, in its discretion, the Court shall direct otherwise) only if persons making objections file with the Court, and serve upon Lead Counsel and counsel for Defendants, on or before the date set by the Court (such date to be at least twenty-one (21) calendar days before the Final Settlement Hearing), written notice of their intent to appear at the Final Settlement Hearing, and/or copies of any papers they ask the Court to consider in connection with issues to be addressed at the Final Settlement Hearing;

h. Provide that notices and papers pursuant to subparagraph (g) shall be deemed filed with the Court on the date they are received or postmarked (with service by mail to be first class and postage prepaid); and shall be deemed served on the Parties' counsel on the date they are received or postmarked (with service by mail to be first class and postage prepaid) to:

William J. Fields LEVI & KORSINSKY LLP 30 Broad Street, 24 th Floor New York, NY 10004 Tel: (212) 363-7500 <i>Counsel for Plaintiff and the Settlement Class</i>	Joseph C. Weinstein SQUIRE PATTON BOGGS (US) LLP 4900 Key Tower 127 Public Square Cleveland, Ohio 44114 Tel: (216) 479-8500 <i>Counsel for Defendants</i>
--	---

i. Provide that, from the date of the Preliminary Approval Order until the Court determines whether a final judgment should be entered in accordance with Paragraph 2 below, Plaintiff and all other Class Members, and any of them, and anyone acting on their behalf,

are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims, either directly, representatively, derivatively, or in any other capacity, against any Released Party; and

j. Provide that the Final Settlement Hearing may, from time to time and without further notice to Class Members, be continued or adjourned by order of the Court.

2. **Final Order and Judgment**. At the Final Settlement Hearing set by the Court, Plaintiff shall ask the Court immediately to enter a Final Order and Judgment identical in substance to the form attached hereto as Exhibit 3 (“Judgment”). The Judgment shall specifically include provisions that:

a. Grant final certification of the Settlement Class solely for settlement purposes;

b. Approve the Settlement set forth in this Stipulation as fair, reasonable and adequate, and direct consummation of the Settlement in accordance with the terms and provisions of this Stipulation;

c. Dismiss with prejudice all claims in the Action, without the award of any damages, costs, or fees, or the grant of any further relief, except as provided for by this Stipulation;

d. Adjudge that the Plaintiff and all other Class Members shall conclusively be deemed bound by the Release contained in Paragraph 10 of this Stipulation, and permanently enjoin (A) all Class Members from filing, commencing, prosecuting, intervening in, participating in (as Class Members or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding (as well as a motion or complaint in intervention in this Action if the person or entity filing such motion or

complaint in intervention purports to be acting as, on behalf of, for the benefit of, or derivatively for any of the above persons or entities) or order, in any jurisdiction or forum, that is based upon, arises out of, or relates to any Released Claim (as herein defined) as to any Released Party (as herein defined), and (B) all persons and entities from filing, commencing, or prosecuting any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action) or other proceeding on behalf of any Class Member as to the Released Parties, if such other lawsuit is based upon, arises out of, or relates to any Released Claim, including any claim that is based upon, arises out of, or relates to the Actions or the transactions and occurrences referred to in the Complaint;

e. Completely bar the claims relating to or arising out of any Released Claims, as described in Section 8 of the proposed Judgment;

f. Adjudge that Defendants shall conclusively be deemed bound by the release contained in Paragraphs 11-12 of the Stipulation;

g. Adjudge that the notice previously given to Class Members pursuant to paragraphs l(e) and (f) above constituted the notice as directed by the Court in the Preliminary Approval Order, constituted due and sufficient notice of the Action, the Settlement, and the matters set forth in said notices to all persons entitled to receive notice, fully satisfied the requirements of Federal Rule of Civil Procedure 23, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law, and otherwise complied with the terms of the Preliminary Approval Order; and

h. Retain jurisdiction over all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Stipulation and Settlement.

3. **Effect of Court Disapproval.** Except as may otherwise be agreed to by the Parties pursuant to the terms hereof, in the event this Court (or any other court)

- a. disapproves or sets aside this Stipulation or any material part hereof for any reason;
- b. declines for any reason to enter or give effect to a Preliminary Approval Order identical in substance to that set forth in Exhibit 1;
- c. declines for any reason to enter or give effect to a Judgment identical in substance to that set forth in Exhibit 3 to this Stipulation; provided, however, that the allowance or disallowance or modification by the Court of the Fee and Expense Amount or the Incentive Award are not conditions to the Settlement set forth in this Stipulation, and any order or proceeding relating to the Fee and Expense Amount or Incentive Award shall not operate to modify, terminate, or cancel this Stipulation or affect or delay the finality of the Final Order and Judgment or the releases contained therein or any other order entered pursuant to this Stipulation; or
- d. holds that the Judgment, or any judgment entered pursuant thereto, should in any material part be overturned or modified;

then: (i) this Stipulation, and all negotiations, transactions, and proceedings in connection therewith shall not be deemed to prejudice in any way the respective positions of the Parties, and the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of this Stipulation; (ii) the provisions contained in this Stipulation and all negotiations, discussions, and proceedings in connection with this Stipulation shall not be deemed a presumption, concession, or admission by any Party of any fault, liability, or wrongdoing or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Action,

or any other actions or proceedings, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence, or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the Settlement; (iii) the Defendants shall not be obligated to pay any of the fees or expenses provided for in this Stipulation (other than, if already incurred, the notice costs addressed in Paragraph 8 of this Stipulation); (iv) the conditional certification of the Settlement Class as provided for herein shall be vacated and be of no further force and effect, and the Defendants shall not be precluded from opposing certification of any class in future proceedings; provided, however, that in the event that the Parties, within ten (10) business days of any such action of any court described in subparagraphs (a) through (d), jointly elect to appeal from or otherwise seek review or reconsideration of such court action, this Stipulation shall not be deemed null and void until such time as such court action becomes final after any proceedings arising directly or indirectly from the Parties' appeal(s) or other attempt(s) to have such court action reversed, withdrawn, or overturned.

4. **Effect of Certain Future Events on Stipulation.**

a. If any action that would be barred by the releases contemplated by this Stipulation is commenced, prosecuted, continued, or instigated, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties (as defined in paragraph 10(b)) in any court prior to the Effective Date (as defined in Paragraph 5), and if a motion to dismiss such action is not granted, or a motion to stay such action is not granted in contemplation of dismissal after the Effective Date, then all or any of the Defendants, at his, her, its, or their sole option, prior to the Effective Date, may withdraw from this Stipulation; provided, however, that such Defendant has first given five (5) business days' notice to each of the counsel listed below so as to be received by such counsel the following day after

notice is given. Within five (5) business days of receipt of such notice, counsel may attempt to cause dismissal of the action asserting any of the Released Claims (as defined in paragraph 10(a) below). If counsel succeed in obtaining dismissal of the action asserting the Released Claims within the five (5) business day period, then any termination or cancellation by such Defendant shall be deemed a nullity. In order to constitute dismissal for purposes of this paragraph, an appropriate notice of dismissal, or motion to stay such action in contemplation of dismissal after the Effective Date, must have been filed with the proper court, and dismissal with prejudice, or an order granting a motion to stay such action in contemplation of dismissal after the Effective Date, must have been entered. This Stipulation shall remain binding as to any Defendant not so withdrawing.

b. If a Defendant elects to withdraw from this Stipulation pursuant to this Paragraph 4, then (i) such Defendant and the Parties shall be restored to their respective positions as they existed immediately prior to the execution of this Stipulation, and this Stipulation and all negotiations, transactions, and proceedings in connection herewith shall not be deemed to prejudice in any way their respective positions, and the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of this Stipulation; (ii) the provisions contained in this Stipulation and all negotiations, discussions, and proceedings in connection with this Stipulation shall not be deemed a presumption, concession, or admission by any Party of any fault, liability, or wrongdoing or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, and shall not be interpreted, construed, deemed, invoked, offered or received in evidence, or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the

Settlement; (iii) such Defendant shall not be obligated to pay any of the fees or expenses provided for in this Stipulation (other than, if already incurred, the notice costs addressed in Paragraph 8 of this Stipulation); and (iv) the conditional certification of the Settlement Class as provided for herein shall be vacated and of no further force and effect with respect to such Defendant, and such Defendant shall not be precluded from challenging whether the case may proceed as a class action.

5. **Effective Date of Settlement**. The Settlement contemplated by this Stipulation shall be deemed effective, and the Parties and Class Members shall be definitively bound thereto, on the date on which the Judgment entered shall be deemed “Final” (the “Effective Date”). The Judgment shall be deemed “Final” on the date upon which the judgment is no longer subject to any further appeal or judicial reconsideration or review, whether by affirmance on or exhaustion of any possible appeal or review, writ of certiorari, lapse of time, or otherwise. Thus, “Final” means, without limitation, the date of expiration of the time for the filing or noticing of any appeal from, or other request for judicial reconsideration or review of, the Judgment, without any appeal or other request for judicial reconsideration or review having been filed or noticed; or, if an appeal or other request for further judicial review of the Judgment is timely filed or noticed, the date on which all appellate and/or other judicial proceedings resulting from such filing(s) or notice(s) have been finally terminated, and the Judgment identical in substance to the form attached hereto as Exhibit 3 has become effective without the possibility of further review by any court; provided, however, and notwithstanding any provision to the contrary in this Stipulation, the pendency of any appeal or judicial reconsideration or review related to the approval of the Fee and Expense Amount or Incentive Award, as addressed in Section 9, shall not be considered in determining the Effective Date.

6. **Consideration by Defendants.** In consideration for this Stipulation, the Settlement and dismissal with prejudice of the Action, and the releases contemplated by this Stipulation, NovaBay:

a. Sought and obtained a ratification of the stockholder vote approving the Amendment and the 1,124,836 share increase in the Aggregate Share Limit that NovaBay believes was approved as part of the Amendment (the “Ratification”). Specifically, in a proxy statement filed by NovaBay on April 21, 2017, NovaBay included the proposal attached as Exhibit 4 hereto. Had NovaBay stockholders not voted in favor of the Ratification, then all awards issued using shares added to the 2007 Plan by the Amendment would have been rendered null and void; and

b. Agrees to adopt or, to the extent already in practice, continue practicing the following corporate governance enhancements: (i) ensuring that all future grants of equity compensation are reviewed by the NovaBay Board of Directors (the “Board”) and comply with all applicable laws, committee charters, and/or other governing documents; (ii) retaining adequate documentation of all awards made under any applicable compensation plans and appointing an individual (who may but need not be a member of the Board or an officer or employee of NovaBay) to monitor compliance with the enhancements contained herein; and (iii) ensuring that the Board, or a designated Board committee, formally review and approve (in writing or otherwise) all disclosures in proxy statements or other public filings containing compensation disclosures, before such statements are publicly filed.

7. **Evaluation of Settlement Terms by Plaintiff and Lead Counsel.** Lead Counsel hereby represents that it believes that the terms of this Stipulation are fair, reasonable, adequate, and in the best interests of all members of the Settlement Class. Plaintiff and Lead

Counsel believe, based on the information available to them, that the consideration identified in the preceding Paragraph will provide and has provided a benefit to NovaBay stockholders.

Defendants do not believe that seeking the Ratification was required under any applicable law, but they agreed to do so to avoid the expense and burden of continued litigation. Defendants agree that the pendency of the Action and efforts of Lead Counsel were the substantive cause of NovaBay's decision to settle on the terms identified in the preceding Paragraph.

8. **Payment of Costs and Administration of Notice**. Defendants shall be responsible for providing notice of the Settlement to the Class Members in conformance with the Preliminary Approval Order. Defendants or their insurers will pay all out-of-pocket costs for the administration and costs of providing the Notice of Hearing in accordance with the Preliminary Approval Order entered by the Court.

9. **The Fee and Expense Amount**.

a. Subject to approval of the Court, the Parties agree that NovaBay or its insurer(s) shall pay to Lead Counsel the amount of \$205,000 in attorneys' fees and expenses (the "Fee and Expense Amount"). Lead Counsel agrees not to seek an award of attorneys' fees and expenses in any amount greater than \$205,000.

b. NovaBay, its successor(s) or insurer(s), on behalf of the Company and for the benefit of the other Defendants, shall pay the Fee and Expense Amount to Lead Counsel within ten (10) business days of entry of the Judgment. In the event that the Judgment is reversed or modified as a result of any appeal and/or any further proceedings on remand, or successful collateral attack, Lead Counsel shall refund to NovaBay (or its successor(s) or insurer(s)) the advanced amount and all interest accrued or accumulated thereon under interest rates prescribed by Delaware law. Except as provided herein, the Released Parties (as defined

herein) shall bear no other expenses, costs, damages, or fees alleged or incurred by the Plaintiff, by any other member of the Settlement Class, or by any of their attorneys, experts, advisors, agents, or representatives.

c. Lead Counsel may make a petition for an incentive award for Plaintiff to be paid out of the Fee and Expense Amount (the “Incentive Award”). Defendants will not oppose an incentive award for Plaintiff in an amount not to exceed \$2,000 and shall not be liable for any portion thereof.

d. Final resolution by the Court of the Fee and Expense Amount or the Incentive Award shall not be a condition to the Settlement or entry of the Judgment.

e. Notwithstanding anything else contained in this Stipulation, no fees or expenses that may otherwise be payable pursuant to this Stipulation shall be payable or paid prior to, or in the absence of: (i) entry of the Judgment by the Court approving the Fee and Expense Amount, or similar judgment and/or order approving Lead Counsel and/or Plaintiff's fees and costs, and (ii) dismissal with prejudice of the Action.

f. The entry of the Judgment shall not divest the Court of jurisdiction over the amount of fees and expenses to be paid to Lead Counsel.

10. **Released Claims and Released Parties.**

a. As used herein, “Released Claim(s)” shall mean any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues, and controversies of any kind, nature, or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown

Claims (as defined below), that Plaintiff and/or any and all Class Members (in their capacity as shareholders) ever had, now have, or may have, or otherwise could, can, or might assert, whether direct, derivative, individual, class, representative, legal, equitable, or of any other type or in any other capacity, against any of the Released Parties, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule that, now or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, inactions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events, claims, or any other matters, things, or causes whatsoever, or any series thereof, that were, could have been, or in the future can or might be alleged, asserted, set forth, claimed, embraced, involved, or referred to in, or related to, directly or indirectly, the Action, including, without limitation, any and all claims that are based upon, arise out of, relate in any way to, or involve, directly or indirectly, (i) disclosures concerning the Amendment, the 2007 Plan, and the Aggregate Share Limit in the Proxy and Proxy Supplement; (ii) any representations, recommendations, publications, solicitations, disclosures, public filings, periodic reports, press releases, registration statements, proxy statements, or other statements issued, made available, or filed relating, directly or indirectly, to the Amendment and the Aggregate Share Limit; (iii) the Amendment, the Aggregate Share Limit, and any disclosures related thereto; (iv) any fiduciary obligations (to the extent any exist) of the Released Parties in connection with the Amendment and the Aggregate Share Limit; (v) the fees, expenses, or costs incurred in prosecuting, defending, or settling the Action (except as otherwise provided for in this Stipulation); (vi) the settlement of the Action; or (vii) any other claim or claims arising out of the transactions or occurrences described or discussed in the Complaint.

b. As used herein, each of the following persons or entities is a “Released Party” and collectively are “Released Parties”: (i) Mark M. Sieczkarek, Paul E. Freiman, Gail Maderis, Xinzhou Li, Xiaoyan Liu, Mijia Wu, Todd Zavodnick, T. Alex McPherson, Massimo Radaelli, Thomas J. Paulson, Justin M. Hall, and NovaBay; (ii) any person or entity that is, was, or will be related to or affiliated with any of the persons or parties referred to in the preceding clause or in which any such person or party has, had, or will have a controlling interest; and (iii) the respective past or present insurers, reinsurers, family members, spouses, and heirs, as well as the respective past or present trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions, affiliates, associated entities, stockholders, shareholders, principals, officers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, and associates, of any of the persons or parties referred to in the preceding clauses (i) and (ii).

c. As used in the definition of Released Claims, “Unknown Claims” means any claim relating to the transactions or occurrences described in the Complaint that any Party to this Stipulation and/or party to the Action – including all members of the Settlement Class – does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those that, if known, might have affected the decision to enter into the Settlement.

11. **Release by the Plaintiff and All Other Class Members.**

a. As of the Effective Date, Plaintiff and all other Class Members are deemed to have forever released, relieved, settled, and discharged, fully and completely, any and all Released Claims against any of the Released Parties.

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

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

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

“Released Claims” was separately bargained for and was a key element of the Settlement and was relied upon by each and all of the Defendants in entering into the Stipulation.

12. **Release by the Defendants and the Released Parties.** Upon the Effective Date, Defendants and the Released Parties release the Plaintiff, Lead Counsel, and the other Class Members from all claims arising out of the commencement, prosecution, settlement, and resolution of the Action; provided, however, that the Defendants and Released Parties shall retain the right to enforce in the Court the terms of this Stipulation.

13. **Stay of Proceedings; Challenges to the Settlement or Amendment.**

a. Pending entry of the Preliminary Approval Order and the entry of the Judgment, the Parties agree to stay all proceedings in the Action, except those incidental to the Settlement itself.

b. The Parties agree to use their best efforts to prevent, stay, or seek dismissal of, or to oppose entry of any interim or final relief in favor of, any claim by any member of the Settlement Class in any other litigation that would be barred by the releases contemplated by this Stipulation, and any other litigation against any of the Parties challenging the Settlement, the Amendment, or any transactions contemplated thereby, or that otherwise involves, directly or indirectly, a Released Claim.

14. **Entire Agreement; Admissibility.** This Stipulation constitutes the full and entire agreement and understanding of and between the Parties with regard to the Settlement and compromise of the Action and supersedes any prior oral and written understandings, agreements, and proposals concerning the matters described herein. All agreements, covenants, representations, and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Stipulation are integrated herein and superseded by this Stipulation. All prior and contemporaneous conversations, negotiations, possible and alleged agreements,

representations, covenants, and warranties between the Parties are merged herein. No Party is relying upon any statement or representation not specified in this Stipulation. This Stipulation shall not be admissible in evidence except to enforce its terms.

15. **Governing Law; Continuing Jurisdiction.** This Stipulation shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without regard to its principles governing choice of law. The Parties agree that any dispute arising out of or relating in any way to this Stipulation and its exhibits shall not be litigated or otherwise pursued in any forum or venue other than the Court. Each Party hereto waives any right to demand a jury trial as to any such action. The Parties submit themselves to the exclusive jurisdiction of the Court for the enforcement and interpretation of the Stipulation and its exhibits, and all other matters regarding or relating to them. Without affecting the finality of the Settlement, the Court shall retain jurisdiction for purposes, among other things, of administering the Settlement and resolving any disputes hereunder.

16. **Headings.** The headings in this Stipulation are solely for the convenience of the Parties, their counsel, and the Court. The headings shall not be deemed to be a part of this Stipulation and shall not be considered in construing or interpreting this Stipulation.

17. **Execution in Counterparts.** This Stipulation may be executed in any number of actual or e-mailed counterparts and by each of the different parties on several counterparts, each of which when so executed and delivered will be an original. The executed signature page(s) from each actual or e-mailed counterpart may be joined together and attached and will constitute one and the same instrument. This Stipulation shall become effective upon complete execution.

18. **Execution by Counsel.** This Stipulation may be executed by Lead Counsel, on its own behalf and on behalf of the Plaintiff and the Settlement Class, and by each Defendant's respective counsel on behalf of Defendants. By executing this Stipulation, each undersigned counsel expressly represents and warrants that he/she has explained the terms of the Stipulation and the ramifications of the Settlement to his/her clients, that he/she is authorized and empowered to enter into the Stipulation on behalf of his/her stated client(s), that the signature of such counsel is intended to and does legally bind stated client(s) of such counsel, and that each such counsel has read this Stipulation and each exhibit hereto.

19. **Plaintiff's Representation.** Plaintiff, through his duly authorized counsel, represents that (i) he has agreed to serve as representative of the Settlement Class to be certified herein, (ii) he has consulted with Lead Counsel about the Action, this Stipulation, and the obligations of a representative of the Settlement Class, and (iii) he approves of and has authorized Lead Counsel to enter into this Stipulation. Plaintiff further represents that he will not seek any incentive or other fee related to his involvement in the Action except as provided for in Section 9.

20. **Modifications Only in Writing; Authorization of Lead Counsel.** This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a written instrument signed by all of the signatories hereto or their successors-in-interest. Plaintiff expressly authorizes Lead Counsel to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Stipulation to effectuate its terms, and also expressly authorizes Lead Counsel to enter into such modifications or amendments to this Stipulation on behalf of Plaintiff and the Settlement Class as Lead Counsel may deem appropriate and that do not materially prejudice Plaintiff's or the other Class Members' rights.

21. **Exhibits Incorporated by Reference.** Each and every exhibit to this Stipulation is incorporated herein by reference as though fully set forth herein.

22. **No Waiver of Breach.** The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver, by that Party or by any other undersigned Party, of any other prior or subsequent breach of this Stipulation. Moreover, any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by such other Party.

23. **No Admission.** All Defendants (a) have denied and continue to deny all fault or liability, and have denied and continue to deny that they have committed, or aided or abetted in the commission of, any unlawful or wrongful act alleged in the Action or otherwise in relation to (i) the 2007 Plan, the Amendment, and the Aggregate Share Limit, (ii) any disclosures relating to the 2007 Plan, the Amendment, and the Aggregate Share Limit, (iii) the Proxy and the Proxy Supplement, (iv) any fiduciary obligations of the Released Parties in connection with the 2007 Plan, the Amendment, and the Aggregate Share Limit (to the extent any such obligations existed), (v) the fees, expenses, or costs incurred in prosecuting, defending, or settling the Action, or (vi) any other aspect of the transaction or occurrences discussed or described in the Complaint; (b) believe they have diligently and scrupulously complied with the federal securities laws, state fiduciary law, and any other applicable rule, statute, regulation, or law; (c) believe they have various defenses that are meritorious; and (d) assert that their conduct with respect to the matters complained of was in all respects and at all times proper, lawful, and in good faith,

and, as to the directors of NovaBay, in the best interests of the stockholders of NovaBay.

Defendants have entered into this Stipulation solely to avoid the substantial burden, expense, risk, inconvenience, and distraction of continued litigation. Nothing in this Stipulation, or in any document or instrument contemplated hereby, is to be construed as or deemed to be a presumption, concession, or admission by any Defendant or Released Party of any fault, liability, or wrongdoing as to any facts or claims that have been or might be alleged or asserted in the Action, or any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered or received in evidence, or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, for any purpose other than as provided expressly herein. Accordingly, this Stipulation may not be used by any third party against any Party hereto. Pursuant to Federal Rule of Evidence 408, the entering into and carrying out of this Stipulation, the exhibits hereto, and any negotiations or proceedings related thereto shall not in any event be construed as, or deemed evidence of, an admission or concession by any of the undersigned parties or a waiver of any applicable statute of limitations, and shall not be offered or received into evidence in any action or proceeding against any undersigned Party in any court, administrative agency, arbitral forum, or other tribunal for any purpose whatsoever, other than to enforce the provisions of this Stipulation or the provisions of any related agreement or exhibit hereto.

24. **Non-Assignment of Claims**. Plaintiff and his counsel represent and warrant that the Plaintiff is a member of the Settlement Class, that Plaintiff has been a continuous owner of NovaBay stock since April 7, 2016, and that none of the Plaintiff's claims or causes of action asserted in the Action, or any claims that could have been alleged in the

Action, or any claims or causes of action referred to in any complaint in the Action or this Stipulation, have been assigned, encumbered, or in any manner transferred in whole or in part.

25. **Legal Representation.** The Parties to this Stipulation acknowledge that they have been represented by qualified legal counsel both in connection with the Action and in connection with the negotiation, drafting, and execution of this Stipulation. Accordingly, the language used in this Stipulation will be deemed to be language chosen by all Parties hereto to express their mutual intent, and no rule of strict construction against any Party hereto will apply to any term or condition of this Stipulation. All Parties agree that this Stipulation was drafted by counsel for the Parties at arm's length and that no parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Stipulation was made or executed. Nor shall there be any presumption for or against any Party that drafted all or any portion of this Stipulation.

26. **Compliance with the Class Action Fairness Act.** As set forth in the Class Action Fairness Act of 2005 ("CAFA"), Defendants shall timely serve the requisite CAFA notices within ten (10) days of the filing of this Stipulation with the Court. Prior to the Final Settlement Hearing, Defendants shall cause to be served on Lead Counsel and filed with the Court, by affidavit or declaration, proof of compliance with CAFA's notice provisions (28 U.S.C. § 1715(b)).

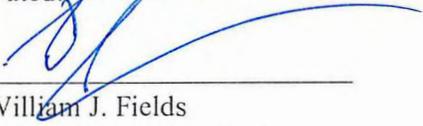
27. **Cooperation.** The Parties to this Stipulation and their respective counsel agree to cooperate fully with one another in seeking Court approval of this Settlement and in the execution of such documents as are reasonably necessary and appropriate to obtain approval of and to implement this Stipulation, to use commercially reasonable efforts to perform all terms of

this Stipulation, and to use their best efforts to have any collateral attack upon this Stipulation or the Settlement promptly dismissed or rejected.

IN WITNESS HEREOF, the undersigned have executed this Stipulation effective as of the date stated above.

Dated:

7/28/17

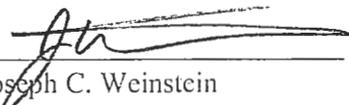


William J. Fields
LEVI & KORSINSKY LLP
30 Broad Street, 24th Floor
New York, NY 10004
Tel: (212) 363-7500

Counsel for Plaintiff and the Settlement Class

Dated:

7/28/17



Joseph C. Weinstein
SQUIRE PATTON BOGGS (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114
Tel: (216) 479-8500

Counsel for Defendants