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9
10 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

11 INCHEN HUANG, Individually and on
12 Behalf of All Others Similarly Situated,

13 Plaintiff,

14 v.

15 ASSERTIO THERAPEUTICS, INC.,
ARTHUR JOSEPH HIGGINS, JAMES A.
16 SCHOENECK, and AUGUST J. MORETTI,

17 Defendants.

Case No. 4:17-cv-04830-JST

**STIPULATION AND AGREEMENT OF
SETTLEMENT**

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1 This Stipulation and Agreement of Settlement, dated as of July 30, 2021 (the “Stipulation”)
2 is entered into between (a) Plaintiffs Aurelio Scarpatetti, Manuele Scarpatetti, Mark Madrack and
3 Duy Vu (collectively, “Plaintiffs”), on behalf of themselves and the Settlement Class (defined
4 below); and (b) Defendants Depomed, Inc., n/k/a Assertio Therapeutics, Inc. (“Depomed”), Arthur
5 Joseph Higgins, James A. Schoeneck, and August J. Moretti (collectively, “Defendants,” and all
6 Defendants other than Depomed, the “Individual Defendants”) and embodies the terms and
7 conditions of the settlement of the above-captioned action (the “Action”).¹ Subject to the approval
8 of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to
9 fully, finally and forever compromise, settle, release, resolve, and dismiss with prejudice the Action,
10 all claims asserted or that could have been asserted therein against Defendants, and all claims in any
11 way relating, directly or indirectly, to the purchase, sale, acquisition, disposition, or holding of
12 Depomed common shares purchased or otherwise acquired between July 29, 2015 and August 7,
13 2017, inclusive (the “Class Period”).

14 WHEREAS:

15 A. On August 18, 2017, a class action complaint was filed in the United States District
16 Court for the Northern District of California, styled *Huang et al. v. Depomed, Inc., et al.*, Case No.
17 3:17-CV-04830-JST (N.D. Cal.).²

18 B. On December 8, 2017, the Court issued an Order (1) appointing Depomed Investor
19 Group as Lead Plaintiffs for the Action; and (2) approving Plaintiff’s selection of Levi & Korsinsky,
20 LLP as Lead Counsel for the proposed plaintiff class. ECF No. 52.

21 C. On December 15, 2017, this Court issued an Order providing for Plaintiff to file an
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23 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in
24 ¶ 1 herein.

25 ² Defendant Depomed, Inc. changed its name to Assertio Therapeutics, Inc. on August 14, 2018. Further, on
26 August 21, 2019, Judge Tigar’s courtroom location changed to the Ronald V. Dellums Federal Building and United
27 States Courthouse, Courtroom 6, 2nd Floor, 1301 Clay Street, Oakland, CA 94612. Therefore, the caption of this action
28 now reads *Huang et al. v. Assertio Therapeutics, Inc., et al.*, Case No. 4:17-CV-04830-JST (N.D. Cal.). Subsequently,
on May 19, 2020, Assertio Therapeutics, Inc. implemented a holding company reorganization pursuant to which (i)
Assertio Therapeutics, Inc. became a direct, wholly-owned subsidiary of Assertio Holdings, Inc.; (ii) each issued and
outstanding share of common stock of Assertio Therapeutics, Inc. converted into an equivalent corresponding share of
common stock of Assertio Holdings, Inc.; (iii) Assertio Holdings, Inc.’s shares were deemed registered pursuant to
Section 12g-3(a) of the Securities Exchange Act of 1934, as amended; and (iv) Assertio Holdings, Inc. assumed Assertio
Therapeutics, Inc.’s listing on the Nasdaq Stock Market.

1 amended complaint, which would then function as the operative complaint. ECF No. 58. On
2 February 6, 2018, Lead Plaintiffs filed an Amended Complaint (the “FAC”), asserting claims under
3 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) against
4 Depomed and the Individual Defendants. ECF No. 61. On April 9, 2018, Defendants filed a Motion
5 to Dismiss the FAC, ECF No. 66, which the Court granted on March 18, 2019. ECF No. 83.

6 D. On May 2, 2019, Lead Plaintiffs filed a Second Amended Complaint (the “Second
7 Amended Complaint” or “SAC”), asserting claims under Sections 10(b) and 20(a) of the Exchange
8 Act and Rule 10b-5 promulgated thereunder. ECF No. 87. On June 17, 2019, Defendants filed a
9 Motion to Dismiss the Second Amended Complaint, ECF No. 92, which the Court granted on
10 March 11, 2020. ECF No. 110.

11 E. On April 9, 2020, Plaintiffs timely filed a Notice of Appeal which was assigned to
12 the United States Court of Appeals for the Ninth Circuit, styled *Aurelio Scarpatetti, et al v. Assertio*
13 *Therapeutics, Inc., et al.*, Case No. 20-15707. ECF Nos. 112-113.

14 F. As part of the appeals process, Plaintiffs and Defendants participated in the Mediation
15 Program of the Ninth Circuit Court of Appeals with Circuit Mediator Jonathan Westen. This
16 included multiple calls with the mediator and the exchange of settlement offers. These mediation
17 efforts were initially unsuccessful.

18 G. On September 23, 2020, Plaintiffs filed their opening brief in the United States Court
19 of Appeals for the Ninth Circuit ECF No. 22. On October 23, 2020, Defendants filed their
20 answering brief ECF. No. 30. On December 14, 2020, Plaintiffs filed their Reply Brief. ECF. No.
21 36.

22 H. An Oral Argument was initially scheduled for March 5, 2021 but on February 26,
23 2021, Appellees filed a Joint Motion to stay the appellate proceedings stating that they were
24 engaged in advanced settlement negotiations and believed that the relief sought herein would
25 facilitate settlement while conserving judicial and party resources. ECF. No. 44.

26 I. While the initial mediation efforts were unsuccessful, Plaintiffs and Defendants
27 continued to negotiate in good faith and came to an agreement in principle on February 26, 2021 to
28 settle and release all claims asserted against Defendants in the Action in return for a cash payment

1 by Depomed of \$1,000,000 for the benefit of the Settlement Class, subject to certain terms and
2 conditions and the execution of a customary “long form” stipulation and agreement of settlement
3 and related papers.

4 J. This Stipulation (together with the exhibits hereto) reflects the final and binding
5 agreement between the Parties.

6 K. Based upon their investigation, prosecution and mediation of the case, Plaintiffs and
7 Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable
8 and adequate to Plaintiffs and the other members of the Settlement Class, and in their best interests.
9 Defendants state no position on the fairness, reasonableness, or adequacy of the terms and
10 conditions of this Stipulation and leave that determination to the Court. Based on Plaintiffs’ direct
11 oversight of the prosecution of this matter and with the advice of their counsel, each of the Plaintiffs
12 has agreed to settle and release the claims raised in the Action pursuant to the terms and provisions
13 of this Stipulation, after considering, among other things: (a) the substantial financial benefit that
14 Plaintiffs and the other members of the Settlement Class will receive under the proposed Settlement;
15 and (b) the significant risks and costs of continued litigation and trial.

16 L. This Stipulation constitutes a compromise of matters that are or could have been in
17 dispute between the Parties. Defendants are entering into this Stipulation solely to eliminate the
18 uncertainty, burden and expense of further protracted litigation. Each of the Defendants has denied
19 and continues to deny each and all of the claims and contentions alleged, or that could have been
20 alleged, by Plaintiffs in this Action, and all allegations of wrongdoing, fault, or liability, or damages
21 whatsoever asserted by Plaintiffs. Each of the Defendants has also denied, *inter alia*, the allegations
22 that Plaintiffs or the Settlement Class have suffered damages or that Plaintiffs or the Settlement
23 Class were harmed by the conduct alleged in the Action. Defendants continue to believe the claims
24 asserted against them in the Action are without merit and that the Action itself should not be
25 certified as a class action for purposes of trial and adjudication of liability and damages. Defendants
26 have not conceded or admitted any wrongdoing or liability, are not doing so by entering into this
27 Stipulation, and disclaim any and all wrongdoing and liability whatsoever. Defendants have agreed
28 to enter into this Stipulation solely to avoid the uncertainties, burden, and expense of further

1 protracted litigation and to put the Released Claims to rest finally and forever.

2 M. This Stipulation shall in no event be construed or deemed to be evidence of or an
3 admission or concession on the part of any of the Defendants with respect to any claim or allegation
4 of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that
5 the Defendants have, or could have, asserted. Similarly, this Stipulation shall in no event be
6 construed or deemed to be evidence of or an admission or concession on the part of any Plaintiff of
7 any infirmity in any of the claims asserted in the Action, or an admission or concession that any of
8 the Defendants' defenses to liability had any merit. Each of the Parties recognizes and
9 acknowledges, however, that the Action has been initiated, filed and prosecuted by Plaintiffs in
10 good faith and defended by Defendants in good faith, and that the Action is being voluntarily settled
11 with the advice of counsel.

12 N. NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among
13 Plaintiffs (individually and on behalf of all other members of the Settlement Class) and Defendants,
14 by and through their respective undersigned attorneys and subject to the approval of the Court
15 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits
16 flowing to the Parties from the Settlement, all Released Plaintiffs' Claims as against the Defendants'
17 Releasees and all Released Defendants' Claims as against the Plaintiffs' Releasees shall be finally
18 and fully compromised, settled and released, upon and subject to the terms and conditions set forth
19 below.

20 DEFINITIONS

21 1. As used in this Stipulation and any exhibits attached hereto and made a part hereof,
22 the following capitalized terms shall have the following meanings:

23 a) "Action" means the securities class action in the matter styled *Huang et al v. Assertio*
24 *Therapeutics, Inc. et al*, Case No. 4:17-cv-04830 (N.D. Cal), and includes all actions consolidated
25 therein.

26 b) "Alternate Judgment" means a form of final judgment that may be entered by the
27 Court herein but in a form other than the form of Judgment provided for in this Stipulation. The
28 Alternate Judgment must be in a form acceptable to all Parties.

1 c) “Authorized Claimant” means a Settlement Class Member who submits a valid Proof
2 of Claim Form to the Claims Administrator that is approved by the Court, pursuant to the Class
3 Distribution Order, for payment from the Net Settlement Fund.

4 d) “Claim” means a Proof of Claim Form submitted to the Claims Administrator.

5 e) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form
6 attached hereto as Exhibit 2 to Exhibit A, that a Claimant or Settlement Class Member must complete
7 and submit should that Claimant or Settlement Class Member seek to share in a distribution of the
8 Net Settlement Fund.

9 f) “Claimant” means a person or entity who or which submits a Claim Form to the
10 Claims Administrator seeking to be eligible to share in the proceeds of the Settlement Fund.

11 g) “Claims Administrator” means the firm retained by Plaintiffs and Lead Counsel,
12 subject to approval of the Court, to provide all notices approved by the Court to potential Settlement
13 Class Members and to administer the Settlement.

14 h) “Class Distribution Order” means an order entered by the Court authorizing and
15 directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

16 i) “Court” means the United States District Court for the Northern District of California.

17 j) “Defendants” means, collectively, Depomed, Inc., n/k/a Assertio Therapeutics, Inc.,
18 Arthur Joseph Higgins, James A. Schoeneck, and August J. Moretti.

19 k) “Defendants’ Counsel” means the law firm of Wilmer Cutler Pickering Hale and Dorr
20 LLP.

21 l) “Defendants’ Releasees” means Defendants and each of a Defendant’s past, present
22 and future parents, subsidiaries and affiliates, and their respective directors, officers, employees,
23 partners, members, principals, agents, underwriters, insurers, co-insurers, reinsurers, controlling
24 shareholders, attorneys, accountants or auditors, financial or investment advisors or consultants,
25 banks or investment bankers, personal or legal representatives, predecessors, successors, assigns,
26 spouses, heirs, related or affiliated entities, any entity in which a Defendant has a majority interest,
27 any member of an Individual Defendant’s Immediate Family, or any trust of which any Individual
28 Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his or her

1 family.

2 m) “Effective Date” with respect to the Settlement means the first date by which all of
3 the events and conditions specified in ¶ 34 of this Stipulation have been met and have occurred or
4 have been waived.

5 n) “Escrow Account” means an account maintained at Signature Bank wherein the
6 Settlement Amount shall be deposited and held in escrow under the control of Lead Counsel.

7 o) “Escrow Agent” means Signature Bank.

8 p) “Escrow Agreement” means the agreement between Lead Counsel and the Escrow
9 Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

10 q) “Excluded Claims” means (i) any claim(s) relating to the enforcement of the
11 Settlement; or (ii) any claims of any person or entity who or which submits a request for exclusion
12 that is accepted by the Court.

13 r) “Final,” with respect to the Judgment or, if applicable, the Alternate Judgment, or
14 any other court order, means: (i) if no appeal is filed, the expiration date of the time provided for
15 filing or noticing any appeal under the Federal Rules of Appellate Procedure, i.e., thirty (30) days
16 after entry of the judgment or order; or (ii) if there is an appeal from the judgment or order, (a) the
17 date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or
18 otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of
19 the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of
20 certiorari or other form of review, and, if certiorari or other form of review is granted, the date of
21 final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking
22 subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys’ fees,
23 costs, expenses or reimbursements to Plaintiffs or Lead Counsel, (ii) the plan of allocation of
24 Settlement proceeds (as submitted or subsequently modified), or (iii) the procedures for determining
25 Authorized Claimants’ recognized claims, shall not in any way delay, affect, or preclude a judgment
26 from becoming Final.

27 s) “Immediate Family” means children, stepchildren, parents, stepparents, spouses,
28 siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-

1 in-law. As used in this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-
2 recognized domestic relationship or civil union.

3 t) “Individual Defendants” means Arthur Joseph Higgins, James A. Schoeneck, and
4 August J. Moretti.

5 u) “Judgment” means the final judgment, substantially in the form attached hereto as
6 Exhibit B, to be entered by the Court approving the Settlement.

7 v) “Lead Counsel” means the law firm of Levi & Korsinsky, LLP.

8 w) “Litigation Expenses” means costs and expenses incurred in connection with
9 commencing, prosecuting and settling the Action, for which Lead Counsel intends to apply to the
10 Court for reimbursement from the Settlement Fund.

11 x) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice
12 and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and (iv) any
13 attorneys’ fees awarded by the Court.

14 y) “Notice” means the Notice of (I) Pendency of Class Action, Certification of
15 Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for
16 an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form
17 attached hereto as Exhibit 1 to Exhibit A, which shall be made available online at a website
18 maintained by the Claims Administrator or mailed to Settlement Class Members upon request.

19 z) “Notice and Administration Costs” means the costs, fees and expenses that are
20 incurred by the Claims Administrator and/or Lead Counsel in connection with: (i) providing notices
21 to the Settlement Class; and (ii) administering the Settlement, including but not limited to the Claims
22 process, as well as the costs, fees and expenses incurred in connection with the Escrow Account.

23 aa) “Officer” means any officer as that term is defined in Securities and Exchange Act
24 Rule 16a-1(f).

25 bb) “Parties” means Defendants and Plaintiffs, on behalf of themselves and the
26 Settlement Class.

27 cc) “Plaintiffs’ Releasees” means Plaintiffs, their respective attorneys, and all other
28 Settlement Class Members, and their respective current and former officers, directors, partners,

1 members, principals, controlling shareholders, accountants or auditors, agents, parents, heirs,
2 Immediate Family members, personal or legal representatives, affiliates, subsidiaries, executors,
3 trustees, administrators, successors, predecessors, assigns, assignees, employees, and attorneys, in
4 their capacities as such.

5 dd) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement
6 Fund set forth in the Notice.

7 ee) “Postcard Notice” means the Postcard Notice of (I) Pendency of Class Action,
8 Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and
9 (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses,
10 substantially in the form attached hereto as Exhibit 4 to Exhibit A, which is to be mailed to
11 Settlement Class Members.

12 ff) “Preliminary Approval Order” means the order, substantially in the form attached
13 hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing
14 that notice of the Settlement be provided to the Settlement Class.

15 gg) “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §
16 78u-4, as amended.

17 hh) “Released Claims” means all Released Defendants’ Claims and all Released
18 Plaintiffs’ Claims.

19 ii) “Released Defendants’ Claims” means all claims and causes of action of every nature
20 and description, whether known claims or Unknown Claims, whether arising under federal, state,
21 common or foreign law, that arise out of or relate in any way to the institution, prosecution, or
22 settlement of the claims asserted in the Action, including but not limited to claims for attorney’s fees
23 or expenses. Released Defendants’ Claims do not include any claims relating to the enforcement of
24 the Settlement or any claims against any person or entity who or which submits a request for
25 exclusion from the Settlement Class that is accepted by the Court.

26 jj) “Released Plaintiffs’ Claims” means any and all claims, including Unknown Claims,
27 that have been or could have been asserted by or on behalf of any of Plaintiffs’ Releasees, in any
28 capacity, arising out of, based upon, relating indirectly or directly to, or in connection with the

1 purchase, sale, acquisition, disposition, or holding of Depomed common shares purchased or
2 otherwise acquired from July 29, 2015 to August 7, 2017, inclusive, and the transactions, facts,
3 events, matters, occurrences, acts, disclosures, statements, representations, misrepresentations or
4 omissions involved, set forth, referred to, or otherwise related, directly or indirectly, to the
5 allegations that were or could have been alleged in this Action or the disclosures made in connection
6 therewith (including the adequacy and completeness or such disclosures). Released Plaintiffs’
7 Claims do not include: (i) any claims relating to the enforcement of the Settlement; and (ii) any
8 claims of any person or entity who or which submits a valid and timely request for exclusion that is
9 accepted by the Court. For avoidance of doubt, the definition of “Released Plaintiffs’ Claims” does
10 not include claims in any shareholder derivative action.

11 kk) “Releasee(s)” means each and any of the Defendants’ Releasees and each and any of
12 the Plaintiffs’ Releasees.

13 ll) “Releases” means the releases set forth in ¶¶ 5-6 of this Stipulation.

14 mm) “Settlement” means the settlement between Plaintiffs and Defendants on the terms
15 and conditions set forth in this Stipulation.

16 nn) “Settlement Amount” means \$1,000,000.00 in cash.

17 oo) “Settlement Class” means all persons who purchased or otherwise acquired common
18 shares of Depomed from July 29, 2015 to August 7, 2017, inclusive. Excluded from the Settlement
19 Class are Defendants and their respective successors and assigns; past and current executive officers
20 and directors of Depomed, Inc. n/k/a Assertio Therapeutics Inc.; members of the Immediate Families
21 of the Individual Defendants; the legal representatives, heirs, successors or assigns of the Individual
22 Defendants; any entity in which any of the above excluded persons have or had a majority interest;
23 and any person who validly requests exclusion from the Settlement Class.

24 pp) “Settlement Class Member” means each person and entity who or which is a member
25 of the Settlement Class.

26 qq) “Settlement Fund” means the Settlement Amount plus any and all interest earned
27 thereon.

28 rr) “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the

1 Federal Rules of Civil Procedure to consider final approval of the Settlement.

2 ss) “Summary Notice” means the Summary Notice of (I) Pendency of Class Action,
3 Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and
4 (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses,
5 substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth in the
6 Preliminary Approval Order.

7 tt) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any
8 interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the expenses and
9 costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes
10 owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and
11 accountants); and (iii) all taxes imposed on payments by the Settlement Fund, including withholding
12 taxes.

13 uu) “Unknown Claims” means any Released Plaintiffs’ Claims which any Plaintiff or any
14 other Settlement Class Member does not know or suspect to exist in their favor at the time of the
15 release of such claims, and any Released Defendants’ Claims which any Defendant or any other
16 Defendants’ Releasee does not know or suspect to exist in their favor at the time of the release of
17 such claims, which, if known by him, her or it, might have affected their decision(s) with respect to
18 this Settlement, including the decision to object to the terms of the settlement or to exclude himself,
19 herself or itself from the Settlement Class. With respect to any and all Released Claims, the Parties
20 stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and Defendants shall
21 expressly waive, and each of the other Settlement Class Members and each of the other Defendants’
22 Releasees shall be deemed to have waived, and by operation of the Judgment or the Alternate
23 Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits
24 conferred by any law of any state or territory of the United States, or principle of common law or
25 foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which
26 provides:

27 **A general release does not extend to claims that the creditor or releasing party**
28 **does not know or suspect to exist in his or her favor at the time of executing the**
release and that, if known by him or her, would have materially affected his or
her settlement with the debtor or released party.

1 The Parties and Releasees may hereafter discover facts, legal theories, or authorities in addition to
2 or different from those which he, she, or it now knows or believes to be true with respect to the
3 subject matter of the Released Claims, but the Parties expressly, fully, finally, and forever settle and
4 release, and each other Releasees shall be deemed to have settled and released, and upon the
5 Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and
6 forever, any and all Released Claims, without regard to the subsequent discovery or existence of
7 such different or additional facts, legal theories, or authorities. Plaintiffs and Defendants
8 acknowledge, and each of the other Settlement Class Members and each of the other Defendants'
9 Releasees shall be deemed by operation of law to have acknowledged, that the foregoing waiver was
10 separately bargained for and a key element of the Settlement.

11 **CLASS CERTIFICATION**

12 2. In the event that the Judgment does not become Final or the Settlement fails to
13 become effective for any reason, all Parties reserve all their rights on all issues, including class
14 certification. Solely for purposes of the Settlement and for no other purpose, Defendants stipulate
15 and agree to: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of
16 the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) certification of Plaintiffs
17 as Class Representatives for the Settlement Class; and (c) appointment of Lead Counsel as Class
18 Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

19 **PRELIMINARY APPROVAL OF SETTLEMENT**

20 3. Promptly upon execution of this Stipulation, Plaintiffs will move for preliminary
21 approval of the Settlement, certification of the Settlement Class for settlement purposes only, and
22 the scheduling of a Settlement Hearing for consideration of final approval of the Settlement, which
23 motion shall be unopposed by Defendants. Concurrently with the motion for preliminary approval,
24 Plaintiffs shall apply to the Court for, and Defendants shall agree to, entry of the Preliminary
25 Approval Order, substantially in the form attached hereto as Exhibit A.

26 **RELEASE OF CLAIMS**

27 4. The obligations incurred pursuant to this Stipulation are in consideration of: (i) the
28 full and final disposition of the Action as against Defendants; and (ii) the Releases provided for

1 herein.

2 5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further
3 action by anyone, upon the Effective Date of the Settlement, Plaintiffs and each of the other
4 Settlement Class Members and Plaintiffs' Releasees, on behalf of themselves, and their respective
5 heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such,
6 shall be deemed to have, and by operation of law and of the Judgment or Alternate Judgment shall
7 have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and
8 discharged each and every Released Plaintiffs' Claim against the Defendants and the other
9 Defendants' Releasees, and shall forever be barred and enjoined from asserting, commencing,
10 prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or
11 prosecution of any or all of the Released Plaintiffs' Claims, in any capacity, against any of the
12 Defendants' Releasees. This release shall not apply to any Excluded Claim.

13 6. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further
14 action by anyone, upon the Effective Date of the Settlement, Defendants, on behalf of themselves,
15 and their respective heirs, executors, administrators, predecessors, successors, and assigns in their
16 capacities as such, shall be deemed to have, and by operation of law and of the Judgment or Alternate
17 Judgment shall have, fully, finally and forever compromised, settled, released, resolved,
18 relinquished, waived and discharged each and every Released Defendants' Claim against Plaintiffs
19 and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any
20 or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees. This release shall
21 not apply to any person or entity who or which submits a valid request for exclusion from the
22 Settlement Class that is accepted by the Court. This release also shall not release or alter the
23 contractual rights, if any, under the terms of any written agreement among any of the Releasees.

24 7. Notwithstanding ¶¶ 5-6 above, nothing in the Judgment, or the Alternate Judgment,
25 if applicable, shall bar any action by any of the Parties to enforce or effectuate the terms of this
26 Stipulation or the Judgment, or Alternate Judgment, if applicable.

27 **THE SETTLEMENT CONSIDERATION**

28 8. In consideration of the settlement of the Released Plaintiffs' Claims against

1 Defendants and the other Defendants' Releasees, Depomed shall pay or cause to be paid the
2 Settlement Amount into the Escrow Account no later than thirty (30) calendar days after the later of:
3 (a) the date of entry by the Court of an order preliminarily approving this Settlement; and (b)
4 Defendants' Counsel's receipt from Lead Counsel of the information necessary to effectuate a
5 transfer of funds to the Escrow Account, including wiring instructions that include the bank name
6 and ABA routing number, account name and number, and a signed W-9 reflecting a valid taxpayer
7 identification number for the qualified settlement fund in which the Settlement Amount is to be
8 deposited. No Defendant other than Depomed, Inc. n/k/a Assertio Therapeutics, Inc. shall have any
9 payment obligation under this Stipulation. Under no circumstances will Defendants or any of their
10 insurers be required to pay, or cause payment of, more than the Settlement Amount pursuant to this
11 Stipulation and the Settlement for any reason whatsoever, including, without limitation, as
12 compensation to any Settlement Class Member, as payment of attorneys' fees and/or Litigation
13 Expenses awarded by the Court, in payment of any fees or expenses incurred by any Settlement
14 Class Member or Lead Counsel, or as interest on the Settlement Amount of any kind and relating to
15 any time period (including prior to the payment of the Settlement Amount into the Escrow Account).
16 If the Settlement Amount is not timely paid to the Escrow Agent, Plaintiffs may terminate the
17 Settlement but only if (1) Lead Counsel has notified Defendants' Counsel in writing of the Plaintiffs'
18 intention to terminate the settlement, and (2) the entire Settlement Amount is not transferred to the
19 Escrow Agent within ten (10) business days after such notice.

20 **USE OF SETTLEMENT FUND**

21 9. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and
22 Administration Costs; (c) any Litigation Expenses awarded by the Court; and (d) any attorneys' fees
23 awarded by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement
24 Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 20-31 below. At such time as
25 it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-
26 effective, the remaining balance shall be contributed to the Investor Protection Trust, a non-sectarian,
27 not-for-profit, 501(c)(3) organization, subject to the Court's approval.

28 10. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund

1 shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent
2 shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the
3 Court until such time as the funds shall be distributed or returned pursuant to the terms of this
4 Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow
5 Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such
6 instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash
7 balances up to the amount that is insured by the FDIC may be deposited in any account that is fully
8 insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu
9 of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be
10 deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of
11 the United States. Additionally, if short-term placement of the funds is necessary, all or any portion
12 of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the
13 FDIC or backed by the full faith and credit of the United States. Defendants and any other
14 Defendants' Releasees shall have no responsibility for, interest in, or liability whatsoever with
15 respect to investment decisions or the actions of the Escrow Agent, or any transactions executed by
16 the Escrow Agent.

17 11. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement
18 Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator
19 of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely
20 responsible for filing or causing to be filed all informational and other tax returns as may be
21 necessary or appropriate (including, without limitation, the returns described in Treasury Regulation
22 § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for causing payment
23 to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The
24 Defendants' Releasees shall not have any liability or responsibility for any such Taxes. Upon written
25 request, Defendants will provide to Lead Counsel the statement described in Treasury Regulation §
26 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury
27 Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry
28 out this paragraph, including, as necessary, making a "relation back election," as described in

1 Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence
2 at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or
3 appropriate in connection therewith.

4 12. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the
5 Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement,
6 and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as
7 the election set forth therein) shall be consistent with the previous paragraph and in all events shall
8 reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement
9 Fund as provided herein. The Defendants' Releasees shall have no responsibility or liability for the
10 acts or omissions of Lead Counsel or its agents with respect to the payment of Taxes.

11 13. The Settlement is not a claims-made settlement, *i.e.*, the Settlement is non-recapture.
12 Upon the occurrence of the Effective Date, no Defendant, other Defendants' Releasee, or any other
13 person or entity who or which paid any portion of the Settlement Amount shall have any right to the
14 return of the Settlement Fund or any portion thereof for any reason whatsoever, including without
15 limitation, the number of Claim Forms submitted, the collective amount of recognized claims of
16 Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized
17 Claimants from the Net Settlement Fund.

18 14. Notwithstanding the fact that the Effective Date of the Settlement has not yet
19 occurred, at any time after entry of the Preliminary Approval Lead Counsel may pay from the
20 Settlement Fund, without further approval from Defendants or further order of the Court, up to
21 \$100,000 from the Settlement Fund to pay for all Notice and Administration Costs reasonably and
22 actually incurred and paid or payable. Such costs and expenses shall include, without limitation, the
23 actual costs of printing and mailing the Postcard Notice, publishing the Summary Notice,
24 reimbursements to nominee owners for forwarding the Postcard Notice to their beneficial owners,
25 the administrative expenses incurred and fees charged by the Claims Administrator in connection
26 with providing notice, administering the Settlement (including processing the submitted Claims),
27 and the fees, if any, of the Escrow Agent. Any additional Notice and Administration Costs in excess
28 of \$100,000 shall be paid from the Settlement Fund subject to prior approval of the Court. In the

1 event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and
2 Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to
3 Defendants, any of the other Defendants' Releasees, or any other person or entity who or which paid
4 any portion of the Settlement Amount.

5 15. It shall be Lead Counsel's sole responsibility to disseminate the Notice and Summary
6 Notice to the Class in accordance with this Stipulation and as ordered by the Court. Settlement Class
7 Members shall have no recourse as to the Defendants' Releasees with respect to any claims they
8 may have that arise from any failure of the notice process.

9 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

10 16. Lead Counsel will apply to the Court for a collective award of attorneys' fees to be
11 paid from (and out of) the Settlement Fund. Lead Counsel also will apply to the Court for
12 reimbursement of Litigation Expenses to be paid from (and out of) the Settlement Fund. Lead
13 Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject
14 of any agreement between Defendants and Plaintiffs other than what is set forth in this Stipulation.

15 17. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be
16 paid to Lead Counsel immediately upon award, notwithstanding the existence of any timely filed
17 objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any
18 part thereof, subject to Lead Counsel's obligation to make appropriate refunds or repayments to the
19 Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if
20 the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal
21 or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or
22 Litigation Expenses is reduced or reversed and such order reducing or reversing the award has
23 become Final. Lead Counsel shall make the appropriate refund or repayment in full no later than
24 thirty (30) days after: (a) receiving from Defendants' Counsel notice of the termination of the
25 Settlement; or (b) any order reducing or reversing the award of attorneys' fees and/or Litigation
26 Expenses has become Final.

27 18. The procedure for and the allowance or disallowance by the Court of any applications
28 by Lead Counsel for attorneys' fees, costs, and expenses, or the costs and expenses of Plaintiffs, to

1 be paid out of the Settlement Fund are not part of the settlement set forth in the Stipulation, and are
2 to be considered by the Court separately from the Court's consideration of the fairness,
3 reasonableness, and adequacy of the settlement set forth in the Stipulation, and any order or
4 proceeding relating to the Fee and Expense Application, or any appeal from any order relating
5 thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation,
6 or affect or delay the finality of the Judgment approving the Stipulation and the settlement of the
7 Action set forth herein, including, but not limited to, the release, discharge, and relinquishment of
8 the Released Claims against the Releasees. The Parties agree that the denial, in whole or in part, of
9 any application for attorneys' fees shall in no way affect the enforceability, validity, or finality of
10 this Stipulation or affect or delay the finality of the Judgment approving the Stipulation and the
11 settlement of the Action set forth therein. Neither Plaintiffs nor Lead Counsel may cancel or
12 terminate the Stipulation or settlement based on any objection or appeal with respect to fees or
13 expenses awarded in the Action or the Court's or an appellate court's ruling with respect to fees and
14 expenses awarded in the Action.

15 19. Defendants' Releasees shall have no responsibility for or liability whatsoever with
16 respect to the allocation or award of attorneys' fees or Litigation Expenses. The attorneys' fees and
17 Litigation Expenses that are awarded to Lead Counsel shall be payable solely from the Escrow
18 Account.

19 **NOTICE AND SETTLEMENT ADMINISTRATION**

20 20. As part of the Preliminary Approval Order, Plaintiffs shall seek appointment of a
21 Claims Administrator. The Claims Administrator shall administer the Settlement, including but not
22 limited to the process of receiving, reviewing and approving or denying Claims, under Lead
23 Counsel's supervision and subject to the jurisdiction of the Court. Other than Defendants' obligation
24 to provide Depomed, Inc.'s n/k/a Assertio Therapeutics, Inc.'s record stockholders as provided in
25 ¶ 22 below, none of the Defendants, nor any other Defendants' Releasees, shall have any
26 involvement in or any responsibility, authority or liability whatsoever for the selection of the Claims
27 Administrator, the Plan of Allocation, the administration of the Settlement, the Claims process, or
28 disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any person or

1 entity, including, but not limited to, Plaintiffs, any other Settlement Class Members or Lead Counsel
2 in connection with the foregoing. Defendants' Counsel shall cooperate in the administration of the
3 Settlement to the extent reasonably necessary to effectuate its terms.

4 21. In accordance with the terms of the Preliminary Approval Order to be entered by the
5 Court, Lead Counsel shall cause the Claims Administrator to mail the Postcard Notice to those
6 Settlement Class Members as may be identified through reasonable effort. Lead Counsel shall also
7 cause the Claims Administrator to: (a) post downloadable copies of the Notice and Claim Form
8 online at a website to be created and maintained by the Claims Administrator; and (b) have the
9 Summary Notice published in accordance with the terms of the Preliminary Approval Order to be
10 entered by the Court. For the purposes of identifying and providing notice to the Settlement Class,
11 within ten (10) business days of the date of entry of the Preliminary Approval Order, Defendants
12 shall provide or cause to be provided to the Claims Administrator in electronic format (at no cost to
13 the Settlement Fund, Lead Counsel or the Claims Administrator) Depomed, Inc.'s n/k/a Assertio
14 Therapeutics, Inc.'s security lists (consisting of names and addresses) of the record holders of the
15 Depomed, Inc.'s n/k/a Assertio Therapeutics, Inc.'s common shares during the relevant period.

16 22. The Claims Administrator shall receive Claims and determine first, whether the
17 Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of
18 the Net Settlement Fund based upon each Authorized Claimant's recognized claim compared to the
19 total recognized claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth
20 in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the
21 Court approves).

22 23. The Plan of Allocation proposed in the Notice is not a necessary term of the
23 Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that
24 any particular plan of allocation be approved by the Court. Plaintiffs and Lead Counsel may not
25 cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's
26 ruling with respect to the Plan of Allocation or any other plan of allocation in this Action.
27 Defendants and the other Defendants' Releasees shall not object in any way to the Plan of Allocation
28 or any other plan of allocation in this Action. No Defendant, nor any other Defendants' Releasees,

1 shall have any involvement with or liability, obligation or responsibility whatsoever for the
2 application of the Court-approved plan of allocation.

3 24. Unless they request exclusion from the Class in the manner set forth herein, any
4 Settlement Class Member who does not submit a valid Claim Form will not be entitled to receive
5 any distribution from the Net Settlement Fund, but will otherwise be bound by all of the terms of
6 this Stipulation and Settlement, including the terms of the Judgment or, the Alternate Judgment, if
7 applicable, to be entered in the Action and the Releases provided for herein and therein, and will be
8 permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind
9 against the Defendants' Releasees with respect to the Released Plaintiffs' Claims in the event that
10 the Effective Date occurs with respect to the Settlement.

11 25. Lead Counsel shall be responsible for supervising the administration of the
12 Settlement and the disbursement of the Net Settlement Fund subject to Court approval. No
13 Defendant, or any other Defendants' Releasees, shall be permitted to review, contest or object to any
14 Claim Form, or any decision of the Claims Administrator or Lead Counsel with respect to accepting
15 or rejecting any Claim for payment by a Settlement Class Member, nor shall any Defendants or
16 Defendants' Releasees have any responsibility for, interest in, or liability for any such decision.
17 Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or
18 technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

19 26. For purposes of determining the extent, if any, to which a Settlement Class Member
20 shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

21 a) Each Settlement Class Member shall be required to submit a Claim Form,
22 substantially in the form attached hereto as Exhibit 2 to Exhibit A, supported by such documents as
23 are designated therein, including proof of the Claimant's loss, or such other documents or proof as
24 the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

25 b) All Claim Forms must be submitted by the date set by the Court in the Preliminary
26 Approval Order and specified in the Notice. Any Settlement Class Member who fails to submit a
27 Claim Form by such date shall be forever barred from receiving any distribution from the Net
28 Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such

1 Settlement Class Member's Claim Form is accepted), but shall in all other respects be bound by all
2 of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate
3 Judgment, if applicable, and the Releases provided for herein and therein, and will be permanently
4 barred and enjoined from bringing any action, claim or other proceeding of any kind against any
5 Defendants' Releasees with respect to any Released Plaintiffs' Claim. Provided that it is mailed by
6 the claim-submission deadline, a Claim Form shall be deemed to be submitted when postmarked, if
7 received with a postmark indicated on the envelope and if mailed by first-class mail and addressed
8 in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to
9 have been submitted on the date when actually received by the Claims Administrator;

10 c) Each Claim Form shall be submitted to and reviewed by the Claims Administrator
11 who shall determine in accordance with this Stipulation and the plan of allocation the extent, if any,
12 to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e)
13 below as necessary;

14 d) Claim Forms that do not meet the submission requirements may be rejected. Prior to
15 rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant
16 in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form
17 submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all Claimants
18 whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons
19 therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the
20 right to a review by the Court if the Claimant so desires and complies with the requirements of
21 subparagraph (e) below; and

22 e) If any Claimant whose Claim has been rejected in whole or in part desires to contest
23 such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice
24 required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of
25 reasons indicating the Claimant's grounds for contesting the rejection along with any supporting
26 documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot
27 be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

28 27. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with

1 respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under
2 the Federal Rules of Civil Procedure, provided, however, that such investigation and discovery shall
3 be limited to that Claimant's status as a Settlement Class Member and the validity and amount of
4 the Claimant's Claim. No discovery shall be allowed on the merits of this Action or of the Settlement
5 in connection with the processing of Claim Forms.

6 28. Lead Counsel will apply to the Court for a Class Distribution Order: (a) approving
7 the Claims Administrator's administrative determinations concerning the acceptance and rejection
8 of the Claims submitted; (b) approving payment of any administration fees and expenses associated
9 with the administration of the Settlement from the Escrow Account; and (c) if the Effective Date has
10 occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow
11 Account.

12 29. Payment pursuant to the Class Distribution Order shall be final and conclusive against
13 all Settlement Class Members. All Settlement Class Members whose Claims are not approved by
14 the Court for payment shall be barred from participating in distributions from the Net Settlement
15 Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement,
16 including the terms of the Judgment or Alternate Judgment, if applicable, to be entered in this Action
17 and the Releases provided for herein and therein, and will be permanently barred and enjoined from
18 bringing any action against any and all Defendants' Releasees with respect to any and all of the
19 Released Plaintiffs' Claims.

20 30. No person or entity shall have any claim against Plaintiffs, Lead Counsel, the Claims
21 Administrator or any other agent designated by Lead Counsel, or the Defendants' Releasees and/or
22 their respective counsel, arising from distributions made substantially in accordance with the
23 Stipulation, the plan of allocation approved by the Court, or any order of the Court. Plaintiffs and
24 Defendants, and their respective counsel, and Plaintiffs' damages expert and all other Releasees shall
25 have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net
26 Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment
27 of any claim or nonperformance of the Claims Administrator, the payment or withholding of taxes
28 (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection

1 therewith.

2 31. All proceedings with respect to the administration, processing and determination of
3 Claims and the determination of all controversies relating thereto, including disputed questions of
4 law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

5 **TERMS OF THE JUDGMENT**

6 32. If the Settlement contemplated by this Stipulation is approved by the Court, Lead
7 Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the
8 form attached hereto as Exhibit B.

9 33. The Judgment shall contain a bar order ("Bar Order") substantially in the form set
10 forth in Exhibit B hereto that shall, upon the Effective Date, permanently bar, enjoin, extinguish,
11 and discharge, to the fullest extent permitted by law, any and all claims for contribution or indemnity
12 (or any other claim or claim-over, however denominated on whatsoever theory, for which the injury
13 claimed is that person's or entity's alleged liability to Plaintiffs or any Class Member) among and
14 against the Defendants' Releasees arising out, relating to, or concerning the purchase, sale,
15 acquisition, disposition, or holding of Depomed common shares purchased or otherwise acquired
16 from July 29, 2015 to August 7, 2017, inclusive, and any acts, facts, statements, or omissions that
17 were or could have been alleged in the Action and the claims that were asserted or could have been
18 asserted therein, whether arising under state, federal, or foreign law as claims, cross-claims,
19 counterclaims, third-party claims, or otherwise, in the Court or any other federal, state, or foreign
20 court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other
21 proceeding or forum, provided however, that nothing in the Bar Order shall release or alter the
22 contractual rights, if any, under the terms of any written agreement among any of the Releasees. The
23 Bar Order shall be consistent with, and apply to the full extent of, the PSLRA.

24 **CONDITIONS OF SETTLEMENT AND EFFECT OF
DISAPPROVAL, CANCELLATION OR TERMINATION**

25 34. The Effective Date of the Settlement shall be deemed to occur on the occurrence or
26 waiver of all of the following events:

27 a) the Court has entered the Preliminary Approval Order, substantially in the form set
28 forth in Exhibit A attached hereto, as required by ¶ 3 above;

1 b) the Settlement Amount has been deposited into the Escrow Account in accordance
2 with the provisions of ¶ 9 above;

3 c) Depomed, Inc. n/k/a Assertio Therapeutics, Inc. has not exercised its option to
4 terminate the Settlement pursuant to the provisions of this Stipulation (including the Supplemental
5 Agreement described in ¶ 38 below);

6 d) Plaintiffs have not exercised their option to terminate the Settlement pursuant to the
7 provisions of this Stipulation;

8 e) the Court has approved the Settlement as described herein, following notice to the
9 Settlement Class and a Settlement Hearing, as prescribed by Rule 23 of the Federal Rules of Civil
10 Procedure, and entered the Judgment and the Judgment has become Final, or the Court has entered
11 an Alternate Judgment and none of the Parties seek to terminate the Settlement and the Alternate
12 Judgment has become Final; and

13 f) the Court has entered the Bar Order.

14 35. Upon the occurrence of all of the events referenced in ¶ 34 above, any and all
15 remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and
16 forever extinguished and the Releases herein shall be effective.

17 36. If (i) Depomed, Inc. n/k/a Assertio Therapeutics, Inc. exercises its right to terminate
18 the Settlement as provided in this Stipulation; (ii) Plaintiffs exercise their right to terminate the
19 Settlement as provided in this Stipulation; (iii) the Court disapproves the Settlement; or (iv) the
20 Effective Date as to the Settlement otherwise fails to occur, then:

21 a) The Settlement and the relevant portions of this Stipulation shall be canceled
22 and terminated.

23 b) Plaintiffs and Defendants shall revert to their respective positions in the
24 Action as of February 26, 2021.

25 c) The terms and provisions of this Stipulation, with the exception of this ¶ 36
26 and ¶¶ 14, 17, 39 and 63, shall have no further force and effect with respect to the Parties and shall
27 not be used in the Action or in any other proceeding for any purpose, and any Judgment, or Alternate
28 Judgment, if applicable, or order entered by the Court in accordance with the terms of this Stipulation

1 shall be treated as vacated, *nunc pro tunc*.

2 d) Within five (5) business days after joint written notification of termination is
3 sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including
4 accrued interest thereon and any funds received by Lead Counsel consistent with ¶¶ 17-18 above),
5 less any Notice and Administration Costs actually incurred, paid or payable and less any Taxes paid,
6 due or owing shall be refunded by the Escrow Agent to the Defendants (or such other persons or
7 entities as the Defendants may direct). In the event that the funds received by Lead Counsel
8 consistent with ¶¶ 17-18 above have not been refunded to the Settlement Fund within the five (5)
9 business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to the
10 Defendants (or such other persons or entities as the Defendants may direct) immediately upon their
11 deposit into the Escrow Account consistent with ¶¶ 17-18 above.

12 37. It is further stipulated and agreed that Plaintiffs, provided they unanimously agree,
13 and the Defendants, shall each have the right to terminate the Settlement and this Stipulation, by
14 providing written notice of their election to do so ("Termination Notice") to the other Parties to this
15 Stipulation within thirty (30) days of: (a) the Court's final refusal to enter the Preliminary Approval
16 Order in any material respect; (b) the Court's final refusal to approve the Settlement or any material
17 part thereof; (c) the Court's final refusal to enter the Judgment in any material respect as to the
18 Settlement; (d) the date upon which the Judgment is modified or reversed in any material respect by
19 the United States Court of Appeals for the Ninth Circuit or the United States Supreme Court; or (e)
20 the date upon which an Alternate Judgment is modified or reversed in any material respect by the
21 United States Court of Appeals for the Ninth Circuit or the United States Supreme Court, and the
22 provisions of ¶ 36 above shall apply. However, any decision or proceeding, whether in this Court
23 or any appellate court, with respect to an application for attorneys' fees or reimbursement of
24 Litigation Expenses or with respect to any plan of allocation shall not be considered material to the
25 Settlement, shall not affect the finality of any Judgment or Alternate Judgment, if applicable, and
26 shall not be grounds for termination of the Settlement.

27 38. In addition to the grounds set forth in ¶ 37 above, Depomed, Inc. n/k/a Assertio
28 Therapeutics, Inc. shall have the unilateral right to terminate the Settlement in the event that

1 Settlement Class Members timely and validly requesting exclusion from the Settlement Class meet
2 the conditions set forth in Depomed, Inc.'s n/k/a Assertio Therapeutics, Inc.'s confidential
3 supplemental agreement with Plaintiffs (the "Supplemental Agreement"), in accordance with the
4 terms of that agreement. The Supplemental Agreement, which is being executed concurrently
5 herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner
6 (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided
7 in the Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises
8 between Plaintiffs and Defendants concerning its interpretation or application, in which event the
9 Parties shall, to the fullest extent possible, submit the Supplemental Agreement in accordance with
10 the practices of the Court so as to preserve the confidentiality of the Supplemental Agreement.
11 Nothing in this ¶ 38 shall prevent Plaintiffs or Defendants from: (i) complying fully with any request
12 or order of the Court, including for public filing of the Supplemental Agreement; or (ii) complying
13 in full with obligations under the Class Action Fairness Act.

14 **NO ADMISSION OF WRONGDOING**

15 39. Neither this Stipulation (whether or not consummated), including the exhibits hereto
16 and the Plan of Allocation contained therein (or any other plan of allocation that may be approved
17 by the Court), the negotiations leading to the execution of this Stipulation, nor any proceedings taken
18 pursuant to or in connection with this Stipulation and/or approval of the Settlement (including any
19 arguments proffered in connection therewith):

20 a) shall be offered against any of the Defendants' Releasees as evidence of, or construed
21 as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants'
22 Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that
23 was or could have been asserted or the deficiency of any defense that has been or could have been
24 asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other
25 wrongdoing of any kind of any of the Defendants' Releasees or in any way referred to for any other
26 reason as against any of the Defendants' Releasees, in any civil, criminal or administrative action or
27 proceeding, other than such proceedings as may be necessary to effectuate the provisions of this
28 Stipulation;

1 43. Defendants warrant that, as to the payments made or to be made by or on behalf of
2 them, at the time of entering into this Stipulation and at the time of such payment they, or to their
3 knowledge any persons or entities contributing to the payment of the Settlement Amount, were not
4 insolvent, nor will the payment required to be made by or on behalf of them render them insolvent,
5 within the meaning of and/or for the purposes of the United States Bankruptcy Code, including
6 §§ 101 and 547 thereof. This representation is made by each of the Defendants and not by their
7 counsel.

8 44. Plaintiffs and Lead Counsel represent and warrant that the Plaintiffs are Settlement
9 Class Members and none of Plaintiffs' claims or causes of action against one or more Defendants in
10 the Action, or referred to in this Stipulation, or that could have been alleged against one or more
11 Defendants in the Action have been assigned, encumbered, or in any manner transferred in whole or
12 in part.

13 45. In the event of the entry of a final order of a court of competent jurisdiction
14 determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of
15 Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any
16 portion thereof is required to be returned, and such amount is not promptly deposited into the
17 Settlement Fund by others, then, at the election of Plaintiffs, Plaintiffs and Defendants shall jointly
18 move the Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment,
19 if applicable, entered in favor of Defendants and the other Releasees pursuant to this Stipulation, in
20 which event the releases and Judgment, or Alternate Judgment, if applicable, shall be null and void,
21 and the Parties shall be restored to their respective positions in the litigation as provided in ¶ 36
22 above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect
23 to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or
24 payable) shall be returned as provided in ¶ 36.

25 46. The Parties intend this Stipulation and the Settlement to be a final and complete
26 resolution of all disputes asserted or which could be asserted by Plaintiffs and any other Settlement
27 Class Members or Plaintiffs' Releasees against the Defendants' Releasees with respect to the
28 Released Plaintiffs' Claims. Accordingly, Plaintiffs and their counsel and Defendants and their

1 counsel agree not to assert in any forum that this Action was brought by Plaintiffs or defended by
2 Defendants in bad faith or without a reasonable basis. No Party shall assert any claims of any
3 violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution,
4 defense, or settlement of this Action. The Parties agree that the amounts paid and the other terms of
5 the Settlement were negotiated at arm's length and in good faith by the Parties, including through a
6 mediation process supervised and conducted by Jonathan Westen, and reflect the Settlement that
7 was reached voluntarily after extensive negotiations and consultation with experienced legal
8 counsel, who were fully competent to assess the strengths and weaknesses of their respective clients'
9 claims or defenses.

10 47. While retaining their right to deny that the claims asserted in the Action were
11 meritorious, Defendants and their counsel, in any statement made to any media representative
12 (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad
13 faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being
14 settled voluntarily after consultation with competent legal counsel. In all events, Plaintiffs and their
15 counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable
16 conduct by either Party concerning the prosecution, defense, and resolution of the Action, and shall
17 not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

18 48. The Parties and their respective counsel agree that (a) they will not intentionally assist
19 or cooperate with any person or entity in the pursuit of legal action related to the subject matter of
20 this Action against the Releasees; (b) they will not intentionally assist or cooperate with any person
21 or entity seeking to publicly disparage or economically harm the Releasees with respect to any matter
22 relating to the subject matter of this Action; (c) they will not discuss any confidential matters related
23 to this Action or the Settlement with anyone; and (d) they will not encourage or otherwise influence
24 (or seek to influence) any Settlement Class Members to request exclusion from, or object to, the
25 Settlement.

26 49. The terms of the Settlement, as reflected in this Stipulation, may not be modified or
27 amended, nor may any of its provisions be waived except by a writing signed on behalf of both
28 Plaintiffs and Defendants (or their successors-in-interest).

1 50. The Releasees who do not appear on the signature lines below, are acknowledged and
2 agreed to be third party beneficiaries of this Stipulation and Settlement.

3 51. The headings herein are used for the purpose of convenience only and are not meant
4 to have legal effect.

5 52. Pending approval of the Court of this Stipulation and its exhibits, all proceedings in
6 this Action shall be stayed.

7 53. The administration and consummation of the Settlement as embodied in this
8 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
9 purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Lead
10 Counsel and enforcing the terms of this Stipulation, including the Plan of Allocation (or such other
11 plan of allocation as may be approved by the Court) and the distribution of the Net Settlement Fund
12 to Settlement Class Members.

13 54. The waiver by one Party of any breach of this Stipulation by any other Party shall not
14 be deemed a waiver of any other prior or subsequent breach of this Stipulation.

15 55. The failure by any of the Parties to insist upon the strict performance by any other
16 Party of any of the provisions of the Stipulation shall not be deemed a waiver of any of the provisions
17 hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the
18 strict performance of any and all of the provisions of this Stipulation to be performed by the other
19 Parties to this Stipulation.

20 56. This Stipulation and its exhibits and the Supplemental Agreement constitute the
21 entire agreement among Plaintiffs and Defendants concerning the Settlement and this Stipulation
22 and its exhibits. All Parties acknowledge that no other agreements, representations, warranties, or
23 inducements have been made by any Party hereto concerning this Stipulation, its exhibits or the
24 Supplemental Agreement other than those contained and memorialized in such documents.

25 57. This Stipulation may be executed in one or more counterparts, including by signature
26 transmitted via facsimile, electronic signature via DocuSign or similar software, and/or by a .pdf/.tif
27 image of the signature transmitted via email. All executed counterparts and each of them shall be
28 deemed to be one and the same instrument.

1 58. This Stipulation shall be binding upon and inure to the benefit of the successors and
2 assigns of the Parties, including any and all Releasees and any corporation, partnership, or other
3 entity into or with which any Party hereto may merge, consolidate or reorganize.

4 59. The construction, interpretation, operation, effect and validity of this Stipulation, the
5 Supplemental Agreement and all documents necessary to effectuate it shall be governed by the
6 internal laws of the State of California without regard to conflicts of laws, except to the extent that
7 federal law requires that federal law govern.

8 60. Any action arising under or to enforce this Stipulation or any portion thereof, shall
9 be commenced and maintained only in the Court.

10 61. This Stipulation shall not be construed more strictly against one Party than another
11 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of
12 the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties
13 and all Parties have contributed substantially and materially to the preparation of this Stipulation.

14 62. All counsel and any other person executing this Stipulation and any of the exhibits
15 hereto, or any related Settlement documents, warrant and represent that they have the full authority
16 to do so and that they have the authority to take appropriate action required or permitted to be taken
17 pursuant to the Stipulation to effectuate its terms.

18 63. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in
19 seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this
20 Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation
21 as may be reasonably required to obtain final approval by the Court of the Settlement.

22 64. If any Party is required to give notice to another Party under this Stipulation, such
23 notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery
24 or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

25
26 If to Plaintiffs or Lead Counsel: Levi & Korsinsky, LLP
27 Attn: Nicholas Porritt, Esq.
28 1101 30th Street, Suite 115
 Washington, DC 20007
 Telephone: (202) 524-4290
 Facsimile: (212) 363-7171

Email: nporritt@zlk.com

If to Defendants:

Wilmer Cutler Pickering Hale and Dorr LLP
Attn: Michael Bongiorno, Esq.
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000
Email: Michael.bongiorno@wilmerhale.com

65. Except as otherwise provided herein, each Party shall bear its own costs.

66. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

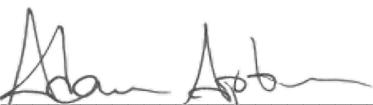
67. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

68. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

69. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of July 30, 2021.

LEVI & KORSINSKY, LLP

By: 

Nicholas I. Porritt
Adam M. Apton
1101 30th Street, Suite 115
Washington, DC 20007

Telephone:(202)524-4290

Facsimile: (212) 363-7171

***Lead Counsel for Plaintiffs
and the Settlement Class***

**WILMER CUTLER PICKERING
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By: Michael Bongiorno

Michael Bongiorno

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Boston, MA 02109

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Facsimile: (617) 526-5000

Counsel for Defendants

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