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SUPERIOR COURT OF THE STATE OF CALIFORNIA

8

COUNTY OF SAN MATEO

9

In re MENLO THERAPEUTICS INC.  
10 SECURITIES LITIGATION

) Lead Case No. 18CIV06049

) CLASS ACTION

11

12 This Document Relates To:

) Assigned for All Purposes to Dept. 16

) STIPULATION OF SETTLEMENT

13

ALL ACTIONS.

) Judge: Honorable Richard H. DuBois  
) Dept: 16

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1 This Stipulation of Settlement (the “Stipulation”) in the action captioned *In re Menlo*  
2 *Therapeutics Inc. Securities Litigation*, Lead Case No. 18CIV06049 (the “Action”), pending before the  
3 Superior Court of California, County of San Mateo (the “Court”), is entered into by and between  
4 Plaintiffs Pavel Silvestrov and Hugh McKay (“Plaintiffs”), on behalf of themselves and the Class (as  
5 defined below), and Defendants Menlo Therapeutics Inc. (“Menlo” or the “Company”), Steven Basta,  
6 Kristine Ball, Paul Berns, Albert Cha, Ted Ebel, David McGirr, Aaron Royston, and Scott Whitcup (the  
7 “Individual Defendants” and with Menlo, the “Menlo Defendants”), and Jefferies LLC, Piper Sandler &  
8 Co. (formerly known as Piper Jaffray & Co.), Guggenheim Securities, LLC, and JMP Securities LLC  
9 (the “Underwriter Defendants”) (all, collectively, “Defendants”), by and through their respective  
10 counsel. The Stipulation is intended by Plaintiffs and Defendants (collectively, the “Parties”) to fully,  
11 finally, and forever resolve, discharge, release and settle the Released Claims, as defined below, upon  
12 and subject to the terms and conditions hereof, and is submitted pursuant to California Code of Civil  
13 Procedure §382 and California Rule of Court 3.769 for approval by this Court.

14 **I. SUMMARY OF CLAIMS AND PROCEDURAL HISTORY**

15 This is a securities class action against the Menlo Defendants under §§11, 12(a)(2), and/or 15 of  
16 the Securities Act of 1933 (the “Securities Act”), and against the Underwriter Defendants under §§11  
17 and 12(a)(2) of the Securities Act. It is a putative class action brought on behalf of all persons and  
18 entities who purchased or otherwise acquired Menlo common stock pursuant or traceable to the  
19 Registration Statement and Prospectus filed in connection with Menlo’s initial public offering (“IPO”)  
20 on or about January 29, 2018. No class has been certified in the Action.

21 Plaintiffs claim that Defendants violated §§11, 12(a)(2), and/or 15 of the Securities Act by  
22 reason of material misrepresentations and omissions in the Registration Statement and Prospectus for  
23 Menlo’s January 29, 2018 IPO. Specifically, Plaintiffs allege that the Registration Statement and  
24 Prospectus misrepresented the clinical and commercial prospects of Menlo’s lone drug candidate –  
25 serlopitant – as a treatment of pruritus associated with atopic dermatitis.

26 The initial complaint (“Complaint”) was filed in this Court by Pavel Silvestrov on November 8,  
27 2018 (the “*Silvestrov Action*”).

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1 On December 20, 2018, the Court appointed plaintiff Pavel Silvestrov’s counsel, Robbins Geller  
2 Rudman & Dowd LLP, as Lead Counsel for the *Silvestrov* Action and any subsequently consolidated  
3 action.

4 On January 25, 2019, Defendants filed demurrers to the Complaint in the *Silvestrov* Action.

5 On January 28, 2019, Plaintiff Hugh McKay filed a complaint in the Court alleging the same  
6 claims against the same defendants as those in the *Silvestrov* Action, *McKay v. Menlo Therapeutics*  
7 *Inc., et al.*, No. 19CIV00574 (the “*McKay* Action”).

8 On February 20, 2019, the Court consolidated the *McKay* Action into the lead *Silvestrov* Action.

9 On February 26, 2019, Plaintiffs filed oppositions to Defendants’ demurrers.

10 On March 19, 2019, Defendants filed replies in support of their demurrers.

11 On May 23, 2019, the Court entered an order overruling Defendants’ demurrers as to Plaintiffs’  
12 claims under §§11 and 15 and sustaining Defendants’ demurrers as to Plaintiffs’ claims under  
13 §12(a)(2).

14 On June 3, 2019, the Defendants answered the Complaint with general denials and affirmative  
15 defenses.

16 The Parties began fact discovery, ultimately resulting in the Menlo Defendants’ production of  
17 over 261,000 documents totaling over 2,100,000 pages.

18 In an effort to conserve judicial resources and attempt to settle the Action, the Menlo Defendants  
19 and Plaintiffs engaged the services of the Hon. Layn R. Phillips (Ret.), a nationally recognized  
20 mediator. There was an exchange of detailed mediation statements and a full-day in-person mediation  
21 with Judge Phillips on February 12, 2020. That same day, the Parties agreed to settle the Action,  
22 subject to the negotiation of a Stipulation of Settlement and approval by the Court. This Stipulation  
23 (together with the exhibits hereto) reflects the final and binding agreement between the Parties.

## 24 **II. PLAINTIFFS’ INVESTIGATION AND THE BENEFITS OF SETTLEMENT**

25 Lead Counsel represents that it has conducted an extensive investigation of the claims and the  
26 underlying events and transactions alleged in this Action. Among other things, Lead Counsel has  
27 analyzed public filings, records, documents, and other materials concerning Defendants and third  
28 parties; searched, reviewed, and analyzed approximately 2 million pages of documents produced by the

1 Menlo Defendants; and researched the applicable law with respect to the claims of Plaintiffs and the  
2 Class against Defendants and the potential defenses thereto.

3         Based on their investigation and review, Plaintiffs and Plaintiffs' Counsel have concluded that  
4 the terms and conditions of this Stipulation are fair, reasonable, and adequate to the Class and in its best  
5 interests, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions  
6 of this Stipulation, after considering: (a) the substantial benefits that Plaintiffs and the Class will receive  
7 from settlement of the Action; (b) the risks, costs, and uncertainties of ongoing litigation; (c) the  
8 desirability of permitting the Settlement to be consummated as provided by the terms of this  
9 Stipulation; and (d) Plaintiffs' Counsel's experience in the prosecution of similar actions.

10         The Parties to this Stipulation and their counsel agree not to contend in any forum that the  
11 Action was brought or defended in bad faith, without a reasonable basis, or in violation of California  
12 Code of Civil Procedure §128.7, or any other similar law or statute. The Action is being voluntarily  
13 settled after advice of counsel and after Plaintiffs' Counsel have determined and believe that the terms  
14 of the Settlement are fair, adequate, and reasonable to the Class.

15 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

16         Defendants have denied and continue to deny each and all of the claims and contentions alleged  
17 by Plaintiffs in this Action. The Defendants expressly have denied and continue to deny all charges of  
18 wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions  
19 alleged, or that could have been alleged, in this Action. The Defendants also have denied and continue  
20 to deny, inter alia, the allegations that Plaintiffs or class members have suffered damage, or were  
21 otherwise harmed by the conduct alleged in this Action. The Defendants have asserted and continue to  
22 assert that the Registration Statement contained no material misstatements or omissions. The  
23 Defendants have asserted and continue to assert, among other things, that they acted at all times in good  
24 faith and in a manner reasonably believed to be in accordance with all applicable rules, regulations, and  
25 laws.

26         Defendants are entering into this Settlement to eliminate the burden and expense of further  
27 litigation. Defendants also have taken into account the uncertainty and risks inherent in any litigation,  
28 especially in complex cases like the Action. Defendants have, therefore, determined that it is desirable

1 and beneficial to them that the Action be settled in the manner and upon the terms and conditions set  
2 forth in this Stipulation.

3 This Stipulation shall in no event be construed or deemed to be evidence of, or an admission or  
4 concession on the part of any Defendant with respect to, any claim or of any fault or liability or  
5 wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have asserted.

6 **IV. TERMS OF THE STIPULATION AND AGREEMENT OF SETTLEMENT**

7 NOW THEREFORE, without any admission or concession on the part of Plaintiffs of any lack  
8 of merit of the Action whatsoever, and without any admission or concession of any liability or  
9 wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby STIPULATED  
10 AND AGREED, by and among the Parties to this Stipulation, through their undersigned attorneys,  
11 subject to approval by the Court, in consideration of the benefits flowing to the Parties hereto from the  
12 Settlement, that all Released Claims (as defined below) as against the Released Persons (as defined  
13 below) and all of Released Defendants' Claims (as defined below) shall be compromised, settled,  
14 released, and discharged, upon and subject to the following terms and conditions:

15 **1. Certain Definitions**

16 As used in this Stipulation, the following terms shall have the following meanings:

17 1.1 "Action" means *In re Menlo Therapeutics Inc. Securities Litigation*, Lead Case  
18 No. 18CIV06049, pending in the Superior Court of California, County of San Mateo, and includes the  
19 *Silvestrov* Action and the *McKay* Action.

20 1.2 "Authorized Claimant" means a Class Member who submits a timely and valid Proof of  
21 Claim form to the Claims Administrator.

22 1.3 "Claims Administrator" means Gilardi & Co. LLC or such other entity as the Court shall  
23 appoint to administer the Settlement.

24 1.4 "Class" and "Class Members" means all Persons who purchased or otherwise acquired  
25 Menlo Therapeutics' common stock pursuant and/or traceable to the Registration Statement and  
26 Prospectus issued in connection with Menlo's IPO. Excluded from the Class are: the Defendants  
27 (meaning, the Menlo Defendants and the Underwriter Defendants) and their respective successors and  
28 assigns; past and current executive officers and directors of Menlo and the Underwriter Defendants;

1 members of the immediate families of the Menlo Defendants; the legal representatives, heirs,  
2 successors, or assigns of the Menlo Defendants; any entity in which any of the above excluded persons  
3 have or had a majority ownership interest; and any person who validly requests exclusion from the  
4 Class. The foregoing exclusion shall not cover “Investment Vehicles,” which for these purposes shall  
5 mean any investment company or pooled investment fund, including, but not limited to, mutual fund  
6 families, exchange-traded funds, fund of funds, private equity funds, real estate funds, and hedge funds,  
7 in which any Underwriter Defendant or any of its affiliates has or may have a direct or indirect interest  
8 or as to which any Underwriter Defendant or any of its affiliates may act as an investment advisor,  
9 general partner, managing member, or in other similar capacity, other than an investment vehicle of  
10 which the Underwriter Defendant or any of its affiliates is a majority owner or holds a majority  
11 beneficial interest and only to the extent of such Underwriter Defendant’s or affiliate’s ownership or  
12 interest. Also excluded from the Class are those Persons who would otherwise be Class Members but  
13 who timely and validly exclude themselves therefrom.

14 1.5 “Company” means Menlo Therapeutics Inc. and its predecessors, successors, parents,  
15 subsidiaries, divisions or affiliates.

16 1.6 “Court” means the California Superior Court for the County of San Mateo.

17 1.7 “Defendants” means the Menlo Defendants and the Underwriter Defendants.

18 1.8 “Menlo Defendants’ Counsel” means the law firm of Wilson Sonsini Goodrich and  
19 Rosati, P.C.

20 1.9 “Effective Date of Settlement” or “Effective Date” means the date upon which all of the  
21 events and conditions set forth in ¶10.1 below have been met and have occurred.

22 1.10 “Escrow Account” means an interest-bearing escrow account established by the Escrow  
23 Agent to receive the Settlement Amount.

24 1.11 “Escrow Agent” means Robbins Geller Rudman & Dowd LLP or its respective  
25 successor(s).

26 1.12 “Fee and Expense Award” means the amount of attorneys’ fees and expenses awarded  
27 by the Court as described in ¶5.1.

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1           1.13   “Final” with respect to the Judgment or Alternative Judgment means: (i) if no appeal is  
2 filed, the expiration date of the time provided for filing or petitioning for any appeal; or (ii) if there is an  
3 appeal from the Judgment, the date of (a) final dismissal of all such appeals, or the final dismissal of  
4 any proceeding on certiorari or otherwise to review the Judgment; or (b) the date the Judgment is finally  
5 affirmed on appeal; and (i) the expiration of the time to file a petition for writ of certiorari or other form  
6 of review; (ii) the denial of a writ of certiorari or other form of review of the Judgment; or (iii) if  
7 certiorari or other form of review is granted, the date of final affirmance of the Judgment following  
8 review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review  
9 pertaining solely to an order issued with respect to (i) attorneys’ fees, costs or expenses; or (ii) the Plan  
10 of Allocation (as submitted or subsequently modified) shall not in any way delay or preclude the  
11 Judgment from becoming Final.

12           1.14   “Judgment” means the proposed judgment to be entered approving the Settlement,  
13 substantially in the form attached hereto as Exhibit B.

14           1.15   “Lead Counsel” means the law firm of Robbins Geller Rudman & Dowd LLP.

15           1.16   “Menlo Defendants” means Menlo Therapeutics Inc., Steven Basta, Kristine Ball, Paul  
16 Berns, Albert Cha, Ted Ebel, David McGirr, Aaron Royston, and Scott Whitcup.

17           1.17   “Net Settlement Fund” means the Settlement Fund less: (i) Court awarded attorneys’  
18 fees; (ii) notice and administration expenses; (iii) any required Taxes and Tax Expenses (as defined  
19 below); (iv) Court awarded litigation expenses; and (v) any award to Plaintiffs pursuant to 15 U.S.C.  
20 §77z-1(a)(4) or other fees or expenses approved by the Court.

21           1.18   “Notice” means the Notice of Proposed Settlement of Class Action, which is to be sent to  
22 members of the Class, substantially in the form attached hereto as Exhibit A-1.

23           1.19   “Notice Order” means the proposed order preliminarily approving the Settlement and  
24 directing notice thereof to the Class, substantially in the form attached hereto as Exhibit A.

25           1.20   “Person” means an individual, corporation, partnership, limited partnership, limited  
26 liability partnership, association, joint stock company, limited liability company or corporation,  
27 professional corporation, estate, legal representative, trust, unincorporated association, government or  
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1 any political subdivision or agency thereof, and any business or legal entity and his, her or its spouses,  
2 heirs, predecessors, successors, representatives, or assignees.

3 1.21 “Plaintiffs” means Pavel Silvestrov and Hugh McKay.

4 1.22 “Plaintiffs’ Counsel” means those firms that have appeared on behalf of the Class in the  
5 Action: Robbins Geller Rudman & Dowd LLP; Robbins LLP; Bronstein, Gewirtz & Grossman LLC;  
6 and Hedin Hall LLP.

7 1.23 “Plan of Allocation” means the plan described in the Notice or any alternate plan  
8 approved by the Court whereby the Net Settlement Fund (as defined above in ¶1.18) shall be distributed  
9 to Authorized Claimants. Any Plan of Allocation is not part of the Stipulation, and the Released  
10 Persons shall have no responsibility therefore or liability with respect thereto.

11 1.24 “Proof of Claim” means the Proof of Claim and Release, substantially in the form  
12 attached hereto as Exhibit A-2.

13 1.25 “Registration Statement” means, collectively, any and all registration statements and  
14 prospectuses, whether preliminary, amended, or as effective, filed with the U.S. Securities and  
15 Exchange Commission in 2018 that relate in any way, in whole or in part, to Menlo’s IPO.

16 1.26 “Related Parties” means each of a Defendant’s past, present, or future direct or indirect  
17 parents, subsidiaries, divisions, affiliates, or joint ventures, as well as each of their respective present or  
18 former directors, officers, employees, partners, members, principals, agents, underwriters, insurers, co-  
19 insurers, reinsurers, controlling shareholders, attorneys, accountants, auditors, financial or investment  
20 advisors or consultants, banks or investment bankers, personal or legal representatives, predecessors,  
21 successors, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a  
22 controlling interest, any member of a Menlo Defendant’s immediate family, any trust of which any  
23 Menlo Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his or  
24 her family, and the legal representatives, heirs, successors in interest, or assigns of the Defendants.

25 1.27 “Released Claims” means any and all claims (including Unknown Claims as defined  
26 below) against Defendants and their Related Parties, arising out of, relating to, or in connection with  
27 either: (i) the facts, events, transactions, acts, occurrences, statements, representations,  
28 misrepresentations, or omissions which were or could have been alleged in this Action, or (ii) the

1 purchase, acquisition, holding, sale, or disposition of Menlo common stock purchased or otherwise  
2 acquired pursuant and/or traceable to the Registration Statement and Prospectus issued in connection  
3 with Menlo’s January 29, 2018 IPO, including any claims for violations of §§11, 12(a)(2), or 15 of the  
4 Securities Act of 1933 and §10(b) of the Securities Exchange Act of 1934.

5 1.28 “Released Defendants’ Claims” means all claims, including “Unknown Claims” as  
6 defined below, that any Defendant or its successors, assigns, executors, administrators, representatives,  
7 attorneys, and agents in their capacity as such may have against Plaintiffs, Class Members, or Plaintiffs’  
8 Counsel relating to the institution, prosecution or settlement of the Action (except for claims to enforce  
9 any of the terms of this Stipulation).

10 1.29 “Released Persons” means Defendants and each and all of their Related Parties.

11 1.30 “Settlement” means the settlement on the terms set forth in this Stipulation.

12 1.31 “Settlement Amount” means the sum of \$9,500,000 to be deposited into an Escrow  
13 Account pursuant to ¶3.1.

14 1.32 “Settlement Fairness Hearing” means the hearing scheduled by the Court to determine  
15 whether (i) the Settlement is fair, reasonable, and adequate; (ii) the Plan of Allocation is fair,  
16 reasonable, and adequate; and (iii) Lead Counsel’s request for an award of attorneys’ fees and expenses,  
17 including an award to Plaintiffs, is reasonable.

18 1.33 “Settlement Fund” means the Settlement Amount plus any interest or income earned  
19 thereon.

20 1.34 “Summary Notice” means the summary notice of proposed Settlement and hearing for  
21 publication, substantially in the form attached hereto as Exhibit A-3.

22 1.35 “Underwriter Defendants” means Jefferies LLC, Piper Sandler & Co. (formerly known  
23 as Piper Jaffray & Co.), Guggenheim Securities, LLC, and JMP Securities LLC.

24 1.36 “Unknown Claims” means any and all Released Claims and potential claims against  
25 Defendants which Plaintiffs or any Class Member does not know or suspect to exist in their, his, her, or  
26 its favor as of the Effective Date, and any Released Claims against Plaintiffs which Defendants do not  
27 know or suspect to exist in their favor, which if known by them, him, her, or it might have affected  
28 their, his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released

1 Claims and Released Defendants' Claims, the Parties stipulate and agree that by operation of the Final  
2 Judgment, upon the Effective Date, the Plaintiffs and Defendants shall have expressly waived, and each  
3 Class Member shall be deemed to have waived, and by operation of the Final Judgment shall have  
4 expressly waived, the provisions, rights, and benefits of Cal. Civ. Code §1542, which provides:

5 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
6 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**  
7 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**  
8 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
9 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**  
10 **DEBTOR OR RELEASED PARTY;**

11 and any and all provisions, rights, and benefits conferred by any law of any state or territory of the  
12 United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ.  
13 Code §1542. Plaintiffs and Class Members may hereafter discover facts in addition to or different from  
14 those which he, she, or it now knows or believes to be true with respect to the subject matter of the  
15 Released Claims, but Plaintiffs shall expressly fully, finally, and forever settle and release, and each  
16 Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final  
17 Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims,  
18 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed  
19 or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing  
20 or coming into existence in the future, including, but not limited to, conduct which is negligent,  
21 intentional, with or without malice, or a breach of any duty, law or rule, without regard to the  
22 subsequent discovery or existence of such different or additional facts. Plaintiffs and Defendants  
23 acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of  
24 "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was  
25 separately bargained for and was an essential element of the Settlement.

26 **2. Scope and Effect of Settlement**

27 2.1 The obligations incurred pursuant to this Stipulation shall be in full and final disposition  
28 of: (i) this Action against Defendants; (ii) any and all Released Claims as against all Released Persons;  
and (iii) any and all Released Defendants' Claims.

1           2.2     Upon the Effective Date of this Settlement, Plaintiffs and all Class Members, on behalf  
2 of themselves, shall be deemed to have, and by operation of the Final Judgment shall have, fully,  
3 finally, and forever waived, released, and discharged all Released Claims against the Released Persons,  
4 regardless of whether such Class Member executes and delivers a Proof of Claim.

5           (a)     Upon the Effective Date of this Settlement, each and every Class Member and  
6 any Person claiming through or on behalf of them will be permanently and forever barred and enjoined  
7 from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in  
8 any court of law or equity, arbitration tribunal, administrative forum, or any other forum, asserting the  
9 Released Claims against the Released Persons, whether or not such Class Member executes and delivers  
10 the Proof of Claim.

11           (b)     Upon the Effective Date of this Settlement, each of the Defendants and their  
12 successors, assigns, executors, administrators, representatives, attorneys, and agents in their capacity as  
13 such shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and  
14 forever released and discharged Plaintiffs, Plaintiffs' Counsel and each and all of the Class Members  
15 from each and every one of the Released Defendants' Claims.

16           (c)     Notwithstanding the provisions of ¶¶2.2(a) through (c) hereof, in the event that  
17 any of the Released Persons asserts against Plaintiffs, any Class Member, or their respective counsel,  
18 any claim that is a Released Defendants' Claim, then such Plaintiffs or Class Member, or counsel shall  
19 be entitled to use and assert such factual matters included within the Released Claims only against such  
20 Released Person in defense of such claim, but not for the purposes of affirmatively asserting any claim  
21 against any Released Person.

22           (d)     Notwithstanding the provisions of ¶¶2.2(a) through (b) hereof, in the event that  
23 Plaintiffs or any member of the Class asserts against any of the Released Persons or their respective  
24 counsel any claim that is a Released Claim, then such Released Person or counsel shall be entitled to  
25 use and assert such factual matters included within the Released Defendants' Claims only against such  
26 Plaintiff or Class Member in defense of such claim, but not for the purposes of affirmatively asserting  
27 any claim against Plaintiffs or any Class Member.

28

1 (e) The releases provided in this Stipulation shall become effective immediately  
2 upon occurrence of the Effective Date without the need for any further action, notice, condition or  
3 event.

4 **3. The Settlement Consideration**

5 3.1 Menlo shall deposit or cause to be deposited the Settlement Amount in accordance with  
6 instructions to be provided by the Escrow Agent within 21 days from either: (1) preliminary approval of  
7 the settlement by the Court, or (2) the date on which Plaintiffs provide to the Menlo Defendants the  
8 payment and tax ID information (including ACH payment instructions and SWIFT code), whichever  
9 date is later. If the Settlement Amount is not timely paid, the unpaid balance shall earn interest at the  
10 rate of 5% per annum until paid. The Parties agree that the Settlement Fund is intended to be a  
11 “Qualified Settlement Fund” within the meaning of Treasury Regulation 26 CFR §1.468B-1. The  
12 account funds, less any amounts incurred for notice, administration, and/or Taxes and Tax expenses,  
13 plus any accrued interest thereon, shall revert to the person(s) making the deposits if the Settlement  
14 does not become effective for any reason, including by reason of a termination of the Settlement  
15 pursuant to ¶10.4 herein. The Settlement Fund includes any interest earned thereon. No Defendant  
16 other than Menlo shall be required to pay or cause payment of, the Settlement Amount or any portion  
17 thereof.

18 3.2 Plaintiffs and Class Members shall look solely to the Settlement Fund as satisfaction of  
19 all claims that are released hereunder. Defendants shall have no obligation under this Stipulation or the  
20 Settlement to pay any additional amounts, and upon payment funding, Defendants shall have no other  
21 obligation to pay or reimburse any fees, expenses, costs, liability, or damages whatsoever alleged or  
22 incurred by Plaintiffs, by any Class Member, or by any of their attorneys, experts, advisors, agents, or  
23 representatives with respect to the Action and Released Claims. Any award made by the Court pursuant  
24 to the Fee and Expense Application referred to in ¶5.1 hereof shall be paid exclusively from the  
25 Settlement Fund; and Defendants shall have no obligation with respect to any allocation between or  
26 among Plaintiffs’ Counsel, or with respect to any payment to any Plaintiffs’ Counsel, of any fees,  
27 expenses, costs, or interest. Plaintiffs and Class Members acknowledge that as of the Effective Date,  
28

1 the releases given herein shall become effective immediately by operation of the Final Judgment and  
2 shall be permanent, absolute and unconditional.

3           3.3     The Settlement Fund, net of any Taxes (as defined below), shall be used to pay: (i) the  
4 notice and administration costs of the Settlement referred to in ¶4.2 hereof; (ii) any award made by the  
5 Court pursuant to the Fee and Expense Application referred to in ¶5.1 hereof; and (iii) the remaining  
6 administration expenses referred to in ¶4.2 hereof and any other attorney and administrative costs, fees,  
7 payments, or awards subsequently approved by the Court. The balance of the Settlement Fund after the  
8 above payments shall be the Net Settlement Fund, which shall be distributed to the Authorized  
9 Claimants as provided in ¶¶6.1-6.3 hereof. Any portions of the Settlement Fund required to be held in  
10 escrow prior to the Effective Date shall be held by the Escrow Agent for the Settlement Fund. The  
11 Settlement Fund held by the Escrow Agent shall be deemed to be in the custody of the Court and shall  
12 remain subject to the jurisdiction of the Court until such time as the Net Settlement Fund shall be  
13 distributed to Authorized Claimants or returned to Defendants pursuant to this Stipulation and/or further  
14 order of the Court. The Escrow Agent shall not disburse the Settlement Fund, or any portion thereof,  
15 except as provided in this Stipulation, or upon Order of the Court. The Escrow Agent shall be  
16 responsible for investing the Settlement Fund in eligible investments, meaning obligations issued or  
17 guaranteed by the United States of America or any agency or instrumentality thereof, backed by the full  
18 faith and credit of the United States, or fully insured by the United States Government or an Agency  
19 thereof, and the Escrow Agent shall reinvest the proceeds of these obligations or instruments as they  
20 mature in similar instruments at their then-current market rates. All risks related to the investment of  
21 the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be  
22 borne by the Settlement Fund.

23           3.4     For the purpose of §468B of the Internal Revenue Code (26 U.S.C. §468B) and the  
24 Treasury regulations thereunder, the Escrow Agent shall be designated as the “administrator” of the  
25 Settlement Fund. The Escrow Agent shall timely and properly file all informational and other tax  
26 returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the  
27 returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described below)  
28 shall be consistent with this paragraph and in all events shall reflect that all Taxes (including any

1 estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of  
2 the Settlement Fund as provided herein.

3 (a) All: (i) taxes (including any estimated taxes, interest or penalties) arising with  
4 respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be  
5 imposed upon Defendants or their Related Parties with respect to any income earned by the Settlement  
6 Fund for any period during which the Settlement Fund does not qualify as a “Qualified Settlement  
7 Fund” for federal or state income tax purposes (“Taxes”); and (ii) all other tax expenses incurred in the  
8 operation of and implementation of this paragraph, including, without limitation, expenses of tax  
9 attorneys and/or accountants and mailing and distribution expenses related to filing or failing to file the  
10 returns described in this paragraph (“Tax Expenses”) shall promptly be paid out of the Settlement Fund  
11 by the Escrow Agent without prior order from the Court. The Escrow Agent shall also be obligated to,  
12 and shall be responsible for, withholding from distribution to Class Members any funds necessary to  
13 pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses.  
14 The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and  
15 accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

16 (b) Except to the extent Lead Counsel are acting in their capacity as Escrow Agent,  
17 neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect  
18 to: (i) any act, omission, or determination of the Escrow Agent or the Claims Administrator, or any of  
19 their respective designees or agents, in connection with the administration of the Settlement Fund or  
20 otherwise; (ii) the Plan of Allocation; (iii) the determination, administration, calculation, or payment of  
21 any claims asserted against the Settlement Fund; or (iv) the payment or withholding of any Taxes, Tax  
22 Expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of  
23 any returns.

#### 24 **4. Administration**

25 4.1 The Claims Administrator shall administer and calculate the claims that shall be allowed  
26 and oversee distribution of the Settlement Fund subject to such supervision of Lead Counsel and/or the  
27 Court as the circumstances may require. The Claims Administrator agrees to be subject to the  
28 jurisdiction of the Court with respect to the administration of the Settlement and the distribution of the

1 Settlement Fund pursuant to the terms of this Stipulation. Defendants shall have no role in, or  
2 responsibility for, the administration of the Settlement and shall have no liability to Plaintiffs, the Class,  
3 or any other person in connection with, as a result of, or arising out of, such administration. The Claims  
4 Administrator will not make any distributions to Class Members from the Net Settlement Fund until the  
5 Judgment becomes Final and all the conditions described in ¶10.1 herein have been satisfied.

6 4.2 Lead Counsel may pay from the Settlement Fund, without further approval from  
7 Defendants or the Court, the reasonable costs and expenses associated with notice to the Class, and the  
8 administration of the Settlement, including, without limitation, the actual costs of notice, and the  
9 administrative expenses incurred and fees charged by the Claims Administrator in connection with  
10 providing notice and processing the submitted claims. Within five (5) calendar days of entry of the  
11 Notice Order, the Company shall provide or cause to be provided to the Claims Administrator, at no  
12 cost, its shareholder lists as appropriate for providing notice to the Class.

13 **5. Fee and Expense Application**

14 5.1 Lead Counsel will submit an application or applications (the “Fee and Expense  
15 Application”) to the Court for an award from the Settlement Fund of: (i) attorneys’ fees and the  
16 payment of litigation expenses incurred in connection with the prosecution of the Action, plus interest  
17 on both amounts at the same rate and period as earned on the Settlement Fund (until paid) as may be  
18 awarded by the Court; and (ii) an amount pursuant to 15 U.S.C. §77z-1(a)(4) in connection with  
19 Plaintiffs’ representation of the Class. Attorneys’ fees, expenses, and interest as are awarded by the  
20 Court shall be paid from the Settlement Fund to Lead Counsel immediately upon entry by the Court of  
21 an order awarding such amounts, notwithstanding the existence of any timely filed objections thereto, or  
22 potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. Lead Counsel  
23 may thereafter allocate such fees to Plaintiffs’ Counsel subject to each Plaintiffs’ Counsel’s (including  
24 their respective partners, shareholders and/or firms) several obligation to repay those amounts to the  
25 Settlement Fund plus accrued interest at the same net rate as is earned by the Settlement Fund, if and  
26 when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the  
27 fee or cost award is reduced or reversed or return of the Settlement Fund is required consistent with the  
28 provisions of ¶10.4 hereof. In such event, Plaintiffs’ Counsel shall, within ten (10) business days from

1 the event which requires repayment of the fee or expense award, refund to the Settlement Fund the fee  
2 and expense award paid to them, along with interest, as described above. Furthermore, all Plaintiffs'  
3 Counsel (including their respective partners, shareholders and/or firms) agree that they remain subject  
4 to the continuing jurisdiction of the Court for the purpose of enforcing their obligation to repay required  
5 attorneys' fees and expenses to the Settlement Fund as provided in this paragraph.

6         5.2       Notwithstanding any other provision of this Stipulation to the contrary, the Fee and  
7 Expense Application to be paid out of the Settlement Fund shall be considered by the Court separate  
8 and apart from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and  
9 any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating  
10 thereto or reversal or modification thereof, shall not operate to, or be grounds to, terminate or cancel  
11 this Stipulation or the Settlement of the Action, or affect or delay the finality of the Judgment approving  
12 this Settlement.

13               **6.       Distribution to Authorized Claimants**

14         6.1       The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of  
15 the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim as defined in the  
16 Plan of Allocation described in the Notice annexed hereto as Exhibit A-1, or in such other plan of  
17 allocation as the Court approves.

18         6.2       The Plan of Allocation set forth in the Notice is not a necessary term of this Stipulation  
19 and it is not a condition of this Stipulation that any particular plan of allocation be approved. The  
20 Released Persons will take no position with respect to the proposed Plan of Allocation or such plan of  
21 allocation as may be approved by the Court. The Plan of Allocation is a matter separate and apart from  
22 the Settlement between the Parties and any decision by the Court concerning the Plan of Allocation  
23 shall not affect the validity or finality of the proposed Settlement.

24         6.3       Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund  
25 based on his, her or its Recognized Claim compared to the total Recognized Claims of all accepted  
26 claimants. The Settlement is non-recapture, *i.e.*, it is not a claims-made settlement. Defendants shall  
27 not be entitled to get back any of the settlement monies, or interest earned thereon, once the Judgment  
28 becomes Final and all the conditions set forth in ¶10.1 herein have been satisfied. The Released

1 Persons shall have no involvement in reviewing, evaluating, or challenging claims and shall have no  
2 responsibility or liability for determining the allocation of any payments to any Class Members or for  
3 any other matters pertaining to the Plan of Allocation.

4           6.4     Nothing in this Settlement shall restrict the ability of any Party hereto to advocate in  
5 favor or against the applicability of any offset to any claims asserted in any other action based on any  
6 amount paid herein.

7           **7.     Administration of the Settlement**

8           7.1     Within ninety (90) calendar days after such time as set by the Court to mail notice to the  
9 Class, each Person claiming to be an Authorized Claimant shall be required to submit to the Claims  
10 Administrator a completed Proof of Claim, substantially in the form attached hereto as Exhibit A-2 and  
11 as approved by the Court, signed under penalty of perjury and supported by such documents as are  
12 specified in the Proof of Claim and as are reasonably available to the Authorized Claimant.

13           7.2     Except as otherwise ordered by the Court, all Class Members who fail to timely submit a  
14 Proof of Claim within such period, or such other period as may be ordered by the Court, shall be forever  
15 barred from receiving any payments pursuant to the Stipulation and the Settlement set forth herein, but  
16 will in all other respects be subject to and bound by the provisions of the Stipulation, the releases  
17 contained herein, and the Final Judgment. Notwithstanding the foregoing, Lead Counsel shall have the  
18 discretion (but not the obligation) to accept for processing late submitted claims so long as the  
19 distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby. No  
20 Person shall have any claim against Plaintiffs, Lead Counsel or the Claims Administrator by reason of  
21 the exercise or non-exercise of such discretion.

22           7.3     Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator,  
23 under the supervision of Lead Counsel, who shall determine, in accordance with this Stipulation and the  
24 approved Plan of Allocation, the extent, if any, to which each claim shall be allowed, subject to review  
25 by the Court pursuant to ¶7.5 below.

26           7.4     Proofs of Claim that do not meet the submission requirements may be rejected. Prior to  
27 rejecting a Proof of Claim, in whole or in part, the Claims Administrator shall communicate with the  
28 claimant in writing to give the claimant the chance to remedy any curable deficiencies in the Proof of

1 Claim submitted. The Claims Administrator, under the supervision of Lead Counsel, shall notify, in a  
2 timely fashion and in writing, all claimants whose claims the Claims Administrator proposes to reject in  
3 whole or in part for curable deficiencies, setting forth the reasons therefor, and shall indicate in such  
4 notice that the claimant whose claim is to be rejected has the right to a review by the Court if the  
5 claimant so desires and complies with the requirements of ¶7.5 below.

6 7.5 If any claimant whose timely claim has been rejected in whole or in part for a curable  
7 deficiency desires to contest such rejection, the claimant must, within twenty (20) calendar days after  
8 the date of mailing of the notice required in ¶7.4 above, or a lesser period of time if the claim was  
9 untimely, serve upon the Claims Administrator a notice and statement of reasons indicating the  
10 claimant's grounds for contesting the rejection along with any supporting documentation, and  
11 requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved,  
12 Lead Counsel shall thereafter present the claimant's request for review to the Court.

13 7.6 Each claimant who declines to be excluded from the Class shall be deemed to have  
14 submitted to the jurisdiction of the Court with respect to the claimant's claim, including, but not limited  
15 to, all releases provided for herein and in the Judgment, and the claim will be subject to investigation  
16 and discovery under the California Code of Civil Procedure, provided that such investigation and  
17 discovery shall be limited to the claimant's status as a Class Member and the validity and amount of the  
18 claimant's claim. In connection with processing the Proofs of Claim, no discovery shall be allowed on  
19 the merits of the Action or the Settlement.

20 7.7 No Person shall have any claim against the Released Persons, Defendants' Counsel,  
21 Plaintiffs, Plaintiffs' Counsel or the Claims Administrator, or any other Person designated by Lead  
22 Counsel based on determinations or distributions made substantially in accordance with this Stipulation  
23 and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

24 7.8 The Net Settlement Fund shall be distributed to Authorized Claimants substantially in  
25 accordance with the Plan of Allocation described in the Notice and approved by the Court. If there is  
26 any balance remaining in the Net Settlement Fund after a reasonable period of time from the date of  
27 distribution of the Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise),  
28 Lead Counsel shall, if economically feasible, reallocate such balance among Authorized Claimants in

1 an equitable and economic fashion. These redistributions will be repeated until the balance remaining  
2 in the Net Settlement Fund is no longer economically reasonable, in Lead Counsel’s discretion, to  
3 distribute to Class Members. Thereafter, subject to distribution to state entities as required by  
4 California Code of Civil Procedure §384(b)(3), any balance which still remains in the Net Settlement  
5 Fund shall be donated to Bay Area Legal Aid.

6 7.9 Except for Menlo’s obligation to pay the Settlement Amount or cause it to be paid, if  
7 applicable, Defendants shall have no liability, obligation, or responsibility for the administration of the  
8 Settlement or disbursement of the Net Settlement Fund. Lead Counsel shall have the right, but not the  
9 obligation, to advise the Claims Administrator to waive what Lead Counsel reasonably deems to be  
10 formal or technical defects in any Proofs of Claim submitted, including, without limitation, failure to  
11 submit a document by the submission deadline, in the interests of achieving substantial justice.

12 7.10 All proceedings with respect to the administration, processing, and determination of  
13 claims and the determination of all controversies relating thereto, including disputed questions of law  
14 and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

15 7.11 The Net Settlement Fund shall be distributed by the Claims Administrator to, or for the  
16 account of, Authorized Claimants, as the case may be, only after the Effective Date and after: (i) all  
17 claims have been processed, and all claimants whose claims have been rejected or disallowed, in whole  
18 or in part, have been notified and provided the opportunity to be heard concerning such rejection or  
19 disallowance; (ii) all objections with respect to all rejected or disallowed claims have been resolved by  
20 the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (iii) all  
21 matters with respect to the Fee and Expense Application have been resolved by the Court, all appeals  
22 therefrom have been resolved or the time therefore has expired.

23 **8. Terms of Order for Notice and Hearing**

24 8.1 Promptly after this Stipulation has been fully executed, Lead Counsel shall apply to the  
25 Court by motion on notice for entry of the Notice Order, substantially in the form annexed hereto as  
26 Exhibit A. Upon receiving any request(s) for exclusion (“Request for Exclusion”), the Claims  
27 Administrator shall promptly notify Lead Counsel and the Menlo Defendants’ Counsel of such  
28 Requests for Exclusion.

1           8.2     Any Class Member who wishes to opt out of the Class must submit a timely written  
2 Request for Exclusion on or before the opt-out date, in the manner specified in the Court’s Notice  
3 Order. A Request for Exclusion is valid only if it is signed by the Class Member or Class Members  
4 requesting exclusion in that request. Any Class Member who does not submit a timely written Request  
5 for Exclusion will be bound by all proceedings, orders, and judgments in the Action, whether or not he,  
6 she, or it timely submits a Proof of Claim.

7           **9.       Terms of Judgment**

8           9.1     If the Settlement contemplated by this Stipulation is approved by the Court, Lead  
9 Counsel shall request that the Court enter a Judgment, substantially in the form annexed hereto as  
10 Exhibit B.

11           **10.     Effective Date of Settlement, Waiver or Termination**

12           10.1    The Effective Date of Settlement shall be the date when all the following shall have  
13 occurred:

- 14                   (a)     the Court has entered the Notice Order in all material respects;
- 15                   (b)     the Settlement Amount has been deposited into the Escrow Account pursuant to  
16 ¶13.1;
- 17                   (c)     Menlo has not exercised its option to terminate this Settlement pursuant to ¶10.3;
- 18                   (d)     final approval by the Court of the Settlement, following notice to the Class; and
- 19                   (e)     entry by the Court of a Judgment, substantially in the form of Exhibit B annexed  
20 hereto, and the Judgment becomes Final, or, in the event that the Court enters a judgment in a form  
21 other than that provided above (“Alternative Judgment”) and neither Plaintiffs nor any Defendant elects  
22 to terminate this Settlement, the date that such Alternative Judgment becomes Final.

23           10.2    Plaintiffs and each of the Defendants, through their respective counsel, shall, in each of  
24 their separate discretions, but in all events subject to ¶5.2 herein, have the right to terminate the  
25 Settlement and this Stipulation, as to themselves, by providing written notice of their election to do so  
26 (“Termination Notice”) to all other Parties hereto within thirty (30) calendar days of: (a) the Court’s  
27 final non-appealable refusal to enter the Notice Order in any material respect; (b) the Court’s final non-  
28 appealable refusal to approve this Stipulation or any material part of it; (c) the Court’s non-appealable

1 refusal to enter the Judgment in any material respect; (d) the date on which the Judgment is modified or  
2 reversed by a court of appeal or any higher court in any material respect; or (e) the date on which an  
3 Alternative Judgment is modified or reversed by a court of appeal or any higher court in any material  
4 respect. Without limitation, any reduction in the scope of the definition of “Class,” “Class Members,”  
5 or “Released Claims” are hereby deemed to be material.

6           10.3 If prior to the Settlement Fairness Hearing, Persons who otherwise would be members of  
7 the Class have submitted valid and timely Requests for Exclusion from the Class in accordance with the  
8 provisions of the Notice Order and the notice given pursuant thereto, and Class Members in the  
9 aggregate representing more than a certain percentage of the Menlo common stock subject to this  
10 Settlement choose to exclude themselves from the Class in an amount greater than the amount specified  
11 in a separate Supplemental Agreement between the Parties (the “Supplemental Agreement”), Menlo, in  
12 its sole and absolute discretion, shall have the option to terminate this Stipulation in accordance with the  
13 procedures set forth in the Supplemental Agreement. The Supplemental Agreement will not be filed  
14 with the Court unless required by Court rule or unless and until a dispute between Plaintiffs and Menlo  
15 concerning its interpretation or application arises.

16           10.4 Except as otherwise provided herein, in the event the Settlement is terminated in  
17 accordance herewith, the judgment is vacated, or the Effective Date fails to occur for any reason, then  
18 the Parties shall be deemed to have reverted to their respective status in the Action as of February 12,  
19 2020, the fact and terms of the Settlement shall not be admissible in any trial of the Action, and, except  
20 as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any  
21 related orders had not been entered, and any portion of the Settlement Amount previously paid by or on  
22 behalf of Defendants, together with any interest earned thereon (and, if applicable, re-payment of any  
23 attorneys’ fee and expense award referred to in ¶5.1 hereof), less any Taxes and Tax Expenses due, if  
24 any, with respect to such income, and less costs of administration and notice actually incurred and paid  
25 or payable from the Settlement Amount shall be returned to the party, parties or insurer that paid the  
26 Settlement Amount as directed by Menlo within ten (10) business days from the date of the event  
27 causing such termination.

28

1           **11. No Admission of Wrongdoing**

2           11.1 Defendants deny that they have committed any act or omission giving rise to any liability  
3 and/or violation of law, and state that they are entering into this Settlement to eliminate the burden and  
4 expense of further litigation. This Stipulation, whether or not consummated, including any and all of its  
5 terms, provisions, exhibits and prior drafts, and any negotiations or proceedings related or taken  
6 pursuant to it:

7                   (a) shall not be offered or received against Defendants as evidence of, or evidence  
8 supporting a presumption, concession, or admission with respect to any liability, negligence, fault, or  
9 wrongdoing, or in any way referred to for any other reason as against Defendants, in any civil, criminal,  
10 or administrative action or proceeding, other than such proceedings as may be necessary to effectuate  
11 the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court  
12 and becomes effective pursuant to its terms, Defendants may refer to it to effectuate the liability  
13 protection granted them hereunder, and nothing in this Settlement shall restrict the ability of any Party  
14 hereto to advocate in favor or against the applicability of any offset to any claims asserted in any other  
15 action based on any amount paid herein;

16                   (b) shall not be construed as or received in evidence as an admission, concession, or  
17 presumption against Plaintiffs or any of the Class Members that any of their claims are without merit, or  
18 that any defenses asserted by Defendants have any merit, or that damages recoverable under the  
19 Complaint in this Action, or any subsequent operative complaint filed in this Action would not have  
20 exceeded the Settlement Fund; and

21                   (c) notwithstanding the foregoing, Defendants, Plaintiffs, Class Members, and/or the  
22 Released Persons may file the Stipulation and/or the Final Judgment in any action that may be brought  
23 against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral  
24 estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim  
25 preclusion or issue preclusion or similar defense or counterclaim.

26           **12. Miscellaneous Provisions**

27           12.1 All of the exhibits attached hereto are hereby incorporated by reference as though fully  
28 set forth herein.

1           12.2    The Parties intend the Settlement to be a final and complete resolution of all disputes  
2 asserted or which could be asserted by Plaintiffs and/or any Class Member against the Released Persons  
3 with respect to the Released Claims. Accordingly, Plaintiffs and Defendants agree not to assert in any  
4 forum that the litigation was brought by Plaintiffs or defended by Defendants in bad faith or without a  
5 reasonable basis. The Parties further agree not to assert in any forum that any party or their counsel  
6 violated California Code of Civil Procedure §128.7 relating to the prosecution, defense, or settlement of  
7 the Action. The Parties agree that the amount paid and the other terms of the Settlement were  
8 negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached  
9 voluntarily after consultation with experienced legal counsel.

10           12.3    This Stipulation may not be modified or amended, nor may any of its provisions be  
11 waived, except by a writing signed by all Parties hereto.

12           12.4    The headings herein are used for the purpose of convenience only and are not meant to  
13 have legal effect.

14           12.5    The administration and consummation of the Settlement as embodied in this Stipulation  
15 shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of  
16 entering orders relating to the Fee and Expense Application, the Plan of Allocation and enforcing the  
17 terms of this Stipulation.

18           12.6    This Stipulation shall not constitute a consent to service or to the jurisdiction of this  
19 Court or any other court for any purpose, including any other matter concerning the Released Claims,  
20 and shall not be construed as such, other than for the sole and limited purpose of the Settlement and the  
21 enforcement of its terms.

22           12.7    The waiver by one party of any breach of this Stipulation by any other party shall not be  
23 deemed a waiver of any other prior or subsequent breach of this Stipulation.

24           12.8    This Stipulation and its exhibits and the Supplemental Agreement constitute the entire  
25 agreement among the Parties hereto concerning the Settlement of the Action, and no representations,  
26 warranties, or inducements have been made by any party hereto concerning this Stipulation and its  
27 exhibits other than the representations, warranties, and covenants contained and memorialized in such  
28 documents.

1           12.9 This Stipulation may be executed in one or more counterparts and the signatures may be  
2 by facsimile, or electronically. All executed counterparts and each of them shall be deemed to be one  
3 and the same instrument provided that counsel for the Parties shall exchange among themselves original  
4 signed counterparts.

5           12.10 This Stipulation shall be binding upon, and inure to the benefit of, the successors,  
6 assigns, executors, administrators, heirs, and legal representatives of the Parties hereto. No assignment  
7 shall relieve any party hereto of obligations hereunder.

8           12.11 The construction, interpretation, operation, effect and validity of this Stipulation, and all  
9 documents necessary to effectuate it, shall be governed by the laws of the State of California, without  
10 regard to conflicts of laws, except to the extent that federal law requires that federal law governs, and in  
11 accordance with the laws of the United States.

12           12.12 This Stipulation shall not be construed more strictly against one party than another  
13 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the  
14 Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all  
15 Parties have contributed substantially and materially to the preparation of this Stipulation.

16           12.13 All counsel and any other person executing this Stipulation and any of the exhibits  
17 hereto, or any related settlement documents, warrant and represent that they have the full authority to do  
18 so and that they have the authority to take appropriate action required or permitted to be taken pursuant  
19 to the Stipulation to effectuate its terms.

20           12.14 The Settlement contemplated herein is not subject to or contingent upon confirmatory  
21 discovery or other additional discovery beyond that already undertaken in the Action.

22           12.15 Plaintiffs, Defendants, and their counsel shall not make any applications for sanctions,  
23 pursuant to California Code of Civil Procedure §128.7 or any other applicable rule, code, or statute,  
24 with respect to any claims or defenses in this Action.

25           12.16 Plaintiffs' Counsel and Defendants' counsel agree to cooperate reasonably with one  
26 another in seeking Court approval of the order for notice and hearing, the Stipulation and the  
27 Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably  
28 required to obtain final approval by the Court of the Settlement.

1 IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed, by  
2 their duly authorized attorneys, dated March 26, 2020.

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4 & DOWD LLP

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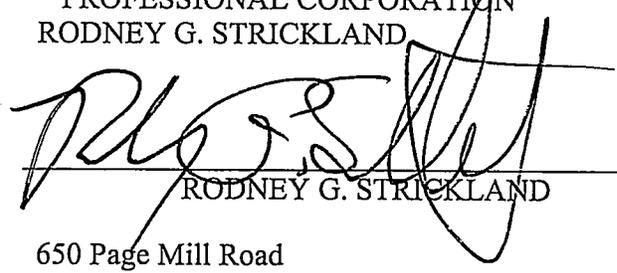
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JMP Securities LLC

# **EXHIBIT A**

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5 Attorneys for Plaintiffs

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN MATEO

10 In re MENLO THERAPEUTICS INC.  
SECURITIES LITIGATION

) Lead Case No. 18CIV06049

) CLASS ACTION

11 \_\_\_\_\_ )  
12 This Document Relates To:

) Assigned for All Purposes to Dept. 16

13 ALL ACTIONS.  
14 \_\_\_\_\_ )

) ORDER PRELIMINARILY APPROVING  
SETTLEMENT AND PROVIDING FOR  
NOTICE

EXHIBIT A

15  
16 Judge: Honorable Richard H. DuBois

Dept: 16

17 Date Action Filed: 11/08/18  
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1           WHEREAS, on March 26, 2020, the Parties to the above-entitled action (the “Action”)<sup>1</sup> entered  
2 into a Stipulation of Settlement (the “Stipulation” or “Settlement”), which is subject to review by this  
3 Court and which, together with the exhibits thereto, sets forth the terms and conditions for the  
4 Settlement of the claims alleged in the Action; and the Court having read and considered the Stipulation  
5 and the accompanying documents; and the Parties to the Stipulation having consented to the entry of  
6 this Notice Order; and all capitalized terms used herein having the meanings defined in the Stipulation;

7           NOW, THEREFORE, IT IS HEREBY ORDERED, this \_\_\_ day of \_\_\_\_\_ 2020, that:

8           1.       The Court preliminarily finds that:

9                   (a)       the Settlement resulted from informed, extensive arm’s-length negotiations,  
10 including mediation among Plaintiffs and the Menlo Defendants under the direction of a very  
11 experienced mediator, the Hon. Layn R. Phillips (Ret.);

12                   (b)       the Settlement is sufficiently fair, reasonable, and adequate to warrant providing  
13 notice of the Settlement to the Class; and

14                   (c)       a Class is certified, pursuant to California Code of Civil Procedure §382, for  
15 settlement purposes, consisting of all Persons who purchased or otherwise acquired Menlo common  
16 stock pursuant and/or traceable to the Registration Statement and Prospectus issued in connection with  
17 Menlo’s January 29, 2018 initial public offering (“IPO”). Excluded from the Class are: the Defendants  
18 (meaning, Menlo, the Individual Defendants, and the Underwriter Defendants) and their respective  
19 successors and assigns; past and current executive officers and directors of Menlo and the Underwriter  
20 Defendants; members of the immediate families of the Individual Defendants; the legal representatives,  
21 heirs, successors, or assigns of the Individual Defendants; any entity in which any of the above  
22 excluded persons have or had a majority ownership interest; and any person who validly requests  
23 exclusion from the Class. The foregoing exclusion shall not cover “Investment Vehicles,” which for  
24 \_\_\_\_\_

25 <sup>1</sup> As used herein, the term “Parties” means Plaintiffs Pavel Silvestrov and Hugh McKay (“Plaintiffs”),  
26 on behalf of themselves and the Class, and Defendants Menlo Therapeutics Inc. (“Menlo” or the  
27 “Company”), Steven Basta, Kristine Ball, Paul Berns, Albert Cha, Ted Ebel, David McGirr, Aaron  
28 Royston, and Scott Whitcup (collectively, the “Individual Defendants” and with Menlo, the “Menlo  
Defendants”), and Jefferies LLC, Piper Sandler & Co. (formerly known as Piper Jaffray & Co.),  
Guggenheim Securities, LLC, and JMP Securities LLC (the “Underwriter Defendants”) (all,  
collectively, “Defendants”).

1 these purposes shall mean any investment company or pooled investment fund, including, but not  
2 limited to, mutual fund families, exchange-traded funds, fund of funds, private equity funds, real estate  
3 funds, and hedge funds, in which any Underwriter Defendant or any of its affiliates has or may have a  
4 direct or indirect interest or as to which any Underwriter Defendant or any of its affiliates may act as an  
5 investment advisor, general partner, managing member, or in other similar capacity, other than an  
6 investment vehicle of which the Underwriter Defendant or any of its affiliates is a majority owner or  
7 holds a majority beneficial interest and only to the extent of such Underwriter Defendant's or affiliate's  
8 ownership or interest. Also excluded from the Class are those Persons who would otherwise be Class  
9 Members but who timely and validly exclude themselves therefrom.

10 2. A Settlement Fairness Hearing is hereby scheduled to be held before the Court on  
11 \_\_\_\_\_, \_\_\_\_, at \_\_\_:\_\_\_ a.m., for the following purposes:

12 (a) to determine whether, for settlement purposes, this Action satisfies the applicable  
13 prerequisites for class action treatment under California Code of Civil Procedure §382;

14 (b) to determine whether the proposed Settlement is fair, reasonable, and adequate,  
15 and should be approved by the Court;

16 (c) to determine whether the Judgment as provided under the Stipulation should be  
17 entered;

18 (d) to determine whether the proposed Plan of Allocation should be approved by the  
19 Court as fair, reasonable, and adequate;

20 (e) to consider Plaintiffs' Counsel's application for an award of attorneys' fees and  
21 expenses;

22 (f) to consider Plaintiffs' request for payment for their efforts in prosecuting this  
23 Action on behalf of the Class; and

24 (g) to rule upon such other matters as the Court may deem appropriate.

25 3. The Court reserves the right to approve the Settlement with or without modification and  
26 with or without further notice to the Class and may adjourn the Settlement Fairness Hearing without  
27 further notice to the Class. The Court reserves the right to enter the Judgment approving the Stipulation  
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1 regardless of whether it has approved the Plan of Allocation, Plaintiffs' Counsel's request for an award  
2 of attorneys' fees and expenses and Plaintiffs' request for payment for their representation of the Class.

3 4. The Court approves the form, substance and requirements of the Notice of Pendency and  
4 Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release (the "Proof of  
5 Claim"), and the Summary Notice of Proposed Settlement of Class Action (the "Summary Notice"),  
6 annexed hereto as Exhibits A-1, A-2 and A-3, respectively.

7 5. The Court approves the appointment of Gilardi & Co. LLC as the Claims Administrator  
8 to supervise and administer the notice procedure in connection with the proposed Settlement as well as  
9 the processing of Proofs of Claim as more fully set forth below.

10 6. The Claims Administrator shall commence mailing the Notice and the Proof of Claim,  
11 substantially in the forms annexed hereto, by first class mail, postage prepaid, within fourteen (14)  
12 calendar days of this Notice Order, to all Class Members who can be identified with reasonable effort.  
13 Within five (5) calendar days of this Notice Order, Menlo, at its expense, shall provide, or cause to be  
14 provided to the Claims Administrator, its shareholder lists as appropriate for providing notice to the  
15 Class. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such  
16 as brokerage firms and other persons or entities who purchased or otherwise acquired Menlo common  
17 stock in connection with Menlo's January 29, 2018 IPO as record owners but not as beneficial owners.  
18 Such nominee purchasers are directed, within ten (10) calendar days of their receipt of the Notice, to  
19 either forward copies of the Notice and Proof of Claim to their beneficial owners or to provide the  
20 Claims Administrator with lists of the names and addresses of the beneficial owners, and the Claims  
21 Administrator is ordered to send the Notice and Proof of Claim promptly to such identified beneficial  
22 owners. Nominee purchasers who elect to send the Notice and Proof of Claim to their beneficial  
23 owners shall send a statement to the Claims Administrator confirming that the mailing was made as  
24 directed. Additional copies of the Notice shall be made available to any record holder requesting such  
25 for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from  
26 the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the  
27 reasonable expense of sending the Notice and Proof of Claim to beneficial owners.

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1           7.       The Claims Administrator shall cause the Summary Notice to be published once in the  
2 national edition of *The Wall Street Journal*, and once over a national newswire service, within ten (10)  
3 calendar days after the mailing of the Notice.

4           8.       Lead Counsel shall, at least seven (7) calendar days before the Settlement Fairness  
5 Hearing, file with the Court and serve on the Parties proof of mailing of the Notice and Proof of Claim  
6 and proof of publication of the Summary Notice.

7           9.       The form and content of the Notice and the Summary Notice, and the method set forth  
8 herein of notifying the Class of the Settlement and its terms and conditions, meet the requirements of  
9 California law and due process, constitute the best notice practicable under the circumstances, and shall  
10 constitute due and sufficient notice to all persons and entities entitled thereto.

11          10.      In order to be entitled to participate in the Net Settlement Fund, in the event the  
12 Settlement is consummated in accordance with its terms set forth in the Stipulation, each Class Member  
13 shall take the following actions and be subject to the following conditions:

14                 (a)      Within ninety (90) calendar days after such time as set by the Court for the  
15 Claims Administrator to mail the Notice to the Class, each Person claiming to be an Authorized  
16 Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim,  
17 substantially in a form contained in Exhibit A-2 attached hereto and as approved by the Court, signed  
18 under penalty of perjury and supported by such documents as are specified in the Proof of Claim and as  
19 are reasonably available to the Authorized Claimant.

20                 (b)      Except as otherwise ordered by the Court, all Class Members who fail to timely  
21 submit a Proof of Claim within such period, or such other period as may be ordered by the Court, shall  
22 be forever barred from receiving any payments pursuant to the Stipulation and the Settlement set forth  
23 therein, but will in all other respects be subject to and bound by the provisions of the Stipulation, the  
24 releases contained therein, and the Final Judgment. Notwithstanding the foregoing, Lead Counsel may,  
25 in its discretion, accept for processing late submitted claims so long as the distribution of the Net  
26 Settlement Fund to Authorized Claimants is not materially delayed. No Person shall have any claim  
27 against Plaintiffs, Lead Counsel or the Claims Administrator by reason of the decision to exercise such  
28 discretion whether to accept late-submitted claims.

1 (c) As part of the Proof of Claim, each Class Member shall submit to the jurisdiction  
2 of the Court with respect to the claim submitted, and shall (subject to effectuation of the Settlement)  
3 release all Released Claims as provided in the Stipulation.

4 11. Class Members shall be bound by all determinations and judgments in this Action,  
5 whether favorable or unfavorable, unless they request exclusion from the Class in a timely and proper  
6 manner, as hereinafter provided. A Class Member wishing to make such request shall, no later than  
7 twenty-one (21) calendar days before the date set for the Settlement Fairness Hearing, mail a request for  
8 exclusion in written form by first class mail postmarked to the address designated in the Notice. Such  
9 request for exclusion shall clearly indicate the name, address, and telephone number of the person  
10 seeking exclusion, that the sender requests to be excluded from the Class, and must be signed by such  
11 person. Such persons requesting exclusion are also directed to state the date(s), price(s), and number(s)  
12 of Menlo shares they purchased or acquired pursuant or traceable to the Registration Statement issued  
13 in connection with Menlo's IPO. The request for exclusion shall not be effective unless it is made in  
14 writing within the time stated above, and the exclusion is accepted by the Court. Class Members  
15 requesting exclusion from the Class shall not be entitled to receive any payment out of the Net  
16 Settlement Fund as described in the Stipulation and Notice.

17 12. The Court will consider objections to the Settlement, the Plan of Allocation, the payment  
18 to Plaintiffs, and/or the award of attorneys' fees and expenses. Any person wanting to object must do  
19 so in writing and may also appear at the Settlement Fairness Hearing. To the extent any person wants to  
20 object in writing, such objections and any supporting papers, accompanied by proof of Class  
21 membership, shall be filed with the Clerk of the Court, Superior Court of the State of California, County  
22 of San Mateo, 400 County Center, Redwood City, CA 94063, and copies of all such papers served no  
23 later than \_\_\_\_\_, 2020, which is twenty-one (21) calendar days before the date set for the  
24 Settlement Fairness Hearing, to James I. Jaconette, Robbins Geller Rudman & Dowd LLP, 655 West  
25 Broadway, Suite 1900, San Diego, CA 92101, on behalf of the Plaintiffs and the Class, and Rodney G.  
26 Strickland, Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304, on behalf of  
27 the Menlo Defendants. Persons who intend to object in writing to the Settlement, the Plan of  
28 Allocation, the request for an award of attorneys' fees and expenses and/or Plaintiffs' request for

1 payment for representing the Class and desire to present evidence at the Settlement Fairness Hearing  
2 must include in their written objections copies of any exhibits they intend to introduce into evidence at  
3 the Settlement Fairness Hearing. If an objector hires an attorney to represent him, her, or it for the  
4 purposes of making an objection, the attorney must both effect service of a notice of appearance on  
5 counsel listed above and file it with the Court by no later than \_\_\_\_\_, 2020. A Class  
6 Member who files a written objection does not have to appear at the Settlement Fairness Hearing for the  
7 Court to consider his, her or its objection. Any member of the Class who does not make his, her, or its  
8 objection in the manner provided shall be deemed to have waived such objection and shall forever be  
9 foreclosed from making any objection to the fairness or adequacy of the Settlement set forth in the  
10 Stipulation, to the Plan of Allocation, and to the award of attorneys' fees and expenses to Plaintiffs'  
11 Counsel and Plaintiffs' request for payment, unless otherwise ordered by the Court.

12 13. All papers in support of the Settlement, the Plan of Allocation, and any application by  
13 Plaintiffs' Counsel for attorneys' fees and expenses and payment to Plaintiffs shall be filed thirty-five  
14 (35) calendar days prior to the Settlement Fairness Hearing. All reply papers shall be filed and served  
15 at least seven (7) calendar days prior to the Settlement Fairness Hearing.

16 14. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*  
17 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds  
18 shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

19 15. Menlo Defendants' Counsel and Plaintiffs' Counsel shall promptly furnish each other  
20 with copies of any and all objections that come into their possession.

21 16. Pending final determination of whether the Settlement should be approved, the Plaintiffs,  
22 all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not  
23 institute, commence, maintain or prosecute, and are hereby barred and enjoined from instituting,  
24 commencing, maintaining, or prosecuting, any action in any court or tribunal that asserts Released  
25 Claims against any of the Released Parties.

26 17. All reasonable expenses incurred in identifying and notifying Class Members, as well as  
27 administering the Settlement Fund, shall be paid as set forth in the Stipulation and herein. In the event  
28 the Settlement is not approved by the Court, or otherwise fails to become effective, neither Plaintiffs nor

1 any of their counsel shall have any obligation to repay any amounts actually and properly disbursed  
2 from the Settlement Fund, except as provided for in the Stipulation.

3 18. If any specified condition to the Settlement set forth in the Stipulation is not satisfied and  
4 Plaintiffs or Defendants elect to terminate the Settlement, then, in any such event, the Stipulation,  
5 including any amendment(s) thereof, shall be null and void and of no further force or effect (except to  
6 the extent otherwise expressly provided in the Stipulation), without prejudice to any party, and may not  
7 be introduced as evidence or referred to in this Action or any action or proceeding by any person or  
8 entity for any purpose, and each party shall be restored to his, her, or its respective position as it existed  
9 on February 12, 2020.

10 19. The Court may adjourn or continue the Settlement Fairness Hearing without further  
11 written notice to the Class.

12 20. The Court retains exclusive jurisdiction over the Action to consider all further matters  
13 arising out of or connected with the Settlement. The Court may approve the Settlement, with such  
14 modifications as may be agreed by the Parties, if appropriate, without further notice to the Class.

15  
16 DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE RICHARD H. DUBOIS  
JUDGE OF THE SUPERIOR COURT

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# **EXHIBIT A-1**

1 ROBBINS GELLER RUDMAN  
& DOWD LLP  
2 JAMES I. JACONETTE (179565)  
655 West Broadway, Suite 1900  
3 San Diego, CA 92101  
Telephone: 619/231-1058  
4 619/231-7423 (fax)

5 Attorneys for Plaintiffs

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN MATEO

10 In re MENLO THERAPEUTICS INC.  
SECURITIES LITIGATION

) Lead Case No. 18CIV06049

) CLASS ACTION

11 \_\_\_\_\_ )  
12 This Document Relates To:

) Assigned for All Purposes to Dept. 16

13 ALL ACTIONS.

) NOTICE OF PROPOSED SETTLEMENT OF  
CLASS ACTION

14 EXHIBIT A-1

15 Judge: Honorable Richard H. DuBois  
16 Dept: 16  
Date Action Filed: 11/08/18

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1 dermatologic conditions such as atopic dermatitis. Menlo’s common stock trades on the NASDAQ  
2 under the ticker symbol “MNLO.”

3 Plaintiffs claim that the Menlo Defendants violated §§11, 12(a)(2) and/or 15 of the Securities  
4 Act of 1933 (the “Securities Act”) and that the Underwriter Defendants violated §§11 and 12(a)(2) of  
5 the Securities Act by reason of material misrepresentations and omissions in the Registration Statement  
6 and Prospectus represented that Menlo was close to the commercialization of serlopitant for the treatment of  
7 pruritus associated with atopic dermatitis.

8 Defendants denied all of Plaintiffs’ allegations.

9 **THE COURT HAS NOT RULED AS TO WHETHER DEFENDANTS ARE LIABLE TO**  
10 **PLAINTIFFS OR TO THE CLASS. THIS NOTICE IS NOT INTENDED TO BE AN**  
11 **EXPRESSION OF ANY OPINION BY THE COURT WITH RESPECT TO THE TRUTH OF**  
12 **THE ALLEGATIONS IN THIS ACTION OR THE MERITS OF THE CLAIMS OR DEFENSES**  
13 **ASSERTED. THIS NOTICE IS SOLELY TO ADVISE YOU OF THE PROPOSED**  
14 **SETTLEMENT OF THIS ACTION AND YOUR RIGHTS IN CONNECTION WITH THAT**  
15 **SETTLEMENT.**

## 16 **II. PROCEDURAL HISTORY**

17 The initial complaint (“Complaint”) was filed in this Court by Pavel Silvestrov on November 8,  
18 2018 (the “*Silvestrov* Action”).

19 On December 20, 2018, the Court appointed plaintiff Pavel Silvestrov’s counsel, Robbins Geller  
20 Rudman & Dowd LLP, as Lead Counsel for the *Silvestrov* Action and any subsequently consolidated  
21 action.

22 On January 25, 2019, Defendants filed demurrers to the Complaint in the *Silvestrov* Action.

23 On January 28, 2019, Plaintiff Hugh McKay filed a complaint in the Court alleging the same  
24 claims against the same defendants as those in the *Silvestrov* Action, *McKay v. Menlo Therapeutics*  
25 *Inc., et al.*, No. 19CIV00574 (the “*McKay* Action”).

26 On February 20, 2019, the Court consolidated the *McKay* Action into the lead *Silvestrov* Action.

27 On February 26, 2019, Plaintiffs filed oppositions to Defendants’ demurrers.

28 On March 19, 2019, Defendants filed replies in support of their demurrers.

On May 23, 2019, the Court entered an order overruling Defendants’ demurrers as to Plaintiffs’  
claims under §§11 and 15 and sustaining Defendants’ demurrer as to Plaintiffs’ claims under §12(a)(2).

On June 3, 2019, the Defendants answered the Complaint with general denials and affirmative  
defenses.

The Parties began fact discovery, ultimately resulting in the Menlo Defendants’ production of  
over 261,000 documents totaling over 2,100,000 pages.

1 In an effort to conserve judicial resources and attempt to settle the Action, the Menlo Defendants  
2 and Plaintiffs engaged the services of the Hon. Layn R. Phillips (Ret.), a nationally recognized  
3 mediator. There was an exchange of detailed mediation statements and a full-day in-person mediation  
4 with Judge Phillips on February 12, 2020. That same day, the Parties agreed to settle the Action,  
subject to the negotiation of a Stipulation of Settlement and approval by the Court. This Stipulation  
(together with the exhibits hereto) reflects the final and binding agreement between the Parties.

### 5 **HOW DO I KNOW IF I AM A CLASS MEMBER?**

6 If you purchased or acquired Menlo common stock pursuant or traceable to the Registration  
7 Statement filed in connection with Menlo’s IPO, you are a Class Member. For purposes of this  
8 Settlement only, you are a Class Member if you purchased or otherwise acquired Menlo common stock  
9 between January 29, 2018 and July 24, 2018, inclusive. As set forth in the Stipulation, excluded from  
10 the Class are: the Defendants (meaning, Menlo, the Individual Defendants, and the Underwriter  
11 Defendants) and their respective successors and assigns; past and current executive officers and  
12 directors of Menlo and the Underwriter Defendants; members of the immediate families of the  
13 Individual Defendants; the legal representatives, heirs, successors, or assigns of the Individual  
14 Defendants; any entity in which any of the above excluded persons have or had a majority ownership  
15 interest; and any person who validly requests exclusion from the Class. The foregoing exclusion shall  
16 not cover “Investment Vehicles,” which for these purposes shall mean any investment company or  
17 pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds,  
fund of funds, private equity funds, real estate funds, and hedge funds, in which any Underwriter  
Defendant or any of its affiliates has or may have a direct or indirect interest or as to which any  
Underwriter Defendant or any of its affiliates may act as an investment advisor, general partner,  
managing member, or in other similar capacity, other than an investment vehicle of which the  
Underwriter Defendant or any of its affiliates is a majority owner or holds a majority beneficial interest  
and only to the extent of such Underwriter Defendant’s or affiliate’s ownership or interest. Also  
excluded from the Class are those Persons who would otherwise be Class Members but who timely and  
validly exclude themselves therefrom.

18 **PLEASE NOTE:** Receipt of this Notice does not mean that you are a Class Member or that  
19 you will be entitled to receive a payment from the Settlement. If you are a Class Member and you wish  
20 to be eligible to participate in the distribution of proceeds from the Settlement, you are required to  
submit the Proof of Claim that is being distributed with this Notice and the required supporting  
documentation as set forth therein postmarked or submitted online on or before \_\_\_\_\_, 2020.

### 21 **WHAT IS THE MONETARY VALUE OF THE PROPOSED SETTLEMENT?**

22 The Settlement, if approved, will result in the creation of a cash settlement fund of  
23 \$9,500,000.00 (the “Settlement Amount”). The Settlement Amount, plus accrued interest, is the  
24 Settlement Fund. The Settlement Fund minus the costs of this Notice and all costs associated with the  
25 administration of the Settlement, Taxes and Tax Expenses, attorneys’ fees and expenses, and any award  
26 to Plaintiffs in connection with their representation of the Class, as approved by the Court (the “Net  
Settlement Fund”), will be distributed to eligible Class Members pursuant to the Plan of Allocation that  
is described in the next section of this Notice.



1 matched on a First-In, First-Out (“FIFO”) basis. Sales will be matched against purchases in  
2 chronological order, beginning with the earliest purchase made during the relevant period.

3 A purchase, acquisition or sale of Menlo shares shall be deemed to have occurred on the  
4 “contract” or “trade” date as opposed to the “settlement” or “payment” date. All purchase, acquisition  
5 and sale prices shall exclude any fees and commissions. The receipt or grant by gift, devise, or  
6 operation of law of Menlo shares shall not be deemed a purchase, acquisition or sale of Menlo shares  
7 for the calculation of a claimant’s recognized claim nor shall it be deemed an assignment of any claim  
relating to the purchase or acquisition of such shares unless specifically provided in the instrument of  
gift or assignment. The receipt of Menlo shares in exchange for securities of any other corporation or  
entity shall not be deemed a purchase, acquisition or sale of Menlo shares.

8 The total of all profits shall be subtracted from the total of all losses from eligible transactions to  
9 determine if a Class Member has a recognized claim. Only if a Class Member had a net market loss,  
after all profits from eligible transactions in Menlo common stock are subtracted from all losses, will  
10 such Class Member be eligible to receive a distribution from the Net Settlement Fund.

11 If an Authorized Claimant has an overall market gain, the recognized claim for that Authorized  
12 Claimant will be \$0.00. If an Authorized Claimant has an overall market loss, that Authorized  
13 Claimant’s recognized claim will be limited to the amount of overall market loss. The Claims  
Administrator shall allocate to each Authorized Claimant a *pro rata* share of the Net Settlement Fund  
14 based on his, her, or its recognized claim as compared to the total recognized claims of all Authorized  
Claimants. No distribution shall be made to Authorized Claimants who would otherwise receive a  
distribution of less than \$10.00.

15 Distributions will be made to Authorized Claimants after all claims have been processed, after  
16 the Court has finally approved the Settlement, and after any appeals are resolved. If there is any  
17 balance remaining in the Net Settlement Fund after a reasonable amount of time from the initial date of  
distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or  
18 otherwise), the Claims Administrator shall, if feasible, reallocate such balance among Authorized  
Claimants in an equitable and economic fashion. These redistributions shall be repeated until the  
19 balance remaining in the Net Settlement Fund is no longer economically feasible to distribute to Class  
Members. Thereafter, subject to distribution to state entities, as required by California Code of Civil  
20 Procedure §384(b)(3), any balance that still remains in the Net Settlement Fund shall be donated to Bay  
Area Legal Aid.

21 Please contact the Claims Administrator or Plaintiffs’ Counsel if you disagree with any  
22 determinations made by the Claims Administrator regarding your Proof of Claim. If you are  
dissatisfied with the determinations, you may ask the Court, which retains jurisdiction over all Class  
23 Members and the claims administration process, to decide the issue by submitting a written request.

24 The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member  
25 on equitable grounds.

26 Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all  
27 Authorized Claimants. No Person shall have any claim against Plaintiffs, Plaintiffs’ Counsel, any  
Claims Administrator, any other Person designated by Plaintiffs’ Counsel, or any of the Released  
28 Parties based on the distributions made substantially in accordance with the Stipulation and the  
Settlement contained therein, the Plan of Allocation, or further orders of the Court. All Class Members

1 who fail to complete and submit a valid and timely Proof of Claim shall be barred from participating in  
2 distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall  
3 be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the  
4 releases given.

4 **DO I NEED TO CONTACT PLAINTIFFS' COUNSEL IN ORDER TO PARTICIPATE IN  
5 DISTRIBUTION OF THE SETTLEMENT FUND?**

5 No. If you have received this Notice and timely submit your Proof of Claim to the designated  
6 address, you need not contact Plaintiffs' Counsel. If your address changes, please contact the Claims  
7 Administrator at:

8 *Menlo Securities Litigation Settlement*  
9 c/o Gilardi & Co. LLC  
10 P.O. Box \_\_\_\_\_  
11 \_\_\_\_\_

11 [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com)

12 **THERE WILL BE NO PAYMENTS IF THE STIPULATION IS TERMINATED**

13 The Stipulation may be terminated under several circumstances outlined in it. If the Stipulation  
14 is terminated, the Action will proceed as if the Stipulation had not been entered into.

15 **WHAT ARE THE REASONS FOR SETTLEMENT?**

16 The Settlement was reached after highly contested motion practice directed to the sufficiency of  
17 Plaintiffs' claims. The Court has not reached any final decisions in connection with Plaintiffs' claims  
18 against Defendants. Instead, Plaintiffs and Defendants have agreed to this Settlement, which was  
19 reached with the substantial assistance of the Hon. Layn R. Phillips (Ret.), a highly respected former  
20 judge with extensive experience in the mediation of complex class actions. In reaching the Settlement,  
21 the Parties have avoided the cost, delay, and uncertainty of further litigation.

22 As in any litigation, Plaintiffs and the proposed Class would face an uncertain outcome if they  
23 did not agree to the Settlement. The Parties expected that the case could continue for a lengthy period  
24 of time and that if Plaintiffs succeeded, Defendants would file appeals that would postpone final  
25 resolution of the case. Continuation of the Action against Defendants could result in a judgment greater  
26 than this Settlement. Conversely, continuing the case could result in no recovery at all or a recovery  
27 that is less than the amount of the Settlement.

28 Plaintiffs and Plaintiffs' Counsel believe that this Settlement is fair and reasonable to the  
members of the Class. They have reached this conclusion for several reasons. Specifically, if the  
Settlement is approved, the Class will receive a certain and immediate monetary recovery.  
Additionally, Plaintiffs' Counsel believe that the significant and immediate benefits of the Settlement,  
when weighed against the significant risk, delay, and uncertainty of continued litigation, are a very  
favorable result for the Class.

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**WHO REPRESENTS THE CLASS?**

The following attorneys are counsel for the Class:

James I. Jaconette  
ROBBINS GELLER RUDMAN & DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 800/449-4900

If you have any questions about the Action, or the Settlement, you are entitled to consult with Plaintiffs’ Counsel by contacting counsel at the phone numbers listed above.

You may obtain a copy of the Stipulation by contacting the Claims Administrator at:

*Menlo Securities Litigation Settlement*  
c/o Gilardi & Co. LLC  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_  
Telephone: 1-\_\_\_\_\_  
www.MenloSecuritiesLitigation.com

**HOW WILL THE PLAINTIFFS’ LAWYERS BE PAID?**

Lead Counsel will file a motion for an award of attorneys’ fees and expenses that will be considered at the Settlement Fairness Hearing. Lead Counsel will apply for an attorneys’ fee award for Plaintiffs’ Counsel in the amount of up to one-third of the Settlement Amount, plus payment of Plaintiffs’ Counsel’s expenses incurred in connection with this Action in an amount not to exceed \$100,000. In addition, Plaintiffs may seek a payment of up to \$12,000 in the aggregate for their efforts in representing the Class. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

The attorneys’ fees and expenses requested will be the only payment to Plaintiffs’ Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. The fees requested will compensate Plaintiffs’ Counsel for their work in achieving the Settlement. The Court will decide what constitutes a reasonable fee award and may award less than the amount requested by Plaintiffs’ Counsel.

**CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?**

Yes. If you do not want to receive a payment from this Settlement, or you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself from, or “opting out” of, the Class. If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this Action, you may want to consult an attorney and discuss whether any individual claim that you may wish to pursue would be time-barred by the applicable statutes of limitation or repose.

To exclude yourself from the Class, you must send a signed letter by mail saying that you want to be excluded from the Class in the following Action: *In re Menlo Therapeutics Inc. Securities*

1 *Litigation*, Lead Case No. 18CIV06049. Be sure to include your name, address, telephone number, and  
2 the date(s), price(s), and number(s) of Menlo shares that you purchased or acquired in connection with  
3 Menlo's January 29, 2018 IPO. Your exclusion request must be **postmarked no later than**  
\_\_\_\_\_ , **2020** and sent to the Claims Administrator at:

4 *Menlo Securities Litigation Settlement*  
5 Claims Administrator  
6 c/o Gilardi & Co. LLC  
7 EXCLUSIONS  
8 3301 Kerner Blvd.  
9 San Rafael, CA 94901

8 You cannot exclude yourself by phone or by e-mail. If you make a proper request for exclusion,  
9 you will not receive a settlement payment, and you cannot object to the Settlement. If you make a  
proper request for exclusion, you will not be legally bound by anything that happens in this lawsuit.

10 **CAN I OBJECT TO THE SETTLEMENT, THE REQUESTED ATTORNEYS' FEES, THE**  
11 **REQUESTED PAYMENT OF COSTS AND EXPENSES AND/OR THE PLAN OF**  
12 **ALLOCATION?**

12 Yes. If you are a Class Member, you may object to the terms of the Settlement. Whether or not  
13 you object to the terms of the Settlement, you may also object to the requested attorneys' fees, costs and  
14 expenses, Plaintiffs' request for payment for representing the Class and/or the Plan of Allocation. In  
15 order for any objection to be considered, you must file a written statement, accompanied by proof of  
16 Class membership, with the Court and send a copy to Plaintiffs' Counsel and the Menlo Defendants'  
17 Counsel, at the addresses listed below by \_\_\_\_\_ , **2020**. The Court's address is Superior Court of  
18 California, County of San Mateo, Hall of Justice and Records, 400 County Center, Redwood City, CA  
19 94063; Plaintiffs' Counsel's addresses are Robbins Geller Rudman & Dowd LLP, 655 West Broadway,  
20 Suite 1900, San Diego, CA 92101, c/o James I. Jaconette; and the Menlo Defendants' Counsel's  
address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304, c/o Rodney  
G. Strickland. Attendance at the Settlement Fairness Hearing is not necessary; however, persons  
wishing to be heard orally at the Settlement Fairness Hearing are required to indicate in their written  
objection their intention to appear at the hearing and identify any witnesses they may call to testify and  
exhibits, if any, they intend to introduce into evidence.

21 **WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING MYSELF**  
22 **FROM THE SETTLEMENT?**

22 Objecting is telling the Court that you do not like something about the proposed Settlement, the  
23 Plan of Allocation, or Plaintiffs' Counsel's request for an award of attorneys' fees and expenses. You  
24 can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to  
25 be part of the Class. If you exclude yourself, you have no basis to object because the case no longer  
applies to you.

26 **WHAT ARE MY RIGHTS AND OBLIGATIONS UNDER THE SETTLEMENT?**

27 If you are a Class Member and you do not exclude yourself from the Class, you may receive the  
28 benefit of, and you will be bound by, the terms of the Settlement described in this Notice, upon  
approval by the Court.

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## HOW CAN I GET A PAYMENT?

In order to qualify for a payment, you must timely complete and return the Proof of Claim that accompanies this Notice. A Proof of Claim is enclosed with this Notice and also may be downloaded at [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com). Read the instructions carefully; fill out the Proof of Claim; sign it; and mail or submit it online so that it is **postmarked (if mailed) or received (if submitted online) no later than \_\_\_\_\_, 2020**. The Proof of Claim may be submitted online at [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com). If you do not submit a timely Proof of Claim with all of the required information, you will not receive a payment from the Settlement Fund; however, unless you expressly exclude yourself from the Class as described above, you will still be bound in all other respects by the Settlement, the Judgment, and the release contained in them.

## WHAT CLAIMS WILL BE RELEASED BY THE SETTLEMENT?

If the Settlement is approved by the Court, the Court will enter a Judgment. If the Judgment becomes final pursuant to the terms of the Stipulation, all Class Members shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged any and all of the Released Parties from all Released Claims.

- “Related Parties” means each of a Defendant’s past, present or future direct or indirect parents, subsidiaries, divisions, affiliates or joint ventures, as well as each of their respective present or former directors, officers, employees, partners, members, principals, agents, underwriters, insurers, co-insurers, reinsurers, controlling shareholders, attorneys, accountants, auditors, financial or investment advisors or consultants, banks or investment bankers, personal or legal representatives, predecessors, successors, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a controlling interest, any member of a Menlo Defendant’s immediate family, any trust of which any Menlo Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his or her family, and the legal representatives, heirs, successors in interest or assigns of the Defendants.
- “Released Persons” means Defendants and each and all of their Related Parties.
- “Released Claims” means any and all claims (including Unknown Claims as defined below) against Defendants and their Related Parties, arising out of, relating to, or in connection with either (i) the facts, events, transactions, acts, occurrences, statements, representations, misrepresentations, or omissions which were or could have been alleged in this Action, or (ii) the purchase, acquisition, holding, sale, or disposition of Menlo common stock purchased or otherwise acquired pursuant and/or traceable to the Registration Statement and Prospectus issued in connection with Menlo’s January 29, 2018 IPO, including any claims for violations for §§11, 12(a)(2), and 15 of the Securities Act of 1933 and §10(b) of the Securities Exchange Act of 1934.
- “Unknown Claims” means any and all Released Claims and potential claims against Defendants which Plaintiffs or any Class Member does not know or suspect to exist in their, his, her, or its favor as of the Effective Date, and any Released Claims against Plaintiffs which Defendants do not know or suspect to exist in their favor, which if known by them, him, her, or it might have affected their, his, her, or its decision(s) with

1 respect to the Settlement. With respect to any and all Released Claims and Released  
2 Defendants' Claims, the Parties stipulate and agree that by operation of the Final  
3 Judgment, upon the Effective Date, the Plaintiffs and Defendants shall have expressly  
4 waived, and each Class Member shall be deemed to have waived, and by operation of  
the Final Judgment shall have expressly waived, the provisions, rights and benefits of  
Cal. Civ. Code §1542, which provides:

5 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
6 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW**  
7 **OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
8 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**  
9 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**  
10 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;**

11 and any and all provisions, rights, and benefits conferred by any law of any state or  
12 territory of the United States, or principle of common law, which is similar, comparable,  
13 or equivalent to Cal. Civ. Code §1542. Plaintiffs and Class Members may hereafter  
14 discover facts in addition to or different from those which he, she, or it now knows or  
15 believes to be true with respect to the subject matter of the Released Claims, but  
16 Plaintiffs shall expressly fully, finally, and forever settle and release, and each Class  
17 Member, upon the Effective Date, shall be deemed to have, and by operation of the  
18 Final Judgment shall have, fully, finally, and forever settled and released, any and all  
19 Released Claims, known or unknown, suspected or unsuspected, contingent or non-  
contingent, whether or not concealed or hidden, which now exist, or heretofore have  
existed, upon any theory of law or equity now existing or coming into existence in the  
future, including, but not limited to, conduct which is negligent, intentional, with or  
without malice, or a breach of any duty, law or rule, without regard to the subsequent  
discovery or existence of such different or additional facts. Plaintiffs and Defendants  
acknowledge, and Class Members shall be deemed to have acknowledged, that the  
inclusion of "Unknown Claims" in the definition of Released Claims and Released  
Defendants' Claims was separately bargained for and was an essential element of the  
Settlement.

20 The above description of the proposed Settlement is only a summary. The complete terms are  
21 set forth in the Stipulation (including its exhibits), which may be obtained at  
[www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com), or by contacting Plaintiffs' Counsel listed on Page \_\_ above.

22 **THE SETTLEMENT FAIRNESS HEARING**

23 The Court will hold a Settlement Fairness Hearing on \_\_\_\_\_, 2020, at \_\_: \_\_.m., before the  
24 Honorable Richard H. DuBois at the Superior Court of California, County of San Mateo,  
25 Department 16, Courtroom 7A, 400 County Center, Redwood City, CA 94063, for the purpose of  
26 determining whether: (1) the Settlement as set forth in the Stipulation for \$9,500,000.00 in cash should  
27 be approved by the Court as fair, reasonable and adequate; (2) Judgment as provided under the  
28 Stipulation should be entered; (3) to award Plaintiffs' Counsel attorneys' fees and expenses out of the  
Settlement Fund and, if so, in what amount; (4) to pay Plaintiffs for their efforts in representing the  
Class out of the Settlement Fund and, if so, in what amount; and (5) the Plan of Allocation should be

1 approved by the Court. The Court may adjourn or continue the Settlement Fairness Hearing without  
2 further notice to members of the Class.

3 Any Class Member may appear at the Settlement Fairness Hearing and be heard on any of the  
4 foregoing matters; provided, however, that no such person shall be heard unless his, her, or its objection  
5 is made in writing and is filed, together with proof of membership in the Class and with copies of all  
6 other papers and briefs to be submitted by him, her, or it to the Court at the Settlement Fairness  
7 Hearing, with the Court no later than \_\_\_\_\_, 2020, and showing proof of service on the following  
8 counsel:

7 James I. Jaconette  
8 ROBBINS GELLER RUDMAN &  
9 DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101

Rodney G. Strickland  
WILSON SONSINI GOODRICH  
& ROSATI  
650 Page Mill Road  
Palo Alto, CA 94304

10 *Attorneys for Plaintiffs*

*Attorneys for Menlo Defendants*

11  
12 Unless otherwise directed by the Court, any Class Member who does not make his, her, or its  
13 objection in the manner provided shall be deemed to have waived all objections to this Settlement and  
14 shall be foreclosed from raising (in this or any other proceeding or on any appeal) any objection and any  
untimely objection shall be barred.

15 If you hire an attorney (at your own expense) to represent you for purposes of objecting, your  
16 attorney must serve a notice of appearance on counsel listed above and file it with the Court (at the  
address set out above) by no later than \_\_\_\_\_, 2020.

### 17 **INJUNCTION**

18 The Court has issued an order enjoining all Class Members from instituting, commencing,  
19 maintaining or prosecuting any action in any court or tribunal that asserts Released Claims against any  
Released Party, pending final determination by the Court of whether the Settlement should be approved.

### 20 **HOW DO I OBTAIN ADDITIONAL INFORMATION?**

21 This Notice contains only a summary of the terms of the proposed Settlement. The records in  
22 this Action may be examined and copied at any time during regular office hours, and subject to  
23 customary copying fees, at the Clerk of the Superior Court of California, County of San Mateo. In  
24 addition, all of the Settlement documents, including the Stipulation, this Notice, the Proof of Claim, and  
25 proposed Judgment may be obtained by contacting the Claims Administrator at:  
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27  
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1 *Menlo Securities Litigation Settlement*  
2 c/o Gilardi & Co. LLC  
3 P.O. Box \_\_\_\_\_

4 Email: [info@menlosecuritieslitigation.com](mailto:info@menlosecuritieslitigation.com)  
5 Telephone: 1-\_\_\_\_\_  
6 [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com)

7 In addition, you may contact Rick Nelson, Shareholder Relations, Robbins Geller Rudman &  
8 Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, if you have any  
9 questions about the Action or the Settlement.

10 **DO NOT WRITE TO OR TELEPHONE THE COURT FOR INFORMATION**

11 **SPECIAL NOTICE TO BANKS, BROKERS, AND OTHER NOMINEES**

12 If you hold any shares of Menlo common stock purchased or acquired between January 29,  
13 2018, and July 24, 2018, inclusive, as a nominee for a beneficial owner, then, within ten (10) business  
14 days after you receive this Notice, you must either: (1) send a copy of this Notice by First-Class Mail to  
15 all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims  
16 Administrator:

17 *Menlo Securities Litigation Settlement*  
18 c/o Gilardi & Co. LLC  
19 P.O. Box \_\_\_\_\_

20 Email: [info@menlosecuritieslitigation.com](mailto:info@menlosecuritieslitigation.com)  
21 Telephone: 1-\_\_\_\_\_  
22 [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com)

23 If you choose to mail the Notice and Proof of Claim yourself, you may obtain from the Claims  
24 Administrator (without cost to you) as many additional copies of these documents as you will need to  
25 complete the mailing.

26 Regardless of whether you choose to complete the mailing yourself or elect to have the mailing  
27 performed for you, you may obtain reimbursement for or advancement of reasonable administrative  
28 costs actually incurred or expected to be incurred in connection with forwarding the Notice and which  
would not have been incurred but for the obligation to forward the Notice, upon submission of  
appropriate documentation to the Claims Administrator.

29 DATED: \_\_\_\_\_

30 BY ORDER OF THE SUPERIOR COURT OF  
31 CALIFORNIA, COUNTY OF SAN MATEO  
32 HONORABLE RICHARD H. DUBOIS

# **EXHIBIT A-2**

1 ROBBINS GELLER RUDMAN  
& DOWD LLP  
2 JAMES I. JACONETTE (179565)  
655 West Broadway, Suite 1900  
3 San Diego, CA 92101  
Telephone: 619/231-1058  
4 619/231-7423 (fax)

5 Attorneys for Plaintiffs

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN MATEO

10 In re MENLO THERAPEUTICS INC.  
SECURITIES LITIGATION

) Lead Case No. 18CIV06049

) CLASS ACTION

11 \_\_\_\_\_ )  
12 This Document Relates To:

) Assigned for All Purposes to Dept. 16

13 ALL ACTIONS.

) PROOF OF CLAIM AND RELEASE

14 \_\_\_\_\_ ) EXHIBIT A-2

15 Judge: Honorable Richard H. DuBois

16 Dept: 16

17 Date Action Filed: 11/08/18

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1 **I. GENERAL INSTRUCTIONS**

2 1. To recover as a Class Member based on the claims in the action entitled *In re Menlo*  
3 *Therapeutics Inc. Securities Litigation*, Lead Case No. 18CIV06049 (the “Action”),<sup>1</sup> you must complete  
4 and, on page \_\_\_ hereof, sign this Proof of Claim. If you fail to file a properly addressed (as set forth in  
5 paragraph 3 below) Proof of Claim, your claim may be rejected and you may be precluded from any  
6 recovery from the Net Settlement Fund created in connection with the proposed Settlement.

7 2. Submission of this Proof of Claim, however, does not assure that you will share in the  
8 proceeds of the Settlement of the Action.

9 3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED  
10 PROOF OF CLAIM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED  
11 HEREIN, ON OR BEFORE \_\_\_\_\_, 2020, ADDRESSED AS FOLLOWS:

12 *Menlo Securities Litigation Settlement*  
13 Claims Administrator  
14 c/o Gilardi & Co. LLC  
15 P.O. Box \_\_\_\_\_

16 Online Submissions: [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com)

17 If you are NOT a Class Member, as defined in the Notice of Proposed Settlement of Class Action  
18 (“Notice”), DO NOT submit a Proof of Claim.

19 4. If you are a Class Member and you do not timely request exclusion, you are bound by  
20 the terms of any judgment entered in the Action, including the releases provided therein, WHETHER  
21 OR NOT YOU SUBMIT A PROOF OF CLAIM.

22 **II. CLAIMANT IDENTIFICATION**

23 You are a member of the Class if you purchased or otherwise acquired Menlo Therapeutics, Inc.  
24 (“Menlo”) common stock pursuant or traceable to the Registration Statement and Prospectus filed in  
25 connection with Menlo’s January 29, 2018 initial public offering (“IPO”). For purposes of this  
26 Settlement only, you are a Class Member if you purchased or otherwise acquired Menlo common stock  
27 between January 29, 2018 and July 24, 2018, inclusive.

28 <sup>1</sup> This Proof of Claim and Release (“Proof of Claim”) incorporates by reference the definitions in the  
Stipulation of Settlement (“Stipulation”), which can be obtained at [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com).

1 Use Part I of this form entitled “Claimant Identification” to identify each purchaser of record  
2 (“nominee”) of the Menlo common stock that forms the basis of this claim. THIS CLAIM MUST BE  
3 FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S) OR THE LEGAL  
4 REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE MENLO COMMON  
5 STOCK UPON WHICH THIS CLAIM IS BASED.

6 All joint purchasers or acquirers must sign this claim. Executors, administrators, guardians,  
7 conservators, and trustees must complete and sign this claim on behalf of persons represented by them  
8 and their authority must accompany this claim and their titles or capacities must be stated. The Social  
9 Security (or taxpayer identification) number and telephone number of the beneficial owner may be used  
10 in verifying the claim. Failure to provide the foregoing information could delay verification of your  
11 claim or result in rejection of the claim.

### 12 **III. CLAIM FORM**

13 Use Part II of this form entitled “Schedule of Transactions in Menlo Common Stock” to supply  
14 all required details of your transaction(s). If you need more space or additional schedules, attach  
15 separate sheets giving all of the required information in substantially the same form. Sign and print or  
16 type your name on each additional sheet.

17 On the schedules, provide all of the requested information with respect to *all* of your purchases,  
18 acquisitions, and sales of Menlo common stock that took place between January 29, 2018 and July 24,  
19 2018, inclusive, whether such transactions resulted in a profit or a loss. You must also provide all of the  
20 requested information with respect to the number of Menlo common stock you held at the close of  
21 trading on July 24, 2018. Failure to report all such transactions may result in the rejection of your  
22 claim.

23 List each transaction separately and in chronological order, by trade date, beginning with the  
24 earliest. You must accurately provide the month, day, and year of each transaction you list.

25 The date of covering a “short sale” is deemed to be the date of purchase of Menlo common  
26 stock. The date of a “short sale” is deemed to be the date of sale of Menlo common stock.

27 **COPIES OF BROKER CONFIRMATIONS OR OTHER DOCUMENTATION OF**  
28 **YOUR TRANSACTIONS IN MENLO COMMON STOCK SHOULD BE ATTACHED TO**

1 **YOUR CLAIM. FAILURE TO PROVIDE THIS DOCUMENTATION COULD DELAY**  
2 **VERIFICATION OF YOUR CLAIM OR RESULT IN REJECTION OF YOUR CLAIM.**

3 NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of  
4 transactions may request, or may be requested, to submit information regarding their transactions in  
5 electronic files. All such claimants MUST also submit a manually signed paper Proof of Claim whether  
6 or not they also submit electronic copies. If you wish to submit your claim electronically, you must  
7 contact the Claims Administrator at [edata@gilardi.com](mailto:edata@gilardi.com) to obtain the required file layout. No electronic  
8 files will be considered to have been properly submitted unless the Claims Administrator issues to the  
9 claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF SAN MATEO

3 *In re Menlo Therapeutics Inc. Securities Litigation*

4 Lead Case No. 18CIV06049

5 **PROOF OF CLAIM AND RELEASE**

6 **Must Be Postmarked (if Mailed) or Received (if Submitted Online) No Later Than:**

7 \_\_\_\_\_, 2020

8 Please Type or Print

9 **REMEMBER TO ATTACH COPIES OF BROKER CONFIRMATIONS OR OTHER**  
10 **DOCUMENTATION OF YOUR TRANSACTIONS IN MENLO COMMON STOCK.**  
11 **FAILURE TO PROVIDE THIS DOCUMENTATION COULD DELAY VERIFICATION OF**  
12 **YOUR CLAIM OR RESULT IN REJECTION OF YOUR CLAIM.**

13 **PART I: CLAIMANT IDENTIFICATION**

Last Name	M.I.	First Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Last Name (Co-Beneficial Owner)	M.I.	First Name (Co-Beneficial Owner)
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="radio"/> IRA <input type="radio"/> Joint Tenancy <input type="radio"/> Employee <input type="radio"/> Individual <input type="radio"/> Other _____ (specify)		
Company Name (Beneficial Owner - If Claimant is not an Individual) or Custodian Name if an IRA		
<input type="text"/>		
Trustee/Asset Manager/Nominee/Record Owner's Name (If Different from Beneficial Owner Listed Above)		
<input type="text"/>		
Account#/Fund# (Not Necessary for Individual Filers)		
<input type="text"/>		

Social Security Number	or	Taxpayer Identification Number
<input type="text"/> - <input type="text"/> - <input type="text"/>		<input type="text"/> - <input type="text"/>
Telephone Number (Primary Daytime)		Telephone Number (Alternate)
<input type="text"/> - <input type="text"/> - <input type="text"/>		<input type="text"/> - <input type="text"/> - <input type="text"/>
Email Address		
<input type="text"/>		

24 **MAILING INFORMATION**

Address		
<input type="text"/>		
Address		
<input type="text"/>		
City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Foreign Province	Foreign Postal Code	Foreign Country Name/Abbreviation
<input type="text"/>	<input type="text"/>	<input type="text"/>

1 PART II: SCHEDULE OF TRANSACTIONS IN MENLO COMMON STOCK

2 A. Purchases or acquisitions of Menlo common stock (January 29, 2018 – July  
 3 24, 2018, inclusive), including purchases or acquisitions in or traceable to  
 4 Menlo’s IPO.

Trade Date(s) Month Day Year (List chronologically)	Number of Shares Purchased or Acquired	Total Purchase or Acquisition Price (Excluding commissions, taxes and fees)	Proof of Purchase/ Acquisition Enclosed
1. _____	1. _____	1. _____	<input type="checkbox"/> Y <input type="checkbox"/> N
2. _____	2. _____	2. _____	<input type="checkbox"/> Y <input type="checkbox"/> N
3. _____	3. _____	3. _____	<input type="checkbox"/> Y <input type="checkbox"/> N

11 IMPORTANT: (i) If any purchase listed covered a “short sale,” please mark Yes:  Yes

12 (ii) If you received shares through an acquisition or merger, please identify  
 13 the date, the share amount, and the company acquired:

14       /      /                                                                                            
 MM DD YYYY                      Merger Shares                      Company

15 B. Sales of Menlo common stock (January 29, 2018 – July 24, 2018, inclusive):

Trade Date Month Day Year	Number of Shares Sold	Total Sales Price (Excluding commissions, taxes and fees)	Proof of Sale Enclosed
1. _____	1. _____	1. _____	<input type="checkbox"/> Y <input type="checkbox"/> N
2. _____	2. _____	2. _____	<input type="checkbox"/> Y <input type="checkbox"/> N
3. _____	3. _____	3. _____	<input type="checkbox"/> Y <input type="checkbox"/> N

22 C. Number of Menlo common stock held at the close of trading on July 24, 2018:

23                       
 Proof of Position Enclosed:  Yes  No

24 **YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN THE**  
 25 **RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR**  
 26 **CLAIM.**

1 **IV. SUBMISSION TO JURISDICTION OF COURT AND**  
2 **ACKNOWLEDGMENTS**

3 I (We) submit this Proof of Claim under the terms of the Stipulation described in the Notice. I  
4 (We) also submit to the jurisdiction of the Superior Court of the State of California, County of San  
5 Mateo, with respect to my (our) claim as a Class Member and for purposes of enforcing the release set  
6 forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any  
7 judgment that may be entered in the Action. I (We) agree to furnish additional information to the  
8 Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other  
9 claim covering the same purchases, acquisitions or sales of Menlo common stock during the relevant  
10 period and know of no other person having done so on my (our) behalf.

11 **V. RELEASE**

12 1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully,  
13 finally, and forever settle, release, and discharge from the Released Claims each and all of the  
14 “Released Parties,” defined as Defendants and each and all of their Related Parties.

15 2. “Related Parties” means each of a Defendant’s past, present or future direct or indirect  
16 parents, subsidiaries, divisions, affiliates or joint ventures, as well as each of their respective present or  
17 former directors, officers, employees, partners, members, principals, agents, underwriters, insurers, co-  
18 insurers, reinsurers, controlling shareholders, attorneys, accountants, auditors, financial or investment  
19 advisors or consultants, banks or investment bankers, personal or legal representatives, predecessors,  
20 successors, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a  
21 controlling interest, any member of a Menlo Defendant’s immediate family, any trust of which any  
22 Menlo Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his or  
23 her family, and the legal representatives, heirs, successors in interest or assigns of the Defendants.

24 3. “Released Claims” means any and all claims (including Unknown Claims as defined  
25 below) against Defendants and their Related Parties, arising out of, relating to, or in connection with  
26 either: (i) the facts, events, transactions, acts, occurrences, statements, representations,  
27 misrepresentations, or omissions which were or could have been alleged in this Action, or (ii) the  
28 purchase, acquisition, holding, sale, or disposition of Menlo common stock purchased or otherwise

1 acquired pursuant and/or traceable to the Registration Statement and Prospectus issued in connection  
2 with Menlo’s January 29, 2018 IPO, including any claims for violations for §§11, 12(a)(2), or 15 of the  
3 Securities Act of 1933 and §10(b) of the Securities Exchange Act of 1934.

4 4. “Unknown Claims” means any and all Released Claims and potential claims against  
5 Defendants which Plaintiffs or any Class Member does not know or suspect to exist in their, his, her, or  
6 its favor as of the Effective Date, and any Released Claims against Plaintiffs which Defendants do not  
7 know or suspect to exist in their favor, which if known by them, him, her, or it might have affected  
8 their, his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released  
9 Claims and Released Defendants’ Claims, the Parties stipulate and agree that by operation of the Final  
10 Judgment, upon the Effective Date, the Plaintiffs and Defendants shall have expressly waived, and each  
11 Class Member shall be deemed to have waived, and by operation of the Final Judgment shall have  
12 expressly waived, the provisions, rights and benefits of Cal. Civ. Code §1542, which provides:

13 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
14 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**  
15 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**  
16 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
17 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**  
18 **DEBTOR OR RELEASED PARTY;**

19 and any and all provisions, rights, and benefits conferred by any law of any state or territory of the  
20 United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ.  
21 Code §1542. Plaintiffs and Class Members may hereafter discover facts in addition to or different from  
22 those which he, she, or it now knows or believes to be true with respect to the subject matter of the  
23 Released Claims, but Plaintiffs shall expressly fully, finally, and forever settle and release, and each  
24 Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final  
25 Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims,  
26 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed  
27 or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing  
28 or coming into existence in the future, including, but not limited to, conduct which is negligent,  
intentional, with or without malice, or a breach of any duty, law or rule, without regard to the  
subsequent discovery or existence of such different or additional facts. Plaintiffs and Defendants

1 acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of  
2 “Unknown Claims” in the definition of Released Claims and Released Defendants’ Claims was  
3 separately bargained for and was an essential element of the Settlement.

4 5. I (We) hereby warrant and represent that I (we) have not assigned or transferred or  
5 purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release  
6 or any other part or portion thereof.

7 6. I (We) hereby warrant and represent that I (we) have included information about all of  
8 my (our) transactions in Menlo common stock that occurred during the relevant period as well as the  
9 number of shares of Menlo common stock held by me (us) at the close of trading on July 24, 2018.

10 I (We) declare under penalty of perjury under the laws of the State of California that all of the  
11 foregoing information supplied on this Proof of Claim by the undersigned is true and correct.

12 Executed this \_\_\_\_\_ day of \_\_\_\_\_  
13 (Month/Year)

14 in \_\_\_\_\_  
15 (City) (State/Country)

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

18 \_\_\_\_\_  
19 (Type or print your name here)

20 \_\_\_\_\_  
21 (Capacity of person(s) signing,  
22 e.g., Beneficial Purchaser or Acquirer,  
23 Executor or Administrator)

24 **ACCURATE CLAIMS PROCESSING TAKES A**  
25 **SIGNIFICANT AMOUNT OF TIME.**  
26 **THANK YOU FOR YOUR PATIENCE.**

27 Reminder Checklist:

- 28 1. Please sign the above release and acknowledgment.
2. Remember to attach copies of supporting documentation.
3. **Do not send** originals of certificates or other documentation as they will not be returned.
4. Keep a copy of your Proof of Claim and all supporting documentation for your records.

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- 5. If you desire an acknowledgment of receipt of your Proof of Claim, please send it Certified Mail, Return Receipt Requested.
- 6. If you move, please send your new address to the address below.
- 7. **Do not use red pen or highlighter** on the Proof of Claim or supporting documentation.

**THIS PROOF OF CLAIM MUST BE SUBMITTED ONLINE OR MAILED NO LATER THAN \_\_\_\_\_, 2020, ADDRESSED AS FOLLOWS:**

*Menlo Securities Litigation Settlement*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box \_\_\_\_\_

Online Submissions: [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com)

# **EXHIBIT A-3**

1 ROBBINS GELLER RUDMAN  
& DOWD LLP  
2 JAMES I. JACONETTE (179565)  
655 West Broadway, Suite 1900  
3 San Diego, CA 92101  
Telephone: 619/231-1058  
4 619/231-7423 (fax)

5 Attorneys for Plaintiffs  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN MATEO

10 In re MENLO THERAPEUTICS INC.	)	Lead Case No. 18CIV06049
SECURITIES LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
11	)	
12 This Document Relates To:	)	Assigned for All Purposes to Dept. 16
	)	
13 ALL ACTIONS.	)	SUMMARY NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
_____	)	
14	)	EXHIBIT A-3
15	)	Judge: Honorable Richard H. DuBois
16	)	Dept: 16
17	)	Date Action Filed: 11/08/18
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1 **TO: ALL PERSONS AND ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED**  
2 **MENLO THERAPEUTICS INC. COMMON STOCK PURSUANT OR TRACEABLE**  
3 **TO THE REGISTRATION STATEMENT AND PROSPECTUS FILED IN**  
4 **CONNECTION WITH MENLO THERAPEUTICS INC.'S ("MENLO" OR THE**  
5 **"COMPANY") INITIAL PUBLIC OFFERING ("IPO") ON OR ABOUT JANUARY 29,**  
6 **2018<sup>1</sup>**

7 **THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER**  
8 **SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.**

9 YOU ARE HEREBY NOTIFIED that a hearing will be held on \_\_\_\_\_, 2020, at \_\_: \_\_  
10 \_\_.m., before the Honorable Richard H. DuBois at the Superior Court of California, County of San  
11 Mateo, Department 16, Courtroom 7A, 400 County Center, Redwood City, CA 94063, to determine  
12 whether: (1) the proposed settlement (the "Settlement") of the above-captioned action as set forth in the  
13 Stipulation of Settlement ("Stipulation")<sup>2</sup> for \$9,500,000.00 in cash should be approved by the Court as  
14 fair, reasonable, and adequate; (2) the Judgment as provided under the Stipulation should be entered;  
15 (3) to award Plaintiffs' Counsel attorneys' fees and expenses out of the Settlement Fund (as defined in  
16 the Notice of Proposed Settlement of Class Action ("Notice"), which is discussed below) and, if so, in  
17 what amount; (4) to pay Plaintiffs for representing the Class out of the Settlement Fund and, if so, in  
18 what amount; and (5) the Plan of Allocation should be approved by the Court as fair, reasonable, and  
19 adequate.

20 This Action is a consolidated securities class action brought on behalf of those Persons who  
21 purchased or acquired Menlo common stock pursuant or traceable to the Registration Statement and  
22 Prospectus for Menlo's IPO, against Menlo and certain of its officers, directors, and underwriters of  
23 Menlo's IPO (collectively, "Defendants") for, among other things, allegedly misstating and omitting  
24 material facts from the Registration Statement and Prospectus filed with the U.S. Securities and  
25 Exchange Commission in connection with the IPO. Plaintiffs allege that these purportedly false and  
26 misleading statements inflated the price of the Company's stock, resulting in damage to Class Members  
27 when the truth was revealed. Defendants deny all of Plaintiffs' allegations.

28 <sup>1</sup> For purposes of this Settlement only, the Class includes all persons or entities who purchased or  
otherwise acquired Menlo common stock between January 29, 2018 and July 24, 2018, inclusive.

<sup>2</sup> The Stipulation can be viewed and/or obtained at [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com). All  
capitalized terms used herein have the same meaning as the terms defined in the Stipulation.

1 IF YOU PURCHASED OR ACQUIRED MENLO COMMON STOCK BETWEEN  
2 JANUARY 29, 2018 THROUGH AND INCLUDING JULY 24, 2018, YOUR RIGHTS MAY BE  
3 AFFECTED BY THE SETTLEMENT OF THIS ACTION.

4 To share in the distribution of the Settlement Fund, you must establish your rights by submitting  
5 a Proof of Claim and Release form (“Proof of Claim”) by mail (**postmarked no later than**  
6 \_\_\_\_\_, **2020**) or online (**no later than** \_\_\_\_\_, **2020**). Your failure to submit your Proof of  
7 Claim by \_\_\_\_\_, 2020, will subject your claim to rejection and preclude you from receiving any of the  
8 recovery in connection with the Settlement of this Action. If you are a member of the Class and do not  
9 request exclusion therefrom, you will be bound by the Settlement and any judgment and release entered  
10 in the Action, including, but not limited to, the Judgment, whether or not you submit a Proof of Claim.

11 If you have not received a copy of the Notice, which more completely describes the Settlement  
12 and your rights thereunder (including your right to object to the Settlement), and a Proof of Claim, you  
13 may obtain these documents, as well as a copy of the Stipulation (which, among other things, contains  
14 definitions for the defined terms used in this Summary Notice) and other settlement documents, online  
15 at [www.MenloSecuritiesLitigation.com](http://www.MenloSecuritiesLitigation.com), or by writing to:

16 *Menlo Securities Litigation Settlement*  
17 c/o Gilardi & Co. LLC  
18 P.O. Box \_\_\_\_\_  
\_\_\_\_\_

19 Inquiries should NOT be directed to Defendants, the Court, or the Clerk of the Court.

20 Inquiries, other than requests for the Notice or for a Proof of Claim, may be made to Plaintiffs’

21 Counsel:

22 ROBBINS GELLER RUDMAN & DOWD LLP  
23 James I. Jaconette  
24 655 West Broadway, Suite 1900  
25 San Diego, CA 92101  
26 Telephone: 800/449-4900

27 IF YOU DESIRE TO BE EXCLUDED FROM THE CLASS, YOU MUST SUBMIT A  
28 REQUEST FOR EXCLUSION SUCH THAT IT IS **POSTMARKED BY** \_\_\_\_\_, **2020**, IN  
THE MANNER AND FORM EXPLAINED IN THE NOTICE. ALL MEMBERS OF THE CLASS

1 WHO HAVE NOT REQUESTED EXCLUSION FROM THE CLASS WILL BE BOUND BY THE  
2 SETTLEMENT EVEN IF THEY DO NOT SUBMIT A TIMELY PROOF OF CLAIM.

3 IF YOU ARE A CLASS MEMBER, YOU HAVE THE RIGHT TO OBJECT TO THE  
4 SETTLEMENT, THE PLAN OF ALLOCATION, THE REQUEST BY PLAINTIFFS' COUNSEL  
5 FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND/OR THE PAYMENT TO  
6 PLAINTIFFS FOR THEIR TIME AND EXPENSES. ANY OBJECTIONS MUST BE FILED WITH  
7 THE COURT AND SENT TO PLAINTIFFS' COUNSEL BY \_\_\_\_\_, 2020, IN THE  
8 MANNER AND FORM EXPLAINED IN THE NOTICE.

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DATED: \_\_\_\_\_

BY ORDER OF THE SUPERIOR COURT OF  
CALIFORNIA, COUNTY OF SAN MATEO  
THE HONORABLE RICHARD H. DUBOIS

# **EXHIBIT B**

1 ROBBINS GELLER RUDMAN  
& DOWD LLP  
2 JAMES I. JACONETTE (179565)  
655 West Broadway, Suite 1900  
3 San Diego, CA 92101  
Telephone: 619/231-1058  
4 619/231-7423 (fax)

5 Attorneys for Plaintiffs  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN MATEO

10 In re MENLO THERAPEUTICS INC. )  
SECURITIES LITIGATION )  
11 \_\_\_\_\_ )

Lead Case No. 18CIV06049

CLASS ACTION

12 This Document Relates To: )

Assigned for All Purposes to Dept. 16

13 ALL ACTIONS. )  
14 \_\_\_\_\_ )

JUDGMENT AND ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT

EXHIBIT B

Judge: Honorable Richard H. DuBois

Dept: 16

Date Action Filed: 11/08/18

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1           WHEREAS, the Court is advised that the Parties,<sup>1</sup> through their counsel, have agreed, subject to  
2 Court approval following notice to the Class and a hearing, to settle this Action upon the terms and  
3 conditions set forth in the Stipulation of Settlement dated March 26, 2020 (the “Stipulation”); and

4           WHEREAS, on \_\_\_\_\_, 2020, the Court entered its Order Preliminarily Approving  
5 Settlement and Providing for Notice, which preliminarily approved the Settlement, and approved the  
6 form and manner of notice to the Class of the Settlement, and said notice has been made, and the  
7 fairness hearing having been held; and

8           NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and proceedings  
9 herein, and it appearing to the Court upon examination that the Settlement set forth in the Stipulation is  
10 fair, reasonable, and adequate, and upon a Settlement Fairness Hearing having been held after notice to  
11 the Class of the Settlement to determine if the Settlement is fair, reasonable, and adequate and whether  
12 the Judgment should be entered in this Action;

13           **THE COURT HEREBY FINDS AND CONCLUDES THAT:**

14           A.     The provisions of the Stipulation, including definitions of the terms used therein, are  
15 hereby incorporated by reference as though fully set forth herein.

16           B.     This Court has jurisdiction of the subject matter of this Action and over all of the Parties  
17 and all Class Members for purposes of the Settlement.

18           C.     The form, content, and method of dissemination of notice given to the Class was  
19 adequate and reasonable and constituted the best notice practicable under the circumstances, including  
20 individual notice to all Class Members who could be identified through reasonable effort.

21           D.     Notice, as given, complied with the requirements of California law, satisfied the  
22 requirements of due process, and constituted due and sufficient notice of the matters set forth herein.

23           E.     The Settlement, as set forth in the Stipulation, is fair, reasonable, and adequate.

24 \_\_\_\_\_  
25 <sup>1</sup> As used herein, the term “Parties” means Plaintiffs Pavel Silvestrov and Hugh McKay (“Plaintiffs”),  
26 on behalf of themselves and the Class (as defined below), and Defendants Menlo Therapeutics Inc.  
27 (“Menlo” or the “Company”), Steven Basta, Kristine Ball, Paul Berns, Albert Cha, Ted Ebel, David  
28 McGirr, Aaron Royston, and Scott Whitcup (the “Individual Defendants” and with Menlo, the “Menlo  
Defendants”), and Jefferies LLC, Piper Sandler & Co. (formerly known as Piper Jaffray & Co.),  
Guggenheim Securities, LLC, and JMP Securities LLC (the “Underwriter Defendants”) (all,  
collectively, “Defendants”).

1 (i) The Settlement was negotiated at arm's length by Plaintiffs on behalf of the Class  
2 and by Defendants, all of whom were represented by highly experienced and skilled counsel. The case  
3 settled only after, among other things: (a) a mediation conducted by an experienced mediator who was  
4 familiar with this Action; (b) the exchange between the Plaintiffs and the Menlo Defendants of detailed  
5 mediation statements prior to the mediation which highlighted the factual and legal issues in dispute;  
6 (c) follow-up negotiations between the Plaintiffs and the Menlo Defendants with the assistance of the  
7 mediator; (d) Plaintiffs' Counsel's extensive investigation, which included, among other things, a  
8 review of Menlo's press releases, U.S. Securities and Exchange Commission filings, analyst reports,  
9 media reports, and other publicly disclosed reports and information about the Defendants; (e) the  
10 drafting and submission of detailed complaints; (f) motion practice; and (g) the review and analysis of  
11 over 2,100,000 pages of non-public documents produced by the Menlo Defendants. Accordingly, both  
12 the Plaintiffs and Defendants were well-positioned to evaluate the settlement value of this Action. The  
13 Stipulation has been entered into in good faith and is not collusive.

14 (ii) If the Settlement had not been achieved, both Plaintiffs and Defendants faced the  
15 expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either  
16 Plaintiffs' or Defendants' arguments, but notes these arguments as evidence in support of the  
17 reasonableness of the Settlement.

18 F. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the interest of  
19 the Class Members in connection with the Settlement.

20 G. Plaintiffs, all Class Members, and Defendants are hereby bound by the terms of the  
21 Settlement set forth in the Stipulation.

22 **IT IS HEREBY ORDERED THAT:**

23 1. The Settlement on the terms set forth in the Stipulation is finally approved as fair,  
24 reasonable, and adequate. The Settlement shall be consummated in accordance with the terms and  
25 provisions of the Stipulation. The Parties are to bear their own costs, except as otherwise provided in  
26 the Stipulation.

27 2. The Court hereby certifies this Action as a class action for purposes of this Settlement  
28 only, pursuant to California Code of Civil Procedure §382, on behalf of all persons and entities who

1 purchased or otherwise acquired Menlo common stock pursuant and/or traceable to the Registration  
2 Statement and Prospectus filed in connection with Menlo’s initial public offering (“IPO”) on or about  
3 January 29, 2018. For purposes of this Settlement only, the Class includes all Persons who purchased  
4 or otherwise acquired Menlo’s common stock between January 29, 2018 and July 24, 2018, inclusive.  
5 Excluded from the Class are: the Defendants (meaning, Menlo, the Individual Defendants, and the  
6 Underwriter Defendants) and their respective successors and assigns; past and current executive officers  
7 and directors of Menlo and the Underwriter Defendants; members of the immediate families of the  
8 Individual Defendants; the legal representatives, heirs, successors or assigns of the Individual  
9 Defendants; any entity in which any of the above excluded persons have or had a majority ownership  
10 interest; and any person who validly requests exclusion from the Class. The foregoing exclusion shall  
11 not cover “Investment Vehicles,” which for these purposes shall mean any investment company or  
12 pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds,  
13 fund of funds, private equity funds, real estate funds, and hedge funds, in which any Underwriter  
14 Defendant or any of its affiliates has or may have a direct or indirect interest or as to which any  
15 Underwriter Defendant or any of its affiliates may act as an investment advisor, general partner,  
16 managing member, or in other similar capacity, other than an investment vehicle of which the  
17 Underwriter Defendant or any of its affiliates is a majority owner or holds a majority beneficial interest  
18 and only to the extent of such Underwriter Defendant’s or affiliate’s ownership or interest. Also  
19 excluded from the Class are those Persons who would otherwise be Class Members but who timely and  
20 validly exclude themselves therefrom.

21 3. All Released Parties as defined in the Stipulation are released in accordance with, and as  
22 defined in, the Stipulation.

23 4. Upon the Effective Date, Plaintiffs and each Class Member shall be deemed to have, and  
24 by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and  
25 discharged all Released Claims against the Released Parties, whether or not such Class Member  
26 executes and delivers a Proof of Claim.

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1           5.       Upon the Effective Date, each of the Defendants shall be deemed to have, and by  
2 operation of this Judgment shall have, fully, finally, and forever released Plaintiffs, Plaintiffs' Counsel,  
3 and each and all of the Class Members from all Released Defendants' Claims.

4           6.       All Class Members who have not objected to the Settlement in the manner provided in  
5 the Notice of Proposed Settlement of Class Action ("Notice") are deemed to have waived any  
6 objections by appeal, collateral attack, or otherwise.

7           7.       All Class Members who have failed to properly submit requests for exclusion (requests  
8 to opt out) from the Class are bound by the terms and conditions of the Stipulation and this Judgment.

9           8.       The requests for exclusion by the persons or entities identified in Exhibit A to this  
10 Judgment are accepted by the Court.

11          9.       All other provisions of the Stipulation are incorporated into this Judgment as if fully  
12 rewritten herein.

13          10.      Plaintiffs and all Class Members are hereby barred and enjoined from instituting,  
14 commencing, maintaining, or prosecuting in any court or tribunal any of the Released Claims against  
15 any of the Released Parties.

16          11.      Neither the Stipulation nor the Settlement, nor any act performed or document executed  
17 pursuant to or in furtherance of the Stipulation or the Settlement:

18               (a)     shall be offered or received against Defendants as evidence of, or evidence in  
19 support of, a presumption, concession, or admission with respect to any liability, negligence, fault, or  
20 wrongdoing, or in any way referred to for any other reason as against Defendants, in any civil, criminal,  
21 or administrative action or proceeding, other than such proceedings as may be necessary to effectuate  
22 the provisions of the Stipulation; however, Defendants may refer to it to effectuate the liability  
23 protection granted them hereunder;

24               (b)     shall be construed as or received in evidence as an admission, concession, or  
25 presumption against Plaintiffs or any of the Class Members that any of their claims are without merit, or  
26 that any defenses asserted by Defendants have any merit, or that damages recoverable in this Action  
27 would have exceeded the Settlement Fund; and

28

1 (c) Notwithstanding the foregoing, Defendants, Plaintiffs, Class Members and/or the  
2 Released Parties may file the Stipulation and/or this Judgment in any action that may be brought against  
3 them in order to support a defense or counterclaim based on principles of *res judicata*, collateral  
4 estoppel, release, good faith settlement, judgment bar, reduction, or any other theory of claim preclusion  
5 or issue preclusion or similar defense or counterclaim.

6 12. The Court hereby finds and concludes that due and adequate notice was directed to all  
7 Persons and entities who are Class Members advising them of the Plan of Allocation and of their right  
8 to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are Class  
9 Members to be heard with respect to the Plan of Allocation.

10 13. The Court hereby finds and concludes that the formula for the calculation of the claims  
11 of Authorized Claimants, which is set forth in the Notice sent to Class Members, provides a fair and  
12 reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the  
13 Stipulation among Class Members, with due consideration having been given to administrative  
14 convenience and necessity.

15 14. Nothing in the Settlement restricts the ability of any Party to advocate in favor of or  
16 against the applicability of any offset to any claims asserted in any other action based on any amount  
17 paid to Authorized Claimants through the Settlement.

18 15. The Court hereby awards Plaintiffs' Counsel attorneys' fees of \$ \_\_\_\_\_, plus  
19 Plaintiffs' Counsel's expenses in the amount of \$ \_\_\_\_\_, together with the interest earned  
20 thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid.  
21 The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is  
22 fair and reasonable given the contingent nature of the case and the substantial risks of non-recovery, the  
23 time and effort involved, and the result obtained for the Class.

24 16. The awarded attorneys' fees and expenses and interest earned thereon shall immediately  
25 be paid to Lead Counsel from the Settlement Fund subject to the terms, conditions, and obligations of  
26 the Stipulation, which terms, conditions, and obligations are incorporated herein.

27 17. Payments are awarded to Plaintiffs Pavel Silvestrov and Hugh McKay in the amounts of  
28 \$ \_\_\_\_\_ and \$ \_\_\_\_\_, respectively. Such payment is appropriate considering their active participation

1 as Plaintiffs in this Action, as attested to by the declarations submitted to the Court. Such payment is to  
2 be made from the Settlement Fund.

3 18. In the event that the Stipulation is terminated in accordance with its terms: (i) this  
4 Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Action shall  
5 proceed as provided in the Stipulation.

6 19. Without affecting the finality of this Judgment in any way, this Court retains continuing  
7 jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement  
8 Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and  
9 determining applications for attorneys' fees, interest, and expenses in the Action; and (d) all parties  
10 hereto for the purpose of construing, enforcing, and administering the Stipulation.

11 IT IS SO ORDERED.

12 DATED: \_\_\_\_\_

\_\_\_\_\_  
13 THE HONORABLE RICHARD H. DUBOIS  
14 JUDGE OF THE SUPERIOR COURT

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NAME	FIRM	EMAIL
David W. Hall	HEDIN HALL LLP Four Embarcadero Center Suite 1400 San Francisco, CA 94104 Telephone: 415/766-3534 415/402-0058 (fax)	dhall@hedinhall.com

**COUNSEL FOR DEFENDANTS:**

NAME	FIRM	EMAIL
Keith E. Eggleton, Rodney G. Strickland Ryan S. Wolf	WILSON SONSINI GOODRICH & ROSATI Professional Corporation 650 Page Mill Road Palo Alto, CA 94304-1050 Telephone: 650/493-9300 650/565-5100 (fax)	keggleton@wsgr.com rstrickland@wsgr.com rwolf@wsgr.com
Charlene S. Shimada Lucy Wang	MORGAN, LEWIS & BOCKIUS LLP One Market, Spear Street Tower San Francisco, CA 94105-1596 Telephone: 415/442-1000 415/442-1001 (fax)	shimada@morganlewis.com lucy.wang@morganlewis.com

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 27, 2020, at San Diego, California.

  
\_\_\_\_\_  
JUNE ITO