

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

NICHOLAS W. FULTON, derivatively  
on behalf of OVASCIENCE, INC.,

Plaintiff,

vs.

MICHELLE DIPP, RICHARD  
ALDRICH, JEFFREY D. CAPELLO,  
MARY FISHER, JOHN HOWE, III,  
MARC KOZIN, THOMAS MALLEY,  
and JOHN SEXTON,

Defendants,

and,

OVASCIENCE, INC., a Delaware  
corporation,

Nominal Defendant.

Civil Action No: 1:17-cv-00869-RDM

**STIPULATION OF COMPROMISE  
AND SETTLEMENT**

**STIPULATION OF COMPROMISE AND SETTLEMENT**

This Stipulation of Compromise and Settlement (“Stipulation”), dated May 23, 2018, is entered into among and between Plaintiff Nicholas W. Fulton (“Plaintiff” or “Mr. Fulton”), individually and derivatively on behalf of OvaScience, Inc. (“OvaScience” or the “Company”); individual defendants Michelle Dipp, Richard Aldrich, Jeffrey D. Capello, Mary Fisher, John Howe, III, Marc Kozin, Thomas Malley, and John Sexton (together, the “Individual Defendants”); and nominal defendant OvaScience, by and through their undersigned attorneys (Plaintiff, OvaScience, and the Individual Defendants together, the “Settling Parties”).

This Stipulation is intended by the Settling Parties to fully, finally, and forever compromise, resolve, discharge, and settle all claims in the above-captioned action (the “Action”) and dismiss the Action with prejudice, upon the terms set forth below and subject to the approval of the United States District Court for the District of Delaware pursuant to Fed. R. Civ. P. 23.1(c).<sup>1</sup>

### **RECITALS**

WHEREAS, on April 4, 2017, Jeffrey M. Norton of Newman Ferrara LLP, on behalf of Plaintiff sent a letter (the “Demand”) to the Board of Directors (the “Board”) of OvaScience concerning the Company’s director compensation program;

WHEREAS, the Demand stated that OvaScience’s current compensation plan, in which all non-employee directors participate (the “2015 Plan”), was never approved by OvaScience stockholders;

WHEREAS, the Demand asserted, among other things, that OvaScience’s compensation policies and practices have caused non-employee directors to be compensated at an excessive level; that the Board’s actions constitute a waste of corporate assets; that the compensation practices and policies constitute a breach of fiduciary duty; and that the compensation levels amount to unjust enrichment for

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<sup>1</sup> All capitalized terms not otherwise defined are defined in Paragraph 1 herein.

the non-employee directors who agree to accept the excessive levels of compensation they granted themselves;

WHEREAS, the Demand sought, among other things, for the Board to take “all action necessary,” including revising the awards of cash and equity, and imposing meaningful limitations on total compensation granted under the 2015 Plan, until a newly-revised director compensation policy may be proposed by the Company and reviewed, considered, and approved by OvaScience stockholders prior to its adoption;

WHEREAS, on April 25, 2017, OvaScience, through its counsel, responded to the Demand by letter (the “Demand Rejection”) wherein the Company rejected the assertions contained in the Demand and declined to take any of the actions suggested by the Plaintiff;

WHEREAS, on June 30, 2017, Mr. Fulton commenced this Action in the United States District Court for the District of Delaware against the Individual Defendants and nominal defendant OvaScience (together, the “Defendants”) by filing the Verified Shareholder Derivative Complaint alleging claims of breach of fiduciary duty, waste of corporate assets, unjust enrichment, and violation of Section 14(a) of the Securities Exchange Act of 1934 (the “Complaint”).

WHEREAS, on September 19, 2017, Defendants filed a motion to transfer the Action to the United States District Court for the District of Massachusetts

pursuant to 28 U.S.C. § 1404(a) (the “Motion to Transfer”), on the grounds that a later-filed case was pending in the District of Massachusetts alleging an overlapping, substantially similar claim concerning compensation awarded to non-employee directors of OvaScience (the “Chiu Action”);

WHEREAS, on September 26, 2017, the plaintiffs in the Chiu Action filed an amended complaint which removed all of their previous claims and allegations concerning the compensation awarded to non-employee directors of OvaScience;

WHEREAS, based on the absence of overlapping claims between the Action and the amended complaint in the Chiu Action, Defendants decided to withdraw their then-pending Motion to Transfer;

WHEREAS, in exchange for the Defendants’ agreement to waive formal service of process, and in light of the Defendants’ agreement to withdraw the Motion to Transfer, Plaintiff agreed, and the Court approved, that the Defendants would have until October 12, 2017, to respond to the Complaint in the Action;

WHEREAS, on October 12, 2017, Defendants filed their Motion to Dismiss the Verified Shareholder Derivative Complaint and Opening Brief in Support of the Defendants’ Motion to Dismiss the Verified Shareholder Derivative Complaint, seeking dismissal of the Action pursuant to Fed. R. Civ. P. 12(b)(6), 12(b)(1), and 23.1, and said motion was fully briefed by December 8, 2017, and is currently pending before the Court;

WHEREAS, after briefing the Defendants' motion to dismiss, the Parties began discussing potential resolution of the Action and the allegations raised in the Complaint. As part of that effort, the Parties engaged in arm's-length negotiations concerning the Demand and the allegations asserted in the Complaint. In particular, the Parties' discussions focused on OvaScience's non-employee director compensation policies and practices, director-specific limits on overall compensation, corporate governance reforms, stockholder approval of a revised compensation policy, and the scope and substance of proxy discussions and disclosures related to a stockholder proposal and vote;

WHEREAS, following the aforementioned arm's-length negotiations, the Parties reached an agreement in principle providing for the settlement of all claims that were or could have been asserted by the Plaintiff, individually and on behalf of OvaScience, against the Defendants in the Action, on the terms and subject to the conditions set forth below in this Stipulation (the "Settlement");

WHEREAS, Defendants deny all of the assertions in the Demand and all allegations of wrongdoing in the Complaint, including Plaintiff's assertions that the Individual Defendants failed to perform their duties when awarding compensation to the non-employee directors;

WHEREAS, solely to avoid the costs, disruption, and distraction of litigation, and without admitting the validity of any assertions or allegations made

either in the Demand, the Complaint, or the Action, or any liability with respect thereto, Defendants have concluded that it is desirable that the Action be settled on the terms reflected in this Stipulation;

**TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff (on behalf of himself and derivatively on behalf of OvaScience) and Defendants, each by and through their respective counsel, subject to the approval of the Court pursuant to Fed. R. Civ. P. 23.1(c), that the Released Claims shall be and hereby are compromised, settled, discontinued, and dismissed with prejudice, as to all Parties, upon the terms and subject to the conditions set forth herein as follows:

**Definitions**

1. As used in this Stipulation, the following terms have the meanings specified below:
  - a) “Court” means the United States District Court for the District of Delaware.
  - b) “Effective Date” means the date by which all of the events and conditions specified in Paragraph 24 herein have been met and have occurred.
  - c) “Final” means the expiration of all time to seek appeal or other review of the Judgment, or if any appeal or other review of such Judgment is filed

and not dismissed, after such Judgment is upheld on appeal in all material respects and is no longer subject to appeal, reargument, or review. For the avoidance of doubt, a modification or reversal on appeal of any amount awarded pursuant to the Fee and Expense Application shall not constitute a material change.

d) “Judgment” means the Order and Final Judgment entered by the Court dismissing this Action with prejudice, substantially in the form annexed hereto as Exhibit C.

e) “Notice” means the Notice of Pendency of Settlement of Derivative Action, substantially in the form annexed hereto as Exhibit B.

f) “Plaintiff’s Counsel” means Newman Ferrara LLP, Rigrodsky & Long, P.A., and Kranenburg.

g) “Released Claims” means and includes any and all claims for relief or causes of action, debts, demands, rights, liabilities, losses, and claims whatsoever, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, or known and Unknown Claims, that have been or could have been or in the future might be asserted by Plaintiff, or any other OvaScience stockholder, or any other person or entity acting or purporting to act on behalf of OvaScience, in the Action against the Released Persons, based on the facts, transactions, events, occurrences, acts, disclosures, statements, or omissions that were asserted in the Action or could have

been asserted based on the facts alleged in the Action against Defendants pertaining to any past or current claims, known or unknown, relating to the director compensation practices and policies alleged in the Complaint or any other claims alleged in the Complaint; provided, however, that it is understood that “Released Claims” and any release provided by this Settlement shall not include: (i) any claims to enforce the Settlement or this Stipulation; and (ii) any claims by Defendants or any other insured to enforce their rights under any contract or policy of insurance.

h) “Released Persons” means all of the Defendants and each of their respective past or present subsidiaries, divisions, parents, affiliates, trustees, successors, predecessors, administrators, representatives, officers, executives, directors, agents, employees, attorneys, advisors, investment advisors, accountants, consultants, insurers, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest.

i) “Releasing Persons” means Plaintiff (both individually and derivatively on behalf of OvaScience), any other current or former OvaScience stockholder acting or purporting to act on behalf of OvaScience, and OvaScience.

“Releasing Person” means, individually, any of the Releasing Persons.

j) “Settlement Hearing” means the hearing set by the Court to consider final approval of the Settlement.



k) “Settling Parties” or “Parties” means, collectively, Plaintiff (on behalf of himself and derivatively on behalf of OvaScience) and Defendants.

“Settling Party” or “Party” means, individually, any of the Settling Parties.

l) “Unknown Claims” means any Released Claim(s) which any of Plaintiff or Defendants do not know of or suspect to exist in his, her, or its favor as of the date of the execution of this Stipulation, including without limitation those which, if known, might have affected the decision to enter into the Settlement.

With respect to any and all Released Claims, the Parties agree that upon the Effective Date, the Parties expressly and all Releasing Persons shall be deemed to have waived the provisions, rights, and benefits conferred by or under California Civil Code section 1542, or any other law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code section 1542, which provides:

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

The Parties acknowledge that they may hereafter discover facts in addition to or different from those now known or believed to be true by them, with respect to the subject matter of the Released Claims, but that it is the intention of the Parties to completely, fully, finally, and forever compromise, settle, release, discharge, and

extinguish any and all Released Claims, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which do not exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge that the foregoing waiver was separately bargained for and is a key element of this Stipulation of which this release is a part, and was relied upon by each and all of the Defendants in entering into this Settlement.

### **Terms of the Settlement**

2. Subject to their fiduciary duties, the Board has considered or shall consider the adoption of, or revisions to, any compensation plans, programs, policies, or arrangements that address the Company's non-employee director compensation plan to the extent necessary to effectuate and implement the changes, including certain changes to corporate governance described herein ("Revised Policies and Practices"). If any of the Revised Policies and Practices listed herein conflict with any existing external law, rule, or regulation (including, without limitation, regulations or rules of any stock exchange on which OvaScience is listed), the Board shall not be required to implement or maintain any such Revised Policy and Practices. However, this shall not affect or eliminate the obligation to implement and/or maintain (as applicable) the remaining Revised Policies and Practices.

3. The Board agrees that, at the Company's next annual stockholder meeting following the Effective Date (*i.e.*, the 2018 Annual Stockholder Meeting), the Company shall present a binding proposal to the Company's stockholders to approve a new director compensation plan (the "Proposal").

4. The Proposal, which shall be approved and recommended by the Board, will establish a specified amount of overall compensation payable to existing and newly-appointed non-employee directors, as follows:

a) each incumbent non-employee director's total annual compensation, including all cash (inclusive of fees awarded for board and committee service) and equity awards (based on grant-date fair value), will not exceed \$300,000;

b) each newly-appointed non-employee director's total annual compensation, including all cash (inclusive of fees awarded for board and committee service) and equity awards (based on grant-date fair value), will not exceed \$600,000; and

c) so long as annual changes to the cash and/or equity components of compensation remain within the overall limits, the Board shall have flexibility to alter specific amounts.

5. The Proposal will also include adoption of a mandatory holding period for all new equity awards. As part of this policy, shares purchased upon

exercise of an initial equity grant or annual equity grant granted following the adoption by the Board and approval by the stockholders of this policy will be subject to a resale restriction ending on the earlier of such non-employee director's termination of service as a non-employee director and the seven-year anniversary of the date of grant of the option (the "Holding Period"); provided, however, that the Holding Period will not apply to: (i) any shares retained by the Company as a result of any net exercise of the options to cover the option exercise price, or (ii) any shares sold by the non-employee director to cover any taxes associated with the exercise of the option. The Company may also allow for exercise and holding of "after-tax" shares if desired. The mandatory stock-ownership policy shall be administered and monitored by OvaScience's principal financial officer under the direction of the Board's Compensation Committee.

6. The Proposal will include a full description of the amended and/or revised compensation plan, disclosures explaining the process of formulating the amended and/or revised compensation plan, and will include a list of the Company's currently-identified peer group. Any adjustments made to the compensation program after 2018 will be based on a current peer group assessment and current best practices. The Proposal will also include a full description of the new option holding period and will include flexibility to alter the compensation plan after 2018 within the proposed limits identified in the Proposal.

7. Finally, if the Proposal is approved by OvaScience's stockholders, the Board agrees that the limits on total annual non-employee director compensation of the amended and/or revised compensation plan, as well as the new equity grant holding requirements, will remain in effect for no less than three (3) years unless amended and approved by OvaScience stockholders.

8. Further, in the course of carrying out the amended and/or revised compensation plan described in the Proposal and upon considering changes to the amended and/or revised compensation plan described in the Proposal in the future, OvaScience agrees to adopt and/or continue to abide by the following practices:

- a) in re-evaluating the compensation program, including the overall limits on Director compensation, the Board (or a committee thereof) shall assess and be guided by compensation paid to non-employee directors of peer group companies and current best practices;
- b) the Company will disclose additional compensation awarded to non-employee directors in the Company's filings with the U.S. Securities and Exchange Commission as required by applicable rules and regulations; and
- c) OvaScience stockholders will have the opportunity to vote on director compensation and options holding periods every three

(3) years or sooner in the event annual limits or options holding periods need to change.

**Notice and Approval of the Settlement**

9. Within five (5) business days of the execution of this Stipulation, the Parties shall submit this Stipulation together with its exhibits to the Court, and shall apply for entry of the proposed Scheduling Order with Respect to Notice and Settlement Hearing (the “Scheduling Order”), substantially in the form of Exhibit A attached hereto, requesting: (i) approval of the manner of notice to OvaScience stockholders substantially in the form attached hereto as Exhibit B; (ii) the Court’s consideration of the proposed Settlement and Plaintiff’s Fee and Expense Application; and (iii) a date for the Settlement Hearing.

10. Notice to OvaScience stockholders shall consist of the Notice of Pendency of Settlement of Derivative Action (the “Notice”), substantially in the form attached hereto as Exhibit B, and shall be provided to OvaScience stockholders as follows:

a) Within ten (10) business days after the entry of the Scheduling Order, OvaScience shall cause to mail the Notice to all record OvaScience stockholders at their respective addresses currently set forth in OvaScience’s stock records. All record holders who were not also the beneficial owners of the shares of OvaScience common stock held by them of record shall be requested to forward

the Notice to the beneficial owners of those shares. The Company shall use reasonable efforts to give notice to such beneficial owners by (i) making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners, or (ii) mailing additional copies of the Notice to beneficial owners as reasonably requested by record holders who provide names and addresses for such beneficial holders; and

b) Within ten (10) business days after the entry of the Scheduling Order, Plaintiff's Counsel (specifically Newman Ferrara LLP) shall post copies of the Notice and this Stipulation on its website.

11. Ten (10) business days prior to the Settlement Hearing, counsel for Defendants shall serve on counsel for the Plaintiff and file with the Court an affidavit with respect to the preparation and mailing of the Notice, and Plaintiff's Counsel shall serve on counsel for Defendants and file with the Court an affidavit with respect to posting the Notice and Stipulation on the website of Plaintiff's Counsel.

12. OvaScience, on behalf of Defendants, shall be responsible for all costs associated with mailing the Notice pursuant to Paragraph 10(a) herein.

13. The Parties agree that the content and manner of notice provided for in this Stipulation constitutes adequate and reasonable notice to OvaScience stockholders pursuant to applicable law.

14. Pending the Court's determination as to final approval of the Settlement, Plaintiff agrees to stay the Action and to refrain from initiating any other proceedings relating to the subject matter of the Action other than those proceedings related to the Settlement of this Action.

15. The Parties will request the Court to order in the Scheduling Order that, pending final determination of whether the Settlement should be approved, Plaintiff and all OvaScience stockholders are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claim against Defendants or any of the Released Persons.

16. The Parties and their attorneys agree to use their individual and collective best efforts to obtain Court approval of the Stipulation. The Parties and their attorneys further agree to use their individual and collective best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, the Stipulation provided for hereunder and the dismissal of the Action.

**Attorneys' Fees and Expenses**

17. Plaintiff's Counsel may submit an application for an award of attorneys' fees and reimbursement of expenses and an incentive award for Plaintiff



(collectively, the “Fee and Expense Application”), and that the Court in the Action may retain jurisdiction for this purpose.

18. Plaintiff agrees not to seek, and Defendants agree not to oppose, a Fee and Expense Application not exceeding three-hundred thousand dollars (\$300,000), inclusive of any incentive award for Plaintiff. Defendants will abide by any Court order resulting therefrom, subject to the right to obtain a refund of any amounts awarded if the Settlement is reversed or modified on appeal or by collateral attack.

19. The Parties represent that their agreement as to the amount of fees and expenses for Plaintiff’s Counsel, and the amount of any incentive award for Plaintiff, was the result of arm’s-length negotiations that occurred wholly independent from and subsequent to the “Terms of the Settlement” reflected in this Stipulation. *See* Paragraphs 2-8, pp. 10-14, *supra*.

20. Any failure of the Court to approve the Fee and Expense Application, in whole or in part, shall not affect the remainder of the Settlement, which shall remain binding on Plaintiff (both individually and derivatively on behalf of OvaScience).

21. Except as ordered by the Court in any order resulting from the Fee and Expense Application, Defendants shall have no obligation to pay or reimburse any fees, expenses, costs, or damages alleged or incurred by Plaintiff, by

OvaScience stockholders, or by their attorneys, experts, advisors, agents, representatives, heirs, successors or assigns, or any person, firm, trust, corporation, officer, director or other individual or entity in which Plaintiff has a controlling interest with respect to the Released Claims or the Action.

### **Releases**

22. Upon the Effective Date, the Releasing Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims (including Unknown Claims) against the Released Persons; provided, however, that such release shall not affect any claims to enforce the terms of this Stipulation.

23. Upon the Effective Date, the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against Plaintiff and Plaintiff's Counsel; provided, that such release shall not affect any claims to enforce the terms of this Stipulation.

### **Conditions and Termination of the Settlement**

24. The Settlement shall be conditioned on the occurrence of all of the following events:

- a) Court approval of the Settlement following notice to OvaScience stockholders as provided for herein, and the Settlement Hearing;
- b) entry of the Judgment in the Action approving the proposed Settlement and providing for the dismissal with prejudice of the Action and approving the release of the Released Claims;
- c) the dismissal with prejudice of the Action; and
- d) the passing of the date upon which the Judgment becomes Final.

25. If any of the conditions listed in Paragraph 24 herein are not met, this Stipulation shall be null and void and of no force and effect. In such case, the Settling Parties shall be restored to their respective positions on the date immediately prior to the execution date of this Stipulation, this Stipulation shall not be deemed to constitute an admission of fact by any Settling Party, and neither the existence of this Stipulation, nor its contents shall be admissible in evidence or be referred to for any purpose in the Action or in any litigation or judicial proceeding.

**Dismissal of the Action**

26. If the Court approves the Stipulation, the Parties shall promptly request the Court to enter the proposed Judgment, substantially in the form annexed hereto as Exhibit C.

**No Admission**

27. This Stipulation reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Stipulation nor the releases given herein, nor any consideration, nor any actions taken to carry out this Stipulation are intended to be, nor may they be deemed or construed to be, an admission or concession of liability (or lack thereof), or the validity of any claim, or defense, or of any point of fact or law on the part of any Party hereto regarding those facts that have been or might have been alleged in the Action or in any other proceeding. Defendants and the Released Persons may file the Stipulation and/or Judgment in any action that has been or may be brought against them in order to support a claim or defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

**Miscellaneous Provisions**

28. This Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware without regard to Delaware's principles

governing choice of law. The Parties agree that any dispute arising out of or relating in any way to this Stipulation shall not be litigated or otherwise pursued in any forum or venue other than the Court, notwithstanding any potential subsequent appeal, and the Parties expressly waive any right to demand a jury trial as to any such dispute.

29. This Stipulation may be modified or amended only by a writing, signed by all of the signatories hereto, that refers specifically to this Stipulation.

30. Plaintiff's Counsel represents that Plaintiff is a stockholder of the Company and has been a stockholder at all relevant times.

31. This Stipulation may be executed in any number of counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. The executed signature page(s) from each counterpart may be joined together and attached and will constitute one and the same instrument.

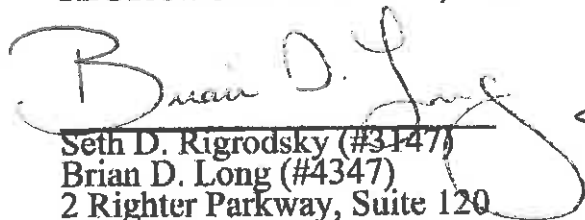
32. This Stipulation embodies and represents the full agreement of the Parties and supersedes any and all prior agreements and understandings relating to the subject matter hereof between or among any of the Parties hereto.

33. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

34. Notwithstanding the entry of the Judgment, the Court shall retain jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of the Stipulation, and all Parties submit to the jurisdiction of the Court for purposes of implementing, enforcing, and interpreting this Stipulation.

IN WITNESS WHEREOF, it is hereby agreed by the undersigned as of the date noted above.

**RIGRODSKY & LONG, P.A.**



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*Attorneys for Defendants*

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

NICHOLAS W. FULTON, derivatively  
on behalf of OVASCIENCE, INC.,

Plaintiff,

vs.

Civil Action No: 1:17-cv-00869-RDM

MICHELLE DIPP, RICHARD  
ALDRICH, JEFFREY D. CAPELLO,  
MARY FISHER, JOHN HOWE, III,  
MARC KOZIN, THOMAS MALLEY,  
and JOHN SEXTON,

Defendants,

and,

OVASCIENCE, INC., a Delaware  
corporation,

Nominal Defendant.

**SCHEDULING ORDER WITH RESPECT  
TO NOTICE AND SETTLEMENT HEARING**

WHEREAS, the Parties to the above-captioned action (the “Action”) have entered into a Stipulation of Compromise and Settlement dated May 23, 2018 (the “Stipulation”), which sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the Action (the “Settlement”), subject to review and approval by this Court pursuant to Fed. R. Civ. P. 23.1 and upon notice of the current stockholders of nominal defendant OvaScience, Inc. (“OvaScience” or the “Company”);

WHEREAS, the Court has read and considered the Stipulation and the accompanying documents; and

WHEREAS all Parties have consented to the entry of this Order.

NOW, upon application of the Parties, after review and consideration of the Stipulation filed with the Court and the exhibits annexed thereto,

IT IS HEREBY ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2018 as follows:

1. For purposes of this Scheduling Order, the Court incorporates by reference the definitions in the Stipulation and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation unless otherwise defined herein.

2. A hearing (the “Settlement Hearing”) shall be held on \_\_\_\_\_, 2018 at \_\_\_\_ a.m. / p.m., in the United States Courthouse, 235 N. Washington Avenue, Scranton, Pennsylvania, 18503, to:

(i) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate and in the best interests of OvaScience and its current stockholders; (ii) determine whether the Court should finally approve the Stipulation and enter the Order and Final Judgment (the “Judgment”) as provided in the Stipulation, dismissing the Action with prejudice and extinguishing and releasing the Released Claims; (iii) hear and



determine any objections to the proposed Settlement; (iv) determine whether the Court should approve Plaintiff's Fee and Expense Application and Incentive Award for Plaintiff; (v) rule on such other matters as the Court may deem appropriate.

3. The Settlement Hearing may be adjourned by the Court from time to time without further notice to anyone other than the Parties to the Action and any Objectors (as defined herein).

4. The Court reserves the right to approve the Stipulation at or after the Settlement Hearing with such modifications as may be consented to by the Parties and without further notice.

5. The Court approves, in form and content, the Notice of Pendency of Settlement of Derivative Action (the "Notice") filed by the Parties with the Stipulation as Exhibit B and finds that the giving of notice substantially in the manner set forth herein meets the requirement of Fed. R. Civ. P. 23.1 and due process, and is the best notice practicable under the circumstances.

6. Within ten (10) business days after the entry of this Scheduling Order, OvaScience shall mail or cause to be mailed the Notice, substantially in the form filed herewith, to all record OvaScience stockholders at their respective addresses currently set forth in OvaScience's stock records. All record holders who were not also the beneficial owners of the shares of OvaScience common stock held by them

of record shall be requested to forward the Notice to the beneficial owners of those shares. The Company shall use reasonable efforts to give notice to such beneficial owners by: (i) making additional copies of the Notice available to any record holder who, prior to the Settlement Hearing, requests the same for distribution to beneficial owners, or (ii) mailing or causing to be mailed additional copies of the Notice to beneficial owners as reasonably requested by record holders who provide names and addresses for such beneficial holders. OvaScience, on behalf of the Individual Defendants, shall be responsible for all costs associated with the mailing of the Notice. If additional notice is required by the Court, then the cost and administration of such additional notice will be borne by OvaScience on behalf of the Individual Defendants.

7. Within ten (10) business days after the entry of this order, Newman Ferrara LLP shall post copies of the Notice and the Stipulation on its website ([www.nflfp.com](http://www.nflfp.com)).

8. Ten (10) business days prior to the Settlement Hearing, Defendants' Counsel shall serve on counsel in the Action and file with the Court an appropriate affidavit with respect to the preparation and mailing of the Notice, and Plaintiff's Counsel shall serve on counsel in the Action and file with the Court an appropriate affidavit with respect to posting of the Notice and Stipulation.

9. As set forth in the Notice, any record or beneficial stockholder of OvaScience who objects to the Stipulation, the proposed Judgment to be entered, the Fee and Expense Application, and/or the Incentive Award for Plaintiff who wishes to be heard (“Objector”), may appear in person or by his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon, unless he, she, or it has, no later than ten (10) calendar days before the Settlement Hearing (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), filed with the Clerk of Court for the United States District Court for the District of Delaware, United States Courthouse, 844 N. King Street, Wilmington, Delaware 19801, and served (electronically through the Court’s electronic filing system, by hand, or by overnight mail) on Plaintiff’s Counsel and Defendants’ Counsel, at the addresses listed below, the following: (i) proof of current ownership of OvaScience stock; (ii) a written notice of the Objector’s intention to appear, including identifying, if represented, the Objector’s counsel; (iii) a detailed statement of the objections to any matter before the Court; and (iv) a detailed statement of all of the grounds thereon and the reasons for the Objector’s desire to appear and to be heard, as well as all documents or writings which the Objector

desires the Court to consider. In addition to the aforementioned Court address, the addresses to which such information should be sent (electronically through the Court's electronic filing system, by hand, or by overnight mail) are as follows:

Brian D. Long  
RIGRODSKY & LONG, P.A.  
2 Righter Parkway, Suite 120  
Wilmington, DE 19803

Jeffrey M. Norton  
NEWMAN FERRARA LLP  
1250 Broadway, 27th Floor  
New York, NY 10001

*Attorneys for Plaintiff*

-and-

Patricia L. Enerio  
Aaron M. Nelson  
HEYMAN ENERIO GATTUSO & HIRZEL LLP  
300 Delaware Avenue  
Suite 200  
Wilmington, DE 19801

John F. Sylvia  
Matthew D. Levitt  
Rebecca L. Zeidel  
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.  
One Financial Center  
Boston, MA 02111

*Attorneys for Defendants and  
Nominal Defendant OvaScience, Inc.*

10. Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection (including the right to appeal), unless the Court in its discretion allows such objection to be heard at the Settlement Hearing, and shall forever be barred from raising such objection in the

Action or any other action or proceeding or otherwise contesting the Stipulation, the Fee and Expense Application, and/or the Incentive Award for Plaintiff, and will otherwise be bound by the Judgment to be entered and the releases to be given.

11. At least twenty-one (21) calendar days prior to the Settlement Hearing, Plaintiff's Counsel shall file with the Court a brief in support of the Settlement, including the Fee and Expense Application and Incentive Award for Plaintiff. Any objections to the Settlement, the Fee and Expense Application, and/or the Incentive Award for Plaintiff, shall be filed and served no later than ten (10) calendar days prior to the Settlement Hearing.

12. At least five (5) calendar days prior to the Settlement Hearing, the Parties may serve and file with the Court a response brief to any objections made by an Objector pursuant to paragraph 9, above.

13. In the event that the Stipulation is not approved by the Court, the Settlement and any actions taken in connection therewith shall become null and void for all purposes, and all negotiations, transactions, and proceedings connected with it: (i) shall be without prejudice to the rights of any Party thereto; (ii) shall not be deemed to be construed as evidence of, or an admission by any Part of any fact, matter, or thing; and (iii) shall not be admissible in evidence or be used for any purpose in any subsequent proceedings in the Action or any other action or proceeding. The Parties shall be deemed to have reverted to their respective status

in the Action as of the date and time immediately prior to the execution of the Stipulation, and, except as otherwise expressly provided, the Parties shall proceed in all respects as if the Stipulation and any related orders had not been entered.

14. All proceedings in this Action (except proceedings as may be necessary to carry out the terms and conditions of the proposed Settlement) are hereby stayed and suspended until further order of the Court. Except as provided in the Stipulation, pending final determination of whether the Settlement should be approved, Plaintiff in the action and all OvaScience stockholders are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claim against Defendants or any of the Released Persons.

15. The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further notice to anyone other than the Parties to the Action and any Objectors.

**SO ORDERED**

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United States District Judge

**EXHIBIT B**

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

NICHOLAS W. FULTON, derivatively  
on behalf of OVASCIENCE, INC.,

Plaintiff,

vs.

Civil Action No: 1:17-cv-00869-RDM

MICHELLE DIPP, RICHARD  
ALDRICH, JEFFREY D. CAPELLO,  
MARY FISHER, JOHN HOWE, III,  
MARC KOZIN, THOMAS MALLEY,  
and JOHN SEXTON,

Defendants,

and,

OVASCIENCE, INC., a Delaware  
corporation,

Nominal Defendant.

**NOTICE OF PENDENCY OF SETTLEMENT OF DERIVATIVE ACTION**

**TO: ALL CURRENT STOCKHOLDERS OF OVASCIENCE, INC.**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.  
YOUR RIGHTS MAY BE AFFECTED BY THE LEGAL PROCEEDINGS  
IN THIS LITIGATION. IF THE COURT APPROVES THE PROPOSED  
SETTLEMENT, YOU WILL BE FOREVER BARRED FROM  
CONTESTING THE FAIRNESS, REASONABLENESS, AND ADEQUACY**

**OF THE PROPOSED SETTLEMENT, OR PURSUING THE CLAIMS  
DEFINED HEREIN.**

**THIS ACTION IS NOT A “CLASS ACTION.” THUS, THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A CLAIM FOR MONETARY PAYMENT. IF YOU DO NOT OBJECT TO THE TERMS OF THE PROPOSED SETTLEMENT OR THE AMOUNT OF ATTORNEYS’ FEES AND EXPENSES DESCRIBED IN THIS NOTICE, YOU ARE NOT OBLIGATED TO TAKE ANY ACTION. IF YOU HOLD OVASCIENCE, INC. STOCK FOR THE BENEFIT OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER.**

**I. WHY ARE YOU RECEIVING THIS NOTICE?**

The purpose of this Notice is to tell you about (i) a lawsuit (the “Action”) in the United States District Court for the District of Delaware (the “Court”) brought on behalf of OvaScience, Inc. (“OvaScience” or the “Company”); (ii) a proposal to settle the Action as provided in a Stipulation of Compromise and Settlement (the “Stipulation”) that sets forth the terms and conditions of the proposed settlement of this Action (“Settlement”); and (iii) your right, among other things, to attend and participate in a hearing to be held on \_\_\_\_\_, 2018 at \_\_\_\_\_ a.m. / p.m., in the United States Courthouse, 235 N. Washington Avenue, Scranton, Pennsylvania 18503 (the “Settlement Hearing”).

This Notice describes the rights you may have under the Stipulation and what steps you may, but are not required to, take concerning the proposed Settlement. If the Court approves the Stipulation, the Parties will ask the Court to



approve an Order and Final Judgment that would dismiss the Action with prejudice (the “Judgment”).

## **II. BACKGROUND: WHAT IS THIS ACTION ABOUT?**

**THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.**

Plaintiff Nicholas Fulton is a current OvaScience stockholder.<sup>1</sup> On June 30, 2017, Plaintiff filed the Verified Shareholder Derivative Complaint in the United States District Court for the District of Delaware against defendants Michelle Dipp, Richard Aldrich, Jeffrey D. Capello, Mary Fisher, John Howe, III, Marc Kozin, Thomas Malley, and John Sexton (the “Individual Defendants”), and nominal defendant OvaScience (together, the “Defendants”; Plaintiff and Defendants together, the “Parties”) alleging claims of breach of fiduciary duty, waste of corporate assets, unjust enrichment, and violation of Section 14(a) of the Securities Exchange Act of 1934 (the “Complaint”).

The Complaint alleges, among other things, that OvaScience’s non-employee director compensation policies and practices were never approved by OvaScience shareholders and have caused members of OvaScience’s Board of Directors (the “Board”) to be compensated at an excessive level. The Complaint

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<sup>1</sup> Plaintiff is represented by Newman Ferrara LLP, Kranenburg, and Cooch and Taylor, P.A. (collectively, “Plaintiff’s Counsel”).

further alleges that certain statements contained in the Company's Schedule 14A "proxy statements" filed with the Securities and Exchange Commission ("SEC") in 2015, 2016, and 2017 contained material misstatements concerning the options valuation metric used by the Company for SEC disclosure purposes. The Complaint also alleges that OvaScience's policies and practices regarding non-employee director compensation, which were in effect as of the filing of the Action, contain no meaningful limitations on the total amount of annual compensation an individual director can receive.

Defendants have denied and continue to deny that they have violated any law or breached any duty owed to Plaintiff, OvaScience, or OvaScience's stockholders, and maintain that their conduct was at all times proper and in compliance with applicable law and that they acted in good faith.

**THE COURT HAS NOT FINALLY DETERMINED THE MERITS OF PLAINTIFF'S CLAIMS OR THE DEFENSES THERETO. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF THE LAW OR THAT RECOVERY COULD BE HAD IF THE ACTION WAS NOT SETTLED.**

### **III. HOW WAS THE SETTLEMENT REACHED?**

On October 12, 2017, Defendants filed their Motion to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6), 12(b)(1), and 23.1. Defendants' motion was fully briefed by the parties as of December 8, 2017. No decision has yet been entered by the Court on the motion and it remains pending before the

Court. Notwithstanding, following the completion of briefing the Defendants' motion to dismiss, the Parties began arm's-length negotiations concerning the allegations asserted in the Complaint. Ultimately, those negotiations resulted in the Parties reaching an agreement in principle providing for the settlement of all claims that were or could have been asserted by the Plaintiff, individually and on behalf of OvaScience, against the Defendants in the Action, on the terms and subject to the conditions set forth below in the Stipulation. The Stipulation was later signed by counsel for all parties on May 23, 2018.

#### **IV. WHAT ARE THE TERMS OF THE SETTLEMENT?**

As a result of the filing, prosecution, and settlement of the Action, OvaScience has agreed to undertake and/or adopt the Revised Policy and Practices as described in the Stipulation and set forth herein:

A. At the Company's next annual stockholder meeting following the Effective Date (*i.e.*, the 2018 Annual Stockholder Meeting), the Company shall present a binding proposal to the Company's stockholders to approve a new director compensation plan (the "Proposal").

B. The Proposal, which shall be approved and recommended by the Board, will establish a specified amount of overall compensation payable to existing and newly-appointed non-employee directors, as follows:

1. each incumbent non-employee director's total annual compensation, including all cash (inclusive of fees awarded for board and committee service) and equity awards (based on grant-date fair value), will not exceed \$300,000;
2. each newly-appointed non-employee director's total annual compensation, including all cash (inclusive of fees awarded for board and committee service) and equity awards (based on grant-date fair value), will not exceed \$600,000; and
3. so long as annual changes to the cash and/or equity components of compensation remain within the overall limits, the Board shall have flexibility to alter specific amounts.

C. The Proposal will also include adoption of a mandatory holding period for all new equity awards. As part of this policy, shares purchased upon exercise of an initial equity grant or annual equity grant granted following the adoption by the Board and approval by the stockholders of this policy will be subject to a resale restriction ending on the earlier of such non-employee director's termination of service as a non-employee director and the seven-year anniversary of the date of grant of the option (the "Holding Period"); provided, however, that the Holding Period will not apply to: (i) any shares retained by the Company as a result of any net exercise of the options to cover the option exercise price, or (ii)

any shares sold by the non-employee director to cover any taxes associated with the exercise of the option. The Company may also allow for exercise and holding of “after-tax” shares if desired. The mandatory stock-ownership policy shall be administered and monitored by OvaScience’s principal financial officer under the direction of the Board’s Compensation Committee.

D. The Proposal will include a full description of the amended and/or revised compensation plan, disclosures explaining the process of formulating the amended and/or revised compensation plan, and will include a list of the Company’s currently-identified peer group. Any adjustments made to the compensation program after 2018 will be based on a current peer group assessment and current best practices. The Proposal will also include a full description of the new option holding period and will include flexibility to alter the compensation plan after 2018 within the proposed limits identified in the Proposal.

E. If the Proposal is approved by OvaScience’s stockholders, the Board agrees that the limits on total annual non-employee director compensation of the amended and/or revised compensation plan, as well as the new equity grant holding requirements, will remain in effect for no less than three (3) years unless amended and approved by OvaScience stockholders.

F. Further, in the course of carrying out the amended and/or revised compensation plan described in the Proposal and upon considering changes to the

amended and/or revised compensation plan described in the Proposal in the future, OvaScience agrees to adopt and/or continue to abide by the following practices:

1. in re-evaluating the compensation program, including the overall limits on Director compensation, the Board (or a committee thereof) shall assess and be guided by compensation paid to non-employee directors of peer group companies and current best practices;
2. the Company will disclose additional compensation awarded to non-employee directors in the Company's filings with the U.S. Securities and Exchange Commission as required by applicable rules and regulations; and
3. OvaScience stockholders will have the opportunity to vote on director compensation and options holding periods every three (3) years or sooner in the event annual limits or options holding periods need to change.

**V. CORPORATE BENEFIT ONLY**

Because the Action was brought for the benefit of OvaScience, any monetary benefit or recovery in the litigation (whether from this or any settlement or through a judgment in favor of the Plaintiff) would go to OvaScience.

OvaScience stockholders will not receive any direct payment as a result of the

Stipulation and will not need to fill out any kind of claims form as a result of the Settlement.

**VI. COURT APPROVAL**

The Settlement is contingent on receiving approval from the Court.

**VII. WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

*Under the Stipulation, the following releases will occur upon the Effective Date, except as noted below*

The Releasing Persons (defined below) shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims (defined below) (including Unknown Claims, defined below) against the Released Persons (defined below); provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation.

The Released Persons (defined below) shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against Plaintiff and Plaintiff's Counsel; provided, however, that such release shall not affect any claims to enforce the terms of this Stipulation.

The “Releasing Persons” means the Plaintiff (both individually and derivatively on behalf of OvaScience), any other current or former OvaScience stockholder acting or purporting to act on behalf of OvaScience, and OvaScience. “Releasing Person” means, individually, any of the Releasing Persons.

The “Released Persons” means all of the Defendants, including OvaScience, and each of their respective past or present subsidiaries, divisions, parents, affiliates, trustees, successors, predecessors, administrators, representatives, officers, executives, directors, agents, employees, attorneys, advisors, investment advisors, accountants, consultants, insurers, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest.

The “Released Claims” means and includes any and all claims for relief or causes of action, debts, demands, rights, liabilities, losses, and claims whatsoever, known or unknown, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, or known and Unknown Claims, that have been or could have been or in the future might be asserted by Plaintiff, or any other OvaScience stockholder, or any other person or entity acting or purporting to act on behalf of OvaScience, in the Action against the Released Persons, based on the facts, transactions, events, occurrences, acts, disclosures, statements, or omissions that were asserted in the Action or could have been



asserted based on the facts alleged in the Action against Defendants; provided, however, that it is understood that “Released Claims” and any release provided by this Settlement shall not include: (i) any claims to enforce the Settlement; and (ii) any claims by Defendants or any other insured to enforce their rights under any contract or policy of insurance.

### **VIII. WHAT ARE THE REASONS FOR SETTLING THE ACTION?**

Plaintiff and Plaintiff’s Counsel submit that the claims they assert in the Action on behalf of OvaScience have merit. Nonetheless, Plaintiff and Plaintiff’s Counsel understand that there is uncertainty, risk, cost, and burden inherent in any litigation, especially in complex cases such as this Action. In addition, Plaintiff and Plaintiff’s Counsel assert that the Settlement set forth in the Stipulation confers substantial benefits upon Plaintiff, OvaScience, and OvaScience’s stockholders in light of the present circumstances.

Based on their evaluation, Plaintiff and Plaintiff’s Counsel submit that the Settlement set forth in the Stipulation is in the best interests of Plaintiff, OvaScience, and OvaScience’s stockholders, and that when compared with the uncertainty, risk, cost, and burden inherent in the continued litigation of this Action, it is in the best interests of Plaintiff, OvaScience, and OvaScience’s stockholders to settle this Action on the terms set forth therein. At the Settlement

Hearing, the Court will determine whether the Settlement should be approved as fair, reasonable, and adequate.

As will be set forth fully in Plaintiff's brief in support of the Settlement, the Settlement's benefits include: a Proposal for and the adoption of a stockholder-approved amended or revised director compensation plan that provides for an overall limit on total annual compensation, including all cash and equity awards, for both incumbent and newly-appointed members; a mandatory holding period for all new equity awards, fulsome proxy statement disclosures concerning the Proposal and the amended or revised compensation plan; a commitment to maintain a stockholder-approved compensation plan for a prescribed period of time; mandatory disclosures regarding any additional compensation arrangements; and various other proposed corporate governance reforms which Plaintiff and Plaintiff's Counsel submit will provide for a more substantial and meaningful annual review of non-employee director compensation.

Plaintiff and Plaintiff's Counsel assert that the terms of the Settlement, which directly address the claims in the Complaint and provide multiple benefits to OvaScience and its stockholders, strongly weigh in favor of acceptance of the Settlement – especially when compared to the uncertainty, risk, cost, and burden of further litigation.

The Parties have agreed that neither the Stipulation, nor any of its terms or provisions, nor entry of the Judgment, nor any document or exhibit referenced in or attached to the Stipulation, nor any action taken to carry out the obligations in the Stipulation or in connection with the Settlement, shall be construed or used as an admission by or against Plaintiff that this Action lacked merit when filed or that it currently lacks merit, in the Action, or in any other action or proceeding, whether civil, criminal, or administrative.

Defendants deny any and all allegations of wrongdoing, fault, liability, or damage whatsoever; deny that they engaged in, committed, or aided or abetted the commission of any breach of duty, wrongdoing, or violation of law; deny that Plaintiff or OvaScience suffered any damage whatsoever; deny that they acted improperly in any way; believe that they acted properly at all times; maintain that the Individual Defendants complied with their fiduciary duties; maintain that they have complied with federal and state laws; and maintain that they have committed no breach of duty or wrongdoing whatsoever.

Defendants entered into the Stipulation solely because they consider it desirable that the Action be settled and dismissed with prejudice in order to, among other things, eliminate the uncertainties, burden, and expense of further litigation and finally put to rest and terminate all of the claims which were or could have been asserted against the Parties in the Action. Nothing in the Stipulation shall be

construed as any admission by Defendants of wrongdoing, fault, liability, or damages whatsoever.

**IX. HOW WILL THE ATTORNEYS GET PAID?**

Subject to the terms and conditions of the Stipulation and any Order of the Court, Plaintiff's Counsel may submit an application for an award of attorneys' fees and reimbursement expenses and an Incentive Award for Shareholder (collectively, the "Fee and Expense Application"). The Parties have agreed that Plaintiff's Counsel will not seek, and OvaScience will not oppose, a Fee and Expense Application exceeding three hundred thousand dollars (\$300,000), inclusive of any Incentive Award for Shareholder. OvaScience will abide by any court order resulting therefrom, subject to the conditions of the Stipulation. The Parties may negotiate as to the appropriate amount of fees and expenses for Plaintiff's Counsel and the amount of any Incentive Award for Shareholder, and acknowledge that any subsequent agreement as to such fees and expenses will be the result of arm's length negotiation that occur wholly independent from and subsequent to the settlement terms reflected in the Stipulation.

The Fee and Expense Award includes the fees and expenses incurred by Plaintiff's Counsel in connection with the prosecution and settlement of the Action. Plaintiff's Counsel will not seek fees or expenses or an Incentive Award for Plaintiff in excess of any agreed-to amounts, and Plaintiff's Counsel will not

seek attorneys' fees or expenses or any award for the Plaintiff in any other jurisdiction.

Except as otherwise provided herein, each of the Parties shall bear his, her, or its own fees and costs.

**X. WHEN WILL THE SETTLEMENT HEARING TAKE PLACE?**

The Court has scheduled a Settlement Hearing to be held on \_\_\_\_\_, 2018 at \_\_\_\_\_ a.m. / p.m., in the United States Courthouse, 235 N. Washington Avenue, Scranton, Pennsylvania 18503.

At the Settlement Hearing, the Court will consider (a) whether the Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate and in the best interests of OvaScience and its current stockholders, and thus should be finally approved; (b) whether the fees and expenses sought by Plaintiff's Counsel should be approved; and (c) whether the Action should be dismissed with prejudice by entry of the Judgment pursuant to the Stipulation. The Court will also hear and determine objections, if any, to the Settlement, the Fee and Expense Award sought by Plaintiff's Counsel, and the Incentive Award for the Plaintiff and rule on such other matters as the Court may deem appropriate.

The Court may adjourn the Settlement Hearing, including consideration of the Fee and Expense Award sought by Plaintiff's Counsel and the Incentive Award

for the Plaintiff, without further notice to anyone other than the Parties to the Action and any Objectors (as defined below). The Court reserves the right to approve the Stipulation at or after the Settlement Hearing with such modifications as may be consented to by the Parties to the Stipulation and without further notice.

**XI. DO I HAVE A RIGHT TO APPEAR AND OBJECT?**

Any record or beneficial stockholder of OvaScience who objects to the Settlement, the proposed Judgment to be entered, the Fee and Expense Award, or the Incentive Award, or who otherwise wishes to be heard (an “Objector”), may appear in person or by his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; *provided, however,* that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon, unless he, she, or it has, no later than ten (10) calendar days before the Settlement Hearing (unless the Court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), filed with the Clerk of Court for the United States District Court for the District of Delaware, United States Courthouse, 844 N. King Street, Wilmington, Delaware 19801, and served (electronically through the Court’s electronic filing system, by hand, or by overnight mail) on Plaintiff’s Counsel and Defendants’ Counsel, at the addresses below, the following: (i) proof of current ownership of OvaScience stock; (ii) a

written notice of the Objector's intention to appear, including identifying, if represented, the Objector's counsel; (iii) a detailed statement of the objections to any matter before the Court; and (iv) a detailed statement of all of the grounds thereon and the reasons for the Objector's desire to appear and to be heard, as well as all documents or writings which the Objector desires the Court to consider. In addition to the aforementioned Court address, the addresses to which such information must be sent (electronically through the Court's electronic filing system, by hand, or by overnight mail) are as follows:

Brian D. Long  
RIGRODSKY & LONG, P.A.  
2 Righter Parkway, Suite 120  
Wilmington, DE 19803

Jeffrey M. Norton  
NEWMAN FERRARA LLP  
1250 Broadway, 27th Floor  
New York, NY 10001

*Attorneys for Plaintiff ("Plaintiff's Counsel")*

-and-

Patricia L. Enerio  
Aaron M. Nelson  
HEYMAN ENERIO GATTUSO & HIRZEL LLP  
300 Delaware Avenue  
Suite 200  
Wilmington, DE 19801

John F. Sylvia  
Matthew D. Levitt  
Rebecca L. Zeidel

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.  
One Financial Center  
Boston, MA 02111

*Attorneys for Defendants and  
Nominal Defendant OvaScience, Inc. (“Defendants’ Counsel”)*

Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection (including the right to appeal), unless the Court, in its discretion, allows such objection to be heard at the Settlement Hearing, and shall forever be barred from raising such objection in the Action or any other action or proceeding or otherwise contesting the Settlement or the Fee and Expense Award or the Incentive Award, and will otherwise be bound by the Judgment to be entered and the releases to be given. You are not required to appear in person at the Settlement Hearing in order to have your timely and properly filed objection considered.

**XII. HOW DO I GET ADDITIONAL INFORMATION ABOUT THE SETTLEMENT?**

This Notice summarizes the Stipulation. It is not a complete statement of the events of the Action or the Stipulation. For additional information about the claims asserted in the Action and the terms of the Settlement, please refer to the documents filed with the Court and the Stipulation available on Plaintiff’s Counsel’s website at [www.nflfp.com](http://www.nflfp.com). You may examine the Court files during regular business hours of each business day at the office of the Clerk of Court for



the United States District Court for the District of Delaware, United States Courthouse, 844 N. King Street, Wilmington, Delaware 19801. However, you must appear in person to inspect these documents. The Clerk's office will not mail copies to you. For more information concerning the Settlement, you may also write, call, or email Plaintiff's Counsel at: Newman Ferrara LLP, c/o Jeffrey M. Norton, 1250 Broadway, 27<sup>th</sup> Fl., New York, New York 10001; Telephone: (212) 619-5400; or email [jnorton@nflp.com](mailto:jnorton@nflp.com).

NOTICE TO PERSONS OR ENTITIES HOLDING RECORD  
OWNERSHIP ON BEHALF OF OTHERS

OvaScience, through its transfer agent, Computershare Trust Company, N.A., working together with Broadridge Financial Solutions, Inc., will cause to mail this Notice to all record OvaScience stockholders at their respective addresses currently set forth in OvaScience's stock records. Brokerage firms, banks, and/or other persons or entities who hold shares of the stock of OvaScience for the benefit of others are hereby requested to promptly send this Notice to all of their respective beneficial owners. If additional copies of this Notice are needed for forwarding to such beneficial owners, prior to the Settlement Hearing, any requests for such copies may be made to:

Fulton Derivative Litigation  
Shareholder Notice Program  
c/o OvaScience, Inc.  
9 4<sup>th</sup> Avenue  
Waltham, MA 02451

***PLEASE DO NOT WRITE OR CALL THE COURT OR THE CLERK OF  
COURT FOR THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF DELAWARE REGARDING THIS NOTICE.***

BY ORDER OF THE COURT

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

**EXHIBIT C**

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

NICHOLAS W. FULTON, derivatively  
on behalf of OVASCIENCE, INC.,

Plaintiff,

vs.

Civil Action No: 1:17-cv-00869-RDM

MICHELLE DIPP, RICHARD  
ALDRICH, JEFFREY D. CAPELLO,  
MARY FISHER, JOHN HOWE, III,  
MARC KOZIN, THOMAS MALLEY,  
and JOHN SEXTON,

Defendants,

and,

OVASCIENCE, INC., a Delaware  
corporation,

Nominal Defendant.

**[PROPOSED] ORDER AND FINAL JUDGMENT**

**WHEREAS**, a hearing was held before this Court on \_\_\_\_\_,  
2018, pursuant to this Court’s Scheduling Order With Respect to Notice and  
Settlement Hearing, dated \_\_\_\_\_, 2018 (the “Scheduling Order”),  
and upon the Stipulation of Compromise and Settlement dated May \_\_\_\_, 2018 (the  
“Stipulation”) setting forth the terms and conditions of a proposed settlement (the  
“Settlement”) of the above-captioned action (the “Action”). The Parties appeared  
by their attorneys of record. The Court heard and considered the submissions and  
evidence presented in support of the proposed Settlement, including the Fee and

Expense Application. The opportunity to be heard was given to all other persons requesting to be heard in accordance with the Scheduling Order. The Court considered, among other matters, the benefits of the proposed Settlement and the risks, complexity, expense, and probable duration of further litigation. The terms of the proposed Settlement, including the Fee and Expense Application, were heard and considered by the Court.

This Order and Final Judgment (“Judgment”) incorporates the Stipulation by reference and, unless otherwise defined, all capitalized terms shall have the same meanings as set forth in the Stipulation.

IT IS ORDERED, ADJUDGED AND DECREED, this \_\_\_\_\_ day of \_\_\_\_\_, 2018 that:

1. The Court finds that Plaintiff and Plaintiff’s Counsel have adequately represented the interests of OvaScience, Inc. (“OvaScience” or the “Company”) and its stockholders with respect to the Action, the claims asserted therein, and all Released Claims.

2. The Court finds that the Settlement as set forth in the Stipulation is fair, reasonable, adequate, and in the best interests of OvaScience and its stockholders.

3. This Court approves the Stipulation in all respects, and the Parties are directed to consummate the Settlement in accordance with the terms of the

Stipulation. The Clerk of Court for this district is directed to enter and docket this Judgment.

4. The Notice of Pendency of Settlement of Derivative Action (the “Notice”) has been given to all current stockholders of the Company pursuant to and in the manner directed by the Scheduling Order, proof of mailing, and other dissemination of the Notice was filed with the Court, and full opportunity to be heard has been offered to all Parties, current stockholders of the Company, and persons in interest. The Court finds that the form and means of the Notice was the best notice practicable under the circumstances and was given in full compliance with the requirements of Fed. R. Civ. P. 23.1 and due process of law, and that all stockholders of OvaScience are bound by this Judgment.

5. This Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Stipulation and this Judgment and over all parties to the Action, including Plaintiff, record or beneficial owners of OvaScience common stock as of the date of Stipulation, and all Defendants (including nominal defendant OvaScience).

6. The Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice. As between Plaintiff and Defendants, the Parties are to bear their own costs, except as otherwise provided in the Stipulation and in this Judgment.

7. Upon the Effective Date, the Releasing Persons shall be deemed to, and by operation of this Judgment do, fully, finally, and forever settle, release, discharge, extinguish and dismiss with prejudice the Released Claims (including Unknown Claims) against the Released Persons; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation.

8. Upon the Effective Date, the Released Persons shall be deemed to, and by operation of this Judgment do, fully, finally, and forever settle, release, discharge, extinguish, and dismiss with prejudice all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against Plaintiff and Plaintiff's Counsel; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation.

9. Except as otherwise provided in the Stipulation, Plaintiff and all OvaScience stockholders are barred and enjoined from commencing, prosecuting, investigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claim against Defendants or any of the Released Persons.

10. Nothing in this Judgment shall in any way impair or restrict the rights of any party to enforce the terms of the Stipulation.

11. The Court hereby approves the Fee and Expense Application in the amount of \$\_\_\_\_\_ , in accordance with the terms of the Stipulation and finds that such fee is fair and reasonable.

12. The Court hereby approves an Incentive Award to the Plaintiff in the amount of \$\_\_\_\_\_ , in accordance with the terms of the Stipulation and finds that such is fair and reasonable.

13. Neither the Stipulation, nor any of its terms or provisions, nor entry of this Judgment, nor any document or exhibit referred to or attached to the Stipulation, nor any action taken to carry out the Stipulation: (a) is, may be construed as, or may be used as evidence of the validity of any of the Released Claims or an admission by or against Defendants of any fault, wrongdoing, or concession of liability whatsoever by any person in the Action, or any other actions or proceedings, whether civil, criminal, or administrative; or (b) shall be interpreted as an admission of liability or wrongdoing on the part of the Defendants, nor an admission on the part of Plaintiff of any lack of merit of claims asserted in the Action. Notwithstanding the foregoing, Defendants and the Released Persons may file the Stipulation, or any judgment or order of the Court related hereto, in any action that has been or may be brought against them, in order to support a claim or defense based on principles of *res judicata*, collateral

estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. Without affecting the finality of this Judgment in any way, the Court retains jurisdiction with respect to the implementation, enforcement, and interpretation of the terms of the Stipulation, and all Parties submit to the jurisdiction of the Court for purposes of implementing, enforcing, and interpreting the Stipulation. Nothing herein dismisses or releases any claim by or against any party to the Stipulation arising out of a breach of the Stipulation or violation of this Judgment.

**SO ORDERED**

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United States District Judge