

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

JOHN SOLAK, derivatively on behalf of  
CLOVIS ONCOLOGY, INC.,

Plaintiff,

M. JAMES E. BARRETT Ph.D., PATRICK  
J. MAHAFFY, BRIAN G. ATWOOD,  
JAMES C. BLAIR Ph.D., KEITH T.  
FLAHERTY M.D., GINGER L. GRAHAM,  
PAUL H. KLINGENSTEIN, EDWARD J.  
MCKINLEY, and Dr. THORLEF  
SPICKSEN,

Defendants,

-and-

CLOVIS ONCOLOGY, INC., a Delaware  
corporation,

Nominal Defendant.

C.A. No. 2017-0362-JRS

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

**TO: ALL CURRENT STOCKHOLDERS OF CLOVIS ONCOLOGY, 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 CLOVIS ONCOLOGY, 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 Court of Chancery of the State of Delaware (the “Court”) brought on behalf of Clovis Oncology, Inc. (“Clovis” 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 May 30, 2018 at 2:00 p.m., in the Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801 (the “Settlement Hearing”).<sup>1</sup>

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 end the Action.

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<sup>1</sup> All capitalized terms are defined in the Stipulation unless otherwise noted. The Stipulation may be inspected on Plaintiff’s Counsel’s website at [www.nflp.com](http://www.nflp.com).

## 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 John Solak is a current Clovis Stockholder.<sup>2</sup> On May 10, 2017, Plaintiff filed the Verified Shareholder Derivative Complaint for Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment (the “Complaint”). The Complaint alleges, among other things, that Clovis’ non-employee director compensation policies and practices were never approved by Clovis shareholders and have caused members of Clovis’ Board of Directors (the “Board”) to be compensated at an excessive level. The Complaint further alleges that the Board’s actions with regard to non-employee director compensation give rise to claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The Complaint also alleges that Clovis’ 2011 Equity Incentive Plan (the “2011 Plan”), in which all non-employee directors participate and which was in effect as of the filing of the Action, contains no meaningful limitations on the total amount of annual compensation an individual director can receive. Defendants have denied and continue to deny they have violated any law or

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<sup>2</sup> Plaintiff is represented by Newman Ferrara LLP, Kranenburg, and Cooch and Taylor, P.A. (collectively, “Plaintiff’s Counsel”).

breached any duty owed to Plaintiff, Clovis, or Clovis' 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?**

Following the commencement of this Action, the Parties engaged in the voluntary exchange of information related to the claims alleged and, thereafter, counsel for the Parties engaged in arm's-length negotiations concerning a possible settlement of the Action. After those significant, arm's-length negotiations, and based on the investigation of Plaintiff's Counsel, the Parties reached an agreement on the principal terms reflected in the Stipulation. The Stipulation was later signed by counsel for all parties on February 26, 2018.

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

As a result of the filing, prosecution, and settlement of the Action, Clovis has agreed to undertake the Corrective Action and adopt the Reforms as described in the Stipulation and set forth herein:

A. *Binding Stockholder Approval (Say on Pay)*

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

B. *Proposal for a Specified Amount of Annual Compensation for Non-Employee Directors*

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 base compensation, including cash and equity components (based on grant-date fair value), and exclusive of additional fees awarded for board and committee service (as specified in Paragraph IV.B.3 below), will be at an amount specified in the Proposal between \$350,000 and \$425,000; and
2. each newly-appointed non-employee director's total base compensation, including cash and equity components (based on grant-date fair value), and exclusive of additional fees awarded

for board and committee service (as specified in Paragraph IV.B.3 below), will be at an amount specified in the Proposal between \$525,000 and \$637,500 within the first year of appointment; and

3. each non-employee director, whether incumbent or newly-appointed, will also receive additional fees awarded for board and committee service in the following amounts: (i) \$30,000 per year to the Chairman of the Board; (ii) \$20,000 per year to the Chair of the Audit Committee; (iii) \$15,000 per year to the Chair of the Compensation Committee; (iv) \$10,000 per year to the Chair of the Nominating and Corporate Governance Committee; (v) \$10,000 per year to each member of the Audit Committee; (vi) \$7,500 per year to each member of the Compensation Committee; and (vii) \$5,000 per year to each member of the Nominating and Corporate Governance Committee.

In addition, the Proposal will include a full description of the amended and/or revised compensation plan, will include disclosures explaining

the process of formulating the amended and/or revised compensation plan, and will identify the constituents of the Company's peer group.

Finally, if approved by stockholders, the specified amount of total annual non-employee director compensation of the amended and/or revised compensation plan will remain in effect for a definite time between two (2) and five (5) years unless amended and approved by Clovis stockholders.

C. *Mandatory Stock-Ownership Guidelines*

Clovis adopted, and shall retain for a period of no less than five (5) years, mandatory stock-ownership guidelines which will require all non-employee directors to hold a minimum number of shares of Company stock equal to three times the directors' annual base cash retainer at all times during which they are serving as non-employee directors, exclusive of fees and additional retainer amounts for committees, chair positions, and meetings. In connection with this requirement:

1. each non-employee director shall have five (5) years from initial implementation of the mandatory stock-ownership policy

in order to meet his or her minimum ownership threshold (and one year after a retainer increase);

2. during the phase-in period, no non-employee director may sell more than 50% of any vested equity awards until he or she has met the applicable minimum threshold;
3. calculations for determining whether any non-employee director has met the minimum threshold requirements under the amended and/or revised plan shall include all shares held directly, indirectly, or through savings plans by such non-employee director;
4. assessment of share ownership shall be determined by using the closing price of Clovis shares on May 1st of each year; provided that, if there is a decline in the Company's stock price such that a non-employee director's holdings temporarily fall below the applicable threshold, such non-employee director will not be required to purchase additional shares to meet the threshold, but shall not sell or transfer any shares until the threshold has again been achieved; and



5. the mandatory stock-ownership policy shall be administered and monitored by Clovis' Chief Financial Officer under the direction of the Board's Compensation Committee.

D. *Compensation-Related Reforms*

In the course of carrying out the amended and/or revised compensation plan and upon considering changes to the amended and/or revised compensation plan in the future, Clovis shall abide by the following practices:

1. in proposing annual retainers for Board and committee service, and fees for Board and committee service, the Board (or a committee of the Board) shall be guided by compensation paid to non-employee directors of peer group companies and current best practices;
2. as part of its assessment in considering equity grants in the form of stock option awards or RSUs, the Board (or a committee of the Board) will consider the proportion of option grants or RSUs granted to non-employee directors of peer group companies and current best practices;

3. the Board (or a committee of the Board) will review its non-employee director compensation peer group on an annual basis; and
4. Clovis will not provide additional compensation to non-employee directors, directly or indirectly, other than that discussed in Clovis' filings with the U.S. Securities and Exchange Commission.

E. *Mandatory Disclosures Regarding Third-Party Compensation*

Clovis shall disclose in its annual proxy statement whether any non-employee director will receive a direct monetary payment from a third party in connection with either the non-employee director's candidacy or service on the Board.

**V. CORPORATE BENEFIT ONLY**

Because the Action was brought for the benefit of Clovis, 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 Clovis. Clovis 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 Stipulation 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) against the Released Persons (defined below); provided, however, that such release shall not affect any claims to enforce the terms of this Stipulation.

Defendants 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 Clovis), any other current or former Clovis stockholder acting or purporting to act on behalf of Clovis, and Clovis. "Releasing Person" means, individually, any of the Releasing Persons.

The “Released Persons” means the Individual Defendants and their predecessors, successors, subsidiaries, affiliates, agents, attorneys, insurers, trustees, executives, administrators, representatives, and each of their past or present officers, directors, and employees. “Released Persons” also includes Clovis and all current and former officers, directors, or employees of Clovis.

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 Shareholder, or any other Clovis stockholder, or any other person or entity acting or purporting to act on behalf of Clovis, 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 Clovis 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, Clovis, and Clovis' 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, Clovis, and Clovis' 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, Clovis, and Clovis' 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 a specified amount of non-employee director compensation for both incumbent and newly-appointed members; mandatory stock-ownership guidelines; 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 third-party 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 Clovis 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 Clovis 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 this 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"). Clovis reserves the right to oppose said Fee and Expense Application but 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 May 30, 2018 at 2:00 p.m., in the Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801.

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 Clovis 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 Clovis who objects to the Settlement, the proposed Judgment to be entered, the Fee and Expense Award, 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 Register in Chancery, Court of Chancery, Kent County Courthouse, 414 Federal Street, Dover, Delaware 19901, and served (electronically by File & Serve*Xpress*, 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 Clovis 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 by File & Serve*Xpress*, by hand or by overnight mail) are as follows:

Blake A. Bennett  
COOCH & TAYLOR, P.A.  
The Brandywine Building  
1000 West Street, 10th Floor  
P.O. Box 1680  
Wilmington, DE 19899

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NEWMAN FERRARA LLP  
1250 Broadway, 27th Floor  
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Paul H. Klingenstein, Edward J. Mckinley,  
and Thorlef Spickschen*

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 Register in Chancery, Court of Chancery, Kent County Courthouse, 414 Federal Street, Dover, Delaware 19901. 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@nflfp.com](mailto:jnorton@nflfp.com).

Brokerage firms, banks, and/or other persons or entities who hold shares of the stock of Clovis 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, any requests for such copies may be made to:

Clovis Oncology, Inc. Derivative Litigation  
Shareholder Notice Program  
c/o Prime Clerk LLC  
850 Third Avenue, Suite 412  
Brooklyn, NY 11232

***PLEASE DO NOT WRITE OR CALL THE COURT OR THE OFFICE OF  
THE REGISTER IN CHANCERY REGARDING THIS NOTICE.***

BY ORDER OF THE COURT

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

\_\_\_\_\_  
Register in Chancery

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