

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

	)	
<b>SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	<b>Case No. 1:18-cv-02381-CMA</b>
	)	
<b>CLOVIS ONCOLOGY, INC.,</b>	)	
<b>PATRICK J. MAHAFFY, and</b>	)	
<b>ERLE T. MAST</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**DISTRIBUTION PLAN**

**INTRODUCTION**

On September 18, 2018, the Commission filed a complaint (the “Complaint”)<sup>1</sup> against Clovis Oncology, Inc. (“Clovis”) and Patrick J. Mahaffy (“Mahaffy”), its Chief Executive Officer, and Erle T. Mast (“Mast”), its former Chief Financial Officer (collectively, the “Defendants”). The Complaint alleged that, over a four-month period starting in July 2015, Clovis and Mahaffy misled investors about how well Clovis' flagship lung cancer drug Rociletinib worked compared to another drug. Clovis raised approximately \$298 million in a public stock offering in July 2015 but saw its stock price collapse in November 2015 after disclosing that the effectiveness rate was actually 28 percent, versus the 60 percent efficacy figure that had been touted in the company's investor presentations, press releases, and SEC filings. The company stopped development on the drug in May 2016. The Commission alleged, in part, that Clovis violated Section 17(a)(2) of the Securities Act of 1933 and Section 13(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules

<sup>1</sup> Dkt No. 1.

12b-20 and 13a-11 thereunder.

The Defendants were ordered to pay a total of \$20,804,145 in disgorgement, prejudgment interest, and penalties to the Commission. On September 24, 2018, Defendants paid the entire amount of their judgments to the Commission.

On July 2, 2019, the Court established a Fair Fund (“Fair Fund”), pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid, along with the disgorgement and prejudgment interest, can be distributed to investors harmed by the Defendants’ conduct described in the Complaint. The Court also appointed Miller Kaplan Arase LLP as the Tax Administrator to fulfill the tax obligations of the Fair Fund.<sup>2</sup>

On December 2, 2019, Epiq Systems (“Epiq”) was appointed as the Distribution Agent of the Fair Fund to assist in overseeing the administration of the distribution of the Fair Fund.<sup>3</sup>

The Fair Fund has been deposited in an interest-bearing account at the United States Department of Treasury’s Bureau of Fiscal Service. The current balance of the fund, as of January 25, 2021, is \$21,304,263.67.

## **ARTICLE I**

### **DEFINITIONS**

As used in this Plan, the following definitions shall apply:

1.1 “Affiliate” shall have the meaning set forth in section 101(2) of Title 11 of the United States Code, 11 U.S.C. § 101(2).

1.2 “Claim Deficiency Notice” means the notice sent by the Distribution Agent to all claimants whose claims submitted in the Fair Fund are deficient in one or more ways. The Claim

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<sup>2</sup> Order to Establish a Fair Fund, Appoint a Tax Administrator, and to Authorize Payment of Future Tax Obligations, and the Fees and Expenses of the Tax Administrator. Dkt. No. 13.

<sup>3</sup> Order to Appoint a Distribution Agent and Authorize Payment of Future Fees and Expenses of the Distribution Agent from the Fair Fund. Dkt. No. 15.

Deficiency Notice shall advise claimants of the reason(s) for the deficiency and the opportunity to cure such deficiency. No later than ninety (90) days after the Claims Bar Date, a Claim Deficiency Notice will be sent to any Class Action Authorized Claimant whose amended claim, or any Potentially Eligible Claimant whose Claim Form is deficient in one or more ways. In addition, a Claim Deficiency Notice shall be sent to Class Action Unauthorized Claimants whose claims submitted in the Class Action have a curable deficiency.

1.3 “Claim Form” shall mean the form designed by the Distribution Agent in accordance with this Plan for the filing of a claim. The Claim Form shall require, at a minimum, sufficient documentation to determine the Potentially Eligible Claimant’s holdings and dispositions of all Clovis common stock during the Relevant Period.

1.4 “Claims Bar Date” shall mean the date established in accordance with this Plan by which a Potentially Eligible Claimant’s Claim Form or a Class Action Authorized Claimant’s amendments to the Claim Form must be submitted in order to receive consideration under the Plan. The Claims Bar Date shall be ninety (90) days after the Notice Date. Claim Forms by Potentially Eligible Claimants or amendments made by Class Action Authorized Claimants postmarked or received after the Claims Bar Date will not be accepted unless the Distribution Agent is directed to do so by the Commission staff.

1.5 “Class Action” shall mean the class action litigation *Medina v. Clovis Oncology, Inc., et al.*, Civil Action No.1:15-cv-2546-RM-MEH (D. Colo. Aug. 4, 2017), which arose out of similar violations alleged in the SEC action. The Class Action class period was from May 31, 2014 to April 7, 2016, inclusive. The court in the Class Action approved the settlement with Clovis Oncology, Inc. for \$142,000,000. The net proceeds were distributed on a *pro rata* basis to authorized claimants who purchased or otherwise acquired Clovis common stock and/or purchased or otherwise acquired exchange traded call options on Clovis common stock and/or sold/wrote

exchange traded put options on Clovis common stock. Epiq, the Distribution Agent for this Plan, also served as the Claims Administrator in the Class Action. The information requested and provided to Epiq for the Class Action claim process included all transactions during the Class Action class period, which included purchases, sales, transfers, conversions, and/or dividend reinvestments, as well as shares held at the beginning and end of the periods. This information is sufficient for the Distribution Agent to apply the Plan of Allocation (*see* Exhibit A), and to make calculations to ensure that no Eligible Claimant will receive a distribution payment larger than his/her/its calculated harm, after taking into account the payment received in the Class Action.

1.6 “Class Action Authorized Claimant” shall mean a Person or entities who filed approved claims in the Class Action on or before December 22, 2020. Such persons or entities are automatically deemed Eligible Claimants with respect only to those transactions as to which a claim was previously authorized in the Class Action and are not required to submit anything further, unless they wish to amend their claim to include additional transactions. If a Person had a claim in the Class Action which was denied in part for containing only partial documentation that Person will still be considered a Class Action Authorized Claimant with respect to the Clovis common stock shares for which valid supporting documentation was provided in the Class Action. A Class Action Authorized Claimant may modify or update his, her or its claim by following the instructions in the Notice Letter and providing valid supporting documentation for the adjustment.

1.7 “Class Action Unauthorized Claimant” shall mean a Person who filed a claim with the claims administrator in the Class Action whose claim was denied in full for failure to provide required documentation supporting the purchases/acquisitions of Clovis common stock claimed, or the claim form is missing either (i) a signature for an owner, co-owner, joint tenant, custodian, agent, executor, administrator, guardian and/or trustee; or (ii) the authority and/or the capacity of the person who signed the Claim Form to sign on behalf of the beneficial owner. A Class Action Unauthorized

Claimant with a curable deficiency will receive a Notice Letter that will include a Claim Deficiency Notice and is required to submit additional information in order to cure any deficiency on their claim. Class Action Unauthorized Claimants who cure all deficiencies on their claim would then be considered an Eligible Claimant and may share in the distribution from the Fair Fund.

1.8 “Days” shall mean calendar days, unless provided otherwise.

1.9 “Distribution Agent” shall mean Epiq (including its employees, agents, consultants or independent contractors), the Distribution Agent appointed by the Court on December 2, 2019 to administer the Fair Fund in accordance with the terms of this Plan and the Court’s orders.

1.10 “Distribution Payment” shall mean the payment to an Eligible Claimant in accordance with the terms of this Distribution Plan.

1.11 “Eligible Claimants” shall mean all Class Action Authorized Claimants, Class Action Unauthorized Claimants who are able to cure their class action claim, and those Potentially Eligible Claimants filing a valid Claim Form with the Distribution Agent who are determined by the Distribution Agent to be eligible for a distribution from the Fair Fund. “Eligible Claimants” in no event shall include:

- (a) any director or officer, or former director or officer, of the Defendants, or any of Defendants’ past or present Affiliates who served in such capacity during the Relevant Period;
- (b) any employee or former employee of Defendants or of any of its past or present Affiliates who has been terminated for cause, or has otherwise resigned, in connection with the conduct described in the Complaint or in any related Commission action;
- (c) any defendant in any action brought by the Commission related to the conduct described in the Complaint or any related Commission action,

unless and until such defendant is found not liable in all such civil suits prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant's timely filed Claim Form;

- (d) any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the violations alleged in the Complaint or any related Commission action, unless and until such Person is found not guilty prior to the Claims Bar Date, and proof of the finding(s) is included in such Person's timely filed Claim Form;
- (e) any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund, provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law;
- (f) the Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent; and/or
- (g) any Affiliates, assignees, creditors, heirs, distributees, spouses, parents, children, or controlled entities of any of the foregoing Persons or entities described in Sections 1.11(a)-(f) above;

1.12 "Eligible Loss Amount" shall refer to the sum of an Eligible Claimant's Recognized Loss per Share for all shares of Clovis common stock purchased during the Relevant Period, as calculated by the Plan of Allocation (Exhibit A).

1.13 "Eligible Securities" shall mean Clovis common stock purchased during the Relevant Period.

1.14 "Fair Fund" shall refer to the fund established by the Court's July 2, 2019 Order, plus any additions thereto as may be provided by Court order or agreement in related cases or

otherwise.

1.15 “Final Determination Notice” shall mean the notice sent by the Distribution Agent to any Potentially Eligible Claimants who file a Claim Form, to any Class Action Authorized Claimants who amend their claim, and to any Class Action Unauthorized Claimants who are sent a Claim Deficiency Notice and attempt to cure the deficiencies on their Claim; the Final Determination Notice states the Distribution Agent’s decision with respect to the validity of the claim (eligible, partially or wholly deficient, or ineligible) and the Eligible Loss Amount. The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the status of the claim.

1.16 “Final Payee List” shall refer to the list of Eligible Claimants, the Eligible Loss Amount of each Eligible Claimant, and the distribution payment amount after the application of the *pro-rata* calculation, to be provided by the Distribution Agent to the Commission staff within forty-five (45) days following the date the Distribution Agent has mailed all Final Determination Notices.

1.17 “Minimum Distribution Amount” or *de minimis* shall refer to the specified dollar amount that a Distribution Payment must equal or exceed in order for a distribution to be made to an Eligible Claimant. The Minimum Distribution Amount shall be \$10.00.. The Distribution Agent in its exclusive discretion may, but will have no obligation to, aggregate accounts held by a person in the same legal capacity in determining Eligible Loss Amounts and Distribution Payment amounts.

1.18 “Net Available Fair Fund” shall mean the Fair Fund, plus accrued interest or earnings, less any amounts expended or to be expended for administering the Fair Fund.

1.19 “Notice Date” shall mean the date that the Distribution Agent first mails the Notice Letter, which shall be no later than fifty (50) days following the entry by the Court of its order approving the Plan.

1.20 “Notice Letter” shall mean all the materials to be provided to Class Action Authorized Claimants, Class Action Unauthorized Claimants, and Potentially Eligible Claimants. For

Class Action Authorized Claimants, the Notice Letter shall contain a cover letter providing instruction that the Class Action Authorized Claimant does not need to file a new claim in order to share in the distribution from the Fair Fund, but that a Class Action Authorized Claimant may update or modify his, her or its claim and instructions to do so. Included with the Notice Letter will be a Claim Deficiency Notice to known Class Action Unauthorized Claimants who can cure certain deficiencies, which will include instructions to do so. A Notice Letter will be sent to each Potentially Eligible Claimant, with instructions as to how to participate in this distribution. To ensure that the Fair Fund can comply with its reporting and/or withholding obligations, a tax certification solicitation notice may also be included with the Notice Letter, if determined by the Tax Administrator that a solicitation is needed on a particular claim.

1.21 “Person” shall mean a natural individual as well as a legal entity, such as a corporation, partnership, limited liability company or governmental entity. All nouns, pronouns, and any variations thereof in this Plan shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the context may require.

1.22 “Plan” shall mean this Distribution Plan, in the form approved by the Court.

1.23 “Potentially Eligible Claimants” shall mean those Persons who filed an exclusion from the class in connection with the class notice portion of the Class Action (“opted out”), who have possible claims to the Fair Fund under this Plan. Potentially Eligible Claimants are required to provide holdings and dispositions of all Clovis common stock during the Relevant Period to share in the distribution of the Fair Fund. The Distribution Agent will identify Potentially Eligible Claimants and will send a letter with additional information and instructions on how to participate in this matter.

1.24 “Pro Rata Share” is a computation intended to measure Eligible Claimants’ claims against one another. Should the sum of Eligible Loss Amounts of all Eligible Claimants exceed the

Net Available Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. The Distribution Agent shall determine each Eligible Claimant's *pro rata* share of the Fair Fund based upon each Eligible Claimant's Eligible Loss Amount divided by the sum of Eligible Loss Amounts of all Eligible Claimants.

1.25 "Recognized Loss per Share" shall mean the amount of loss per share of Clovis common stock, as calculated pursuant to the Plan of Allocation (Exhibit A).

1.26 "Relevant Period" shall mean the period of July 7, 2015 through November 13, 2015.

1.27 "Summary Notice" shall mean the notice to be published in a national publication pursuant to Section 3.3 below. Such notice (the text of which shall be approved by the Commission staff) shall include, at a minimum, a statement that the Fair Fund relates to holdings, purchases and sales of Clovis common stock during the Relevant Period.

1.28 "Tax Administrator" shall mean Miller Kaplan Arase LLP, the firm appointed by the Court on July 2, 2019.

1.29 "Third-Party Filer" means a third-party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to, and submits: (1) a claim on behalf of one or more Potentially Eligible Claimants; (2) an amended claim made on behalf of one or more Class Action Authorized Claimants; and/or (3) a curable claim on behalf of one or more Class Action Unauthorized Claimants. Third Party Filer does not include assignees or purchasers of claims, which are excluded from receiving distribution payments.

## **ARTICLE II**

### **ALLOCATION AMONG ELIGIBLE CLAIMANTS**

2.1 The Fair Fund shall be allocated among Eligible Claimants pursuant to the Plan of Allocation (Exhibit A) and as provided under the terms of this Plan.

2.2 An Eligible Claimant's calculated Eligible Loss Amount shall be used as the basis

for determining, pursuant to the Plan of Allocation, whether an Eligible Claimant holds a claim that meets the Minimum Distribution Amount and is thus eligible for a Distribution Payment.

### ARTICLE III

#### ADMINISTRATION OF THE CLAIMS PROCEDURE

A. Identification of and Notice to Class Action Authorized Claimants, Class Action Unauthorized Claimants and Potentially Eligible Claimants

3.1 The Distribution Agent will build a database for purposes of administering the Fair Fund containing previously approved information regarding all Class Action Authorized Claimants as well as information received regarding Potentially Eligible Claimants, and Class Action Unauthorized Claimants who can cure certain deficiencies as noticed in Paragraph 1.5.

3.2 Within fifty (50) days following the entry by the Court of its order approving this Plan, the Distribution Agent shall:

- (a) run a National Change of Address search to retrieve updated addresses for all records, so that the Distribution Agent has updated mailing information, to the extent possible;
- (b) mail by United States First Class Mail a Notice Letter to each Class Action Authorized Claimant, Class Action Unauthorized Claimant, and Potentially Eligible Claimant known to the Distribution Agent. For Class Action Authorized Claimants, the Notice Letter shall contain a cover letter providing instruction that the Class Action Authorized Claimant does not need to file a new claim in order to share in the distribution from the Fair Fund, but that a Class Action Authorized Claimant may update or modify his, her or its claim. Included in the Notice Letter will be a Claim Deficiency Notice to known Class Action Unauthorized Claimants who can cure certain deficiencies, and a notification letter to each Potentially Eligible Claimant, instructing them how

to participate in this matter;

- (c) establish and maintain a website dedicated to the Fair Fund. The Fair Fund's website, located at [www.ClovisFairFundDistribution.com](http://www.ClovisFairFundDistribution.com), will make available a copy of the approved Plan, provide eligibility requirements for participation in the Fair Fund in the form of frequently asked questions, and provide such other information that the Distribution Agent believes will be beneficial;
- (d) establish and maintain a traditional mailing address and an email mailing address which will be listed on all correspondence from the Distribution Agent as well as on the Fair Fund website; and
- (e) establish a toll-free telephone number at (833) 991-0978 by which Class Action Authorized Claimants, Class Action Unauthorized Claimants and Potentially Eligible Claimants can obtain information about the Fair Fund.

3.3 Within fourteen (14) days of the mailing of the Notice Letter, the Summary Notice will be published in print or internet media acceptable to the SEC staff once a week for three consecutive weeks.

3.4 The Distribution Agent shall also give additional notice of the distribution process in such a manner as the Distribution Agent, in consultation with Commission staff, deems appropriate, which may include further direct notification to custodians, securities broker-dealers, and other potential nominee purchasers identified by the Distribution Agent.

3.5 To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potentially Eligible Claimant must submit to the Distribution Agent a properly completed Claim Form reflecting such Potentially Eligible Claimant's claim, together with all required supporting documentation. The burden to prove timely receipt of a claim by the Distribution Agent will be

upon the Potentially Eligible Claimant; therefore Potentially Eligible Claimants will be instructed to submit their Claim Forms in a manner that will enable them to prove timely receipt of the Claim Form by the Distribution Agent. A Claim Form that is postmarked, or otherwise received by the Distribution Agent after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent for good cause shown after consultation with the SEC staff, in which event such extension shall constitute the Claims Bar Date for such Potentially Eligible Claimants. Such decisions of the Distribution Agent and Commission staff are final and not subject to challenge.

3.6 When submitting claims to the Fair Fund on behalf of its clients, all Third-Party Filers must use the electronic filing template provided by the Distribution Agent in this matter. Filers that do not comply with the template and format provided by the Distribution Agent may be rejected. Third-Party Filers must also submit a signed master proof of claim and release, as well as proof of authority to file on behalf of the claimant(s) at the time the electronic file of transactions is submitted. Failure to do so may result in rejection of the claim.

3.7 Each Third-Party Filer must establish the validity and amount of each claim in its submission. Like all other claimants to the Fair Fund, Third-Party Filers must submit such supporting documentary evidence of purchases, dispositions, and holdings of Eligible Securities as the Distribution Agent deems necessary or appropriate to substantiate each individual claim. Without limitation, this includes the complete name of the claimant (beneficial account owner) and its TIN (for individuals) or EIN (for companies), sufficient contact information to confirm the identity of the beneficial owner, and documentation from the original bank, broker or other institution of purchases and dispositions of Eligible Securities (account statements, confirmations and other documentation of purchases and dispositions), as well as holdings of the Eligible Security on pertinent dates. Documentation generated by the Third-Party Filer as well as affidavits in lieu of supporting documentation, will not be accepted unless, for good cause, the Distribution Agent determines it

acceptable. The Distribution Agent will have the right to request, and the Third-Party Filer will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed necessary by the Distribution Agent to substantiate the claim(s) contained in the submission. Documentation from a Third-Party Filer that is not acceptable to the Distribution Agent will result in rejection of the affected claim(s). The determination of the Distribution Agent to reject a claim for insufficient documentation, as reflected on the Final Determination Notice, is final and within the discretion of the Distribution Agent.

3.8 Distribution Payments must be made by check or electronic payment payable to the Eligible Claimant (the beneficial account owner). The Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment. Any other payment arrangement must be discussed with the Distribution Agent in consultation with the SEC staff and must be authorized by the Eligible Claimant. Compensation to the Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.

3.9 If, after discussion with the Distribution Agent in consultation with the SEC, and authorization by the Eligible Claimant(s), a Distribution Payment is to be made to a Third-Party Filer to distribute to the Eligible Claimant(s), the Third-Party Filer will be required to complete a certification, which will require them, at a minimum, to attest that any distribution to the custodian, trustee, or investment professional representing multiple potentially eligible beneficial owners, will be allocated for the benefit of current or former pooled investors and not for the benefit of management. The certification form will be available on the Fair Fund website and upon request from the Distribution Agent. All such Third-Party Filers must have an auditable mechanism available to the Distribution Agent and the SEC staff to confirm that each Eligible Claimant received the Distribution Payment directed to them.

B. Notification of Claims Determination, Including Claim Deficiency Notice and Opportunity to Cure

3.10 The Distribution Agent shall review each Claim Form received to determine the validity and amount of such Potentially Eligible Claimant's Eligible Loss Amount, together with any additional conclusions of the Distribution Agent on other issues relevant to the claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of his, her, or, its claim, and that he, she, or it qualifies as an Eligible Claimant; and the Distribution Agent shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

3.11 The Distribution Agent shall provide to each Potentially Eligible Claimant or Class Action Authorized Claimant whose claim is deficient, in whole or in part, a Claim Deficiency Notice setting forth the reason(s) why the claim is deficient and instructions on how to cure the deficiency. The Claim Deficiency Notice shall be provided to such affected claimants within ninety (90) days after the Claims Bar Date.

3.12 Any Potentially Eligible Claimant, Class Action Authorized Claimant or Class Action Unauthorized Claimant, who has received a Claim Deficiency Notice shall have sixty (60) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

3.13 Before final payment amounts are calculated, the Distribution Agent shall mail by United States First Class Mail a Final Determination Notice to each Potentially Eligible Claimant who has filed a Claim Form, and to any Class Action Unauthorized Claimant who is sent a Claim Deficiency Notice and attempts to cure deficiencies on their Claim with the Distribution Agent. In the event a claim is denied, in whole or in part, the Distribution Agent will state the reason for such denial. The Distribution Agent will also send Final Determination Notices to Class Action Authorized Claimants who have modified their claim. The Final Determination Notice will be sent

within one hundred eighty (180) days of the Claims Bar Date.

3.14 In the event the claim is denied, in whole or in part, the Final Determination Notice will state the reason for such denial. The Final Determination Notice will constitute the Distribution Agent's final ruling regarding the status of the claim.

3.15 All claimants have the burden of providing the Distribution Agent with any changes to his, her, or its name or mailing address.

3.16 All determinations made by the Distribution Agent in accordance with this Plan shall be final.

C. Third-Party Review

3.17. After the Distribution Agent has completed the process of analyzing the claims and determining claim amounts in accordance with the Plan, and prior to the distribution of any funds, if so requested by the SEC staff, the Distribution Agent will engage an independent, third-party firm, not unacceptable to SEC staff, to perform a set of agreed upon procedures, review a statistically significant sample of new claims submitted by Potentially Eligible Claimants, or changes to a claim filed by Class Action Authorized Claimants and Class Action Unauthorized Claimants, to ensure accurate and comprehensive application of the Methodology. The Distribution Agent will communicate the results of the review to SEC staff together with any written analysis or reports related to the review, and, upon request, will make the firm available to the SEC staff to respond to questions concerning the review.

D. Preparation of the Final Payee List

3.18 Within forty-five (45) days following the date the Distribution Agent has mailed all Final Determination Notices, the Distribution Agent shall prepare a list of Eligible Claimants, the amount of the asserted claim of each Eligible Claimant, and the Eligible Loss Amount of each Eligible Claimant (*i.e.*, the Final Payee List). The Distribution Agent shall provide the Final

Payee List to Commission staff with a reasonable assurances letter as to the completeness and accuracy of the Final Payee List.

3.19 After receipt and acceptance of the Final Payee List, Commission staff will petition the Court to transfer to the Distribution Agent the estimated funds available for distribution to Eligible Claimants pursuant to this Plan. The Tax Administrator and Distribution Agent will work together to retain a prudent reserve to pay any taxes, fees and expenses payable in connection with the Fair Fund. The Final Payee List shall, upon request, be made available to the Court under seal.

E. Establishment of the Escrow Account

3.20 Prior to the receipt of the funds for distribution, the Distribution Agent will establish an escrow account (the “Escrow Account”) pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff. The Escrow Account will be established to receive the monies from the Commission and the Fair Fund will be held in the Escrow Account until the time of its distribution. The Distribution Agent will also establish a separate deposit account (*e.g.* controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”) for the purpose of funding the Distribution Payments to be distributed to Eligible Claimants. The accounts shall be in the name of and bearing the Employer Identification Number of the Fair Fund as custodian for the distributees of this Plan. The name of each account will be in the following form: “SEC v. Clovis Fair Fund,” and include the case number.

3.21 During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, tax obligations, and/or fees and expenses that may accrue, including investment or reinvestment in

a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

3.22 In consultation with the Commission staff, the Distribution Agent will work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow Account and Distribution Account that will preserve earnings, if possible, while providing maximum protection for the Fair Fund.

3.23 Upon transfer from the SEC-designated account, the assets of the Fair Fund will be held in the Escrow Account, separate from Bank assets, until the presentation of checks. All Fair Fund checks presented for payment or electronic transfers will be subject to “positive pay” controls before they are honored by the Bank. The “positive pay” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Distribution Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

3.24 Electronic or wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments. For any electronic payment, the exact amount necessary to make a payment shall be transferred from the Escrow Account directly to the payee bank account in accordance with written instruction provided to the Escrow Bank by the Distribution Agent. All wire transfers will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require authorization by two members of the Distribution Agent’s senior staff.

3.25 The Distribution Agent shall provide copies of bank and/or investment statements on

any accounts established by the Distribution Agent to the Tax Administrator and shall assist the Tax Administrator in obtaining mid-cycle statements as necessary.

F. Distribution

3.26 The Fair Fund will be distributed to Eligible Claimants as provided under the terms of the Plan. An Eligible Claimant's Eligible Loss Amount, as determined in accordance with the Plan of Allocation contained in Exhibit A to this Plan, will be used to determine the amount of their Distribution Payment.

3.27 Should the total amount of the Eligible Loss Amount of all Eligible Claimants exceed the Net Available Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. This formula will be the Eligible Loss Amount of each Eligible Claimant divided by the aggregate Eligible Loss Amounts of all Eligible Claimants. No Distribution Payment will be made to an otherwise Eligible Claimant unless the amount to be paid equals or exceeds \$10.00.

3.28 Following the Court's approval of the Commission's petition for the authority to distribute the Fair Fund to Eligible Claimants as provided for in this Plan, the Distribution Agent shall commence the distribution to all Eligible Claimants as promptly as possible following the transfer of funds from the Commission to the Escrow Account at the Bank.

3.29 All Fair Fund checks issued to Eligible Claimants by the Distribution Agent shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Where an Eligible Claimant's check has not been negotiated within the ninety (90) day period and has been voided by the Distribution Agent, that Eligible Claimant's claim shall be extinguished upon the occurrence of the stale date. All such funds will remain in the Fair Fund.

3.30 All Distribution Payments shall be preceded or accompanied by a communication

that includes, as appropriate:

- (a) a statement characterizing the distribution;
- (b) a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution;
- (c) a statement that checks will be void after ninety (90) days; and
- (d) the name of a person or entity to contact if the Eligible Claimant has any questions regarding the distribution.

3.31 The foregoing communication shall be submitted to the Commission staff and the Tax Administrator for review and approval. The Fair Fund distribution checks, on their face or in the accompanying mailing, shall clearly indicate that the money is being distributed from the Fair Fund established by this Court to compensate investors for harm as a result of securities law violations that affected their investment in Clovis common stock.

3.32 The submission of the Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant is not intended to be a release of an Eligible Claimant's rights and claims against any party.

#### **ARTICLE IV**

##### **POST-DISTRIBUTION**

4.1 The Distribution Agent shall reissue checks to Eligible Claimants upon the receipt of a valid written request from the Eligible Claimant. Such reissued checks will be void either ninety (90) days after issuance or sixty (60) days after the stale date of the original check, whichever is later. The Distribution Agent may decline to reissue checks one hundred twenty (120) days after the original check was issued.

4.2. The Distribution Agent shall use reasonable commercially available resources to

locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the U.S. Postal Service, and will reissue checks to Eligible Claimants who are located so long as the new address is received within one hundred twenty (120) days post-distribution. However, Eligible Claimants have the burden of providing the Distribution Agent with any changes to their mailing address.

4.3. In addition, the Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow-up on the status of uncashed Distribution Payments over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

## **ARTICLE V**

### **RESPONSIBILITIES OF THE TAX ADMINISTRATOR**

5.1 The Fair Fund is a Qualified Settlement Fund within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2 including, but not limited to:

- (a) obtaining a taxpayer identification number;
- (b) submitting requests for funds necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing of applicable tax returns; and
- (c) fulfilling any information, reporting, or withholding requirements required for distributions from the Fair Fund.

5.2 The Distribution Agent shall cooperate with the Tax Administrator in providing

any information necessary to ensure income tax compliance.

## ARTICLE VI

### **PAYMENT OF COSTS, FEES, AND TAXES, AND FILING OF REPORTS AND ACCOUNTINGS**

6.1 Pursuant to the Order to Appoint a Distribution Agent,<sup>4</sup> the Distribution Agent's reasonable fees and expenses associated with distributing the Fair Fund shall be paid from the Fair Fund upon approval by the Court. Similarly, pursuant to the Order to Establish a Fair Fund and Appoint a Tax Administrator,<sup>5</sup> all taxes and reasonable Tax Administrator fees shall be paid from the Fair Fund upon approval by the Court.

6.2 The Distribution Agent shall provide to Commission Staff and file with the Court a progress report and a quarterly account statement in a format to be provided by Commission staff, within forty-five (45) days of the entry of this Distribution Plan, and shall provide to Commission staff and file additional reports and quarterly account statements within twenty (20) days after the end of every quarter thereafter.

6.3 The progress report and quarterly account statement will inform the Court, and the staff of the Commission, of the activities and status of the Fair Fund during the relevant reporting period, and once funds are transferred to the Distribution Agent will specify, at a minimum:

- (a) The location of the account(s) comprising the Fair Fund; and
- (b) An interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Eligible Claimants under this Distribution Plan, and any monies expended from the Fair Fund to satisfy

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<sup>4</sup> Dkt. No. 15.

<sup>5</sup> Dkt. No. 13.

any fees, costs, taxes and other expenses incurred in the implementation of this Distribution Plan.

## ARTICLE VII

### WIND DOWN OF DISTRIBUTION

7.1 The residual of the Fair Fund (the “Residual”) consists of any amounts remaining after all assets have been disbursed. The Residual may include, among other things, funds reserved for future taxes and for post-distribution contingencies, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payment checks that were not delivered or accepted upon delivery, and tax refunds.

7.2 If, after the distribution is complete and all taxes, fees, and expenses have been paid, funds remain in the Fair Fund, and the Distribution Agent, in consultation with the Commission staff, has determined further distributions to be infeasible, the Residual shall be transferred to the Commission.

7.3 The Distribution Agent shall provide to Commission staff for approval and filing with the Court a final report and final account statement in a format to be provided by Commission staff, when the administration of the Fair Fund is completed. The final report shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan and shall be compiled in coordination with the Tax Administrator.

7.4 Upon submission by the Distribution Agent of the final accounting to the Commission, the Commission staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual, consistent with *SEC v. Liu*, 140 S. Ct. 1936 (2020). If distribution of the Residual to investors is infeasible, the Commission staff may recommend the transfer of the Residual to the general fund

of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>6</sup>

7.5 Before termination of the Fair Fund, the Distribution Agent shall make arrangement for the final payment of taxes and any remaining fees and expenses. The Fair Fund shall be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred: (a) the final fund accounting has been submitted to and approved by the Court; (b) all taxes, fees and expenses have been paid; and (c) disposition of the residual has occurred in the manner specified in Section 7.2 above.

7.6 The Distribution Agent will maintain all claims materials in paper and electronic form, including documents in any media, for six (6) years after approval of the final fund accounting by the Court and thereafter will transfer the documents to the Commission, pursuant to Commission direction.

7.7 The Distribution Agent will shut down the toll-free number and website established specifically for the administration of the Fair Fund pursuant to Commission staff's direction.

7.8 Once the Fair Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

## **ARTICLE VIII**

### **OTHER RIGHTS AND POWERS**

8.1 The Distribution Agent is authorized to enter into agreements with financial institutions ("Institutions") as may be appropriate or necessary in the administration of the Fair Fund, provided that such Institutions are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the

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<sup>6</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

Distribution Agent under this Plan.

8.2 All proceedings with respect to the administration, processing, and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

8.3 The Court reserves the right to amend this Plan from time to time, and retains jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to this Plan.

8.4 The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any Person for making a distribution in accordance with the Order of the Court approving the distribution and the schedules of Eligible Claimants, and their Eligible Loss Amounts as approved by the Court, and all Persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a distribution from the Fair Fund, such Eligible Claimant shall be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent, its employees, agents, and attorneys in connection with this Plan and the administration of the Fair Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

8.5 The submission of the Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant shall not affect an Eligible Claimant's rights and claims against any party (other than the Distribution Agent), including, but not limited to, Defendants and Defendants' past or present directors, officers, employees, advisers, and agents.

# EXHIBIT A

## **PLAN OF ALLOCATION**

The Fair Fund will be distributed to Eligible Claimants pursuant to the terms of this Plan of Allocation.

### **CALCULATION OF RECOGNIZED LOSS PER SHARE**

1. Based on the formula set forth below, “Recognized Loss Per Share” shall be calculated for each purchase of Clovis common stock during the Relevant Period that is listed on the Claim Form and for which adequate documentation is provided, or was accepted as part of the Class Action. In the calculations below, if a Recognized Loss Per Share calculates to a negative number, reflecting a gain, that Recognized Loss Per Share shall be \$0.00.
2. For each share of Clovis common stock purchased or otherwise acquired during the period from July 7, 2015 through and including November 13, 2015 and:
  - (a) Sold on or before November 13, 2015, the Recognized Loss Per Share will be \$0.00.
  - (b) Sold during the period from November 16, 2015 through and including the close of trading on February 12, 2016, the Recognized Loss Per Share will be *the least of* (i) \$67.70; (ii) the purchase/acquisition price *minus* the moving average closing price of Clovis common stock on the sale date as set forth in Table A below; or (iii) the purchase/acquisition price *minus* the sale price.
  - (c) Held as of the close of trading on February 12, 2016, the Recognized Loss per Share is the *lesser of* (i) \$67.70; or (ii) the purchase/acquisition price minus \$27.63, the moving average closing price of Clovis common stock on February 12, 2016.

### **GENERAL PROVISIONS**

3. All prices mentioned in the calculations exclude all taxes, fees and commissions. Purchases and sales shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date.
4. Exercise of option contracts or the conversion of preferred stock into common stock will be considered to be purchases or sales of common stock as of the date of the exercise or conversion.
5. Subject to the limitations set forth in the Plan, if a Potentially Eligible Claimant acquired Clovis common stock by way of gift, inheritance, devise or operation of law, such claim will be computed using the date and price of the original purchase and not the date and price of transfer, gift or inheritance. To the extent those shares were not originally purchased in the Relevant Period, the Recognized Loss Per Share for that acquisition shall be \$0.00.

6. The Recognized Loss Per Share on “short sales” is zero. In the event that a claimant has an opening short position in Clovis common stock, the earliest Relevant Period purchases shall be matched against such opening short position and not be entitled to a recovery and will not contribute to a market gain or loss until that short position is fully covered.

**USE OF “FIFO” METHODOLOGY FOR COMPUTATION OF RECOGNIZED LOSSES PER SHARE FOR ELIGIBLE CLAIMANTS WHO MADE MULTIPLE TRANSACTIONS IN ELIGIBLE SECURITIES DURING THE RELEVANT PERIOD**

7. For Eligible Claimants who held shares before the beginning of the Relevant Period and/or made multiple purchases, acquisitions or sales of the Clovis common stock during the Relevant Period, the sales of shares will be matched in chronological order first against the claimant’s closing position the day before the beginning of the Relevant Period, until that day’s closing position has been exhausted; then remaining sales after the beginning of the Relevant Period will be matched in chronological order against purchases or acquisitions made in the Relevant Period until all such shares have been exhausted. Purchases and sales of eligible securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date.

**COMPUTATION OF THE ELIGIBLE LOSS AMOUNT FOR EACH ELIGIBLE CLAIMANT**

8. An Eligible Claimant’s Eligible Loss Amount equals the sum of the Recognized Loss Per Share as calculated in paragraph 2 above on all shares purchased in the Relevant Period.

9. If a claimant’s actual market loss on shares purchased during the Relevant Period are less than his, her or its Eligible Loss Amount, then the Eligible Loss Amount shall be limited to the actual market loss amount. If the actual market loss calculates to a gain, then the investor’s Eligible Loss Amount will be \$0.00. The actual market loss will be calculated as a) the total purchase amount for shares purchased during the Relevant Period less the sum of b) the total sales proceeds on those shares, and c) the holding value on the remaining of those shares. For shares still held as of the market close on November 16, 2015, the holding value will be \$30.24, the closing price on that day, for purposes of this calculation.

**DISTRIBUTION PAYMENT CALCULATIONS**

10. Should the total Eligible Loss Amounts of all Eligible Claimants exceed the Net Available Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. The Distribution Agent shall determine each Eligible Claimant’s *pro rata* share of the Net Fair Fund based upon each Eligible Claimant’s Eligible Loss Amount divided by the total Eligible Loss Amounts of all Eligible Claimants.

11. In no event will an Eligible Claimant receive a Distribution Payment greater than his, her, or its Eligible Loss Amount, after taking into account the payment received in the Class Action.

12. If an Eligible Claimant's Distribution Payment is less than \$10.00, that Eligible Claimant will not be included in the calculation and the funds will be distributed to other Eligible Claimants whose Distribution Payments are greater than the Minimum Distribution Amount.

Table A: Clovis Common Stock Average Closing Price, November 16, 2015 - February 13, 2016

<b>Date</b>	<b>Average Closing Price from Nov 16, 2015 to Date Shown</b>	<b>Date</b>	<b>Average Closing Price from Nov 16, 2015 to Date Shown</b>	<b>Date</b>	<b>Average Closing Price from Nov 16, 2015 to Date Shown</b>
11/16/2015	\$30.24	12/16/2015	\$30.73	1/19/2016	\$30.60
11/17/2015	\$28.53	12/17/2015	\$30.84	1/20/2016	\$30.41
11/18/2015	\$28.01	12/18/2015	\$30.92	1/21/2016	\$30.22
11/19/2015	\$27.71	12/21/2015	\$31.03	1/22/2016	\$30.05
11/20/2015	\$27.45	12/22/2015	\$31.13	1/25/2016	\$29.90
11/23/2015	\$27.16	12/23/2015	\$31.23	1/26/2016	\$29.74
11/24/2015	\$27.26	12/24/2015	\$31.33	1/27/2016	\$29.57
11/25/2015	\$27.50	12/28/2015	\$31.40	1/28/2016	\$29.39
11/27/2015	\$28.02	12/29/2015	\$31.52	1/29/2016	\$29.23
11/30/2015	\$28.36	12/30/2015	\$31.61	2/1/2016	\$29.07
12/1/2015	\$28.70	12/31/2015	\$31.72	2/2/2016	\$28.89
12/2/2015	\$29.12	1/4/2016	\$31.77	2/3/2016	\$28.73
12/3/2015	\$29.44	1/5/2016	\$31.77	2/4/2016	\$28.58
12/4/2015	\$29.76	1/6/2016	\$31.74	2/5/2016	\$28.42
12/7/2015	\$29.90	1/7/2016	\$31.69	2/8/2016	\$28.25
12/8/2015	\$30.09	1/8/2016	\$31.62	2/9/2016	\$28.09
12/9/2015	\$30.25	1/11/2016	\$31.47	2/10/2016	\$27.93
12/10/2015	\$30.39	1/12/2016	\$31.37	2/11/2016	\$27.78
12/11/2015	\$30.47	1/13/2016	\$31.19	2/12/2016	\$27.63
12/14/2015	\$30.50	1/14/2016	\$31.01		
12/15/2015	\$30.64	1/15/2016	\$30.81		