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 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 OAKLAND DIVISION

12 CYTOKINETICS, INC.,  
 13 Plaintiff,  
 14 and  
 15 DATATRAK INTERNATIONAL, INC.,  
 16 New Party Plaintiff,  
 17 v.  
 18 PHARM-OLAM INTERNATIONAL, LTD.,  
 19 Defendant.

Case No. 4:14-cv-05256-JSW  
**STIPULATION AND ~~PROPOSED~~ ORDER  
 OF DISMISSAL WITH PREJUDICE  
 AS MODIFIED**

1           **WHEREAS**, on December 1, 2014, Plaintiff Cytokinetics, Inc. (“Cytokinetics”) filed a  
2 complaint in the above-captioned action (the “Action”) against Defendant Pharm-Olam  
3 International, Ltd. (“Pharm-Olam”) alleging fraudulent inducement, breach of contract and  
4 negligence by Pharm-Olam in connection with its performance as the data management vendor  
5 for the BENEFITS-ALS clinical trial;

6           **WHEREAS**, on March 24, 2015, Pharm-Olam filed an answer, denying the allegations in  
7 the complaint;

8           **WHEREAS**, on June 5, 2015, Datatrak International, Inc. (“Datatrak”) filed a motion to  
9 intervene as a New Party Plaintiff, seeking a declaratory judgment that the indemnification  
10 provision of the agreement between Pharm-Olam and Datatrak did not require Datatrak to  
11 indemnify Pharm-Olam for the claims asserted against Pharm-Olam by Cytokinetics;

12           **WHEREAS**, on July 1, 2015, the Court granted Datatrak’s motion and Datatrak filed its  
13 complaint against Pharm-Olam;

14           **WHEREAS**, on July 21, 2015, Pharm-Olam filed an answer to Datatrak’s complaint,  
15 denying the allegations therein, and brought a counterclaim for a declaratory judgment that  
16 Datatrak must indemnify Pharm-Olam for the claims asserted against it by Cytokinetics;

17           **WHEREAS**, on August 17, 2015, Datatrak filed an answer to Pharm-Olam’s  
18 counterclaim, denying the allegations therein;

19           **WHEREAS**, on May 10, 2016, Cytokinetics, Pharm-Olam and Datatrak filed a Notice of  
20 Settlement requesting that all calendared deadlines be vacated pending the performance of  
21 conditions contained within the parties’ Settlement Agreement. On the same day, the court  
22 entered an order vacating all such deadlines;

23           **WHEREAS**, on or around June 7, 2016, Cytokinetics, Pharm-Olam and Datatrak entered  
24 into a Settlement Agreement and Mutual Waiver and General Release of All Claims (“Settlement  
25 Agreement”) in the Action thereby resolving all disputes among the parties, the conditions of  
26 which have now been met;

27           **BASED ON THE FOREGOING, IT IS HEREBY STIPULATED AND AGREED** by  
28 and among Cytokinetics, Pharm-Olam and Datatrak, through their respective undersigned

1 counsel, that the above action is hereby **DISMISSED WITH PREJUDICE** and that the Court  
2 may enter judgment herein dismissing the above-captioned action with prejudice pursuant to Rule  
3 41(a)(2) of the Federal Rules of Civil Procedure. Each party shall bear its own costs and  
4 attorneys' fees.

5 Respectfully submitted,

6 Dated: July 8, 2016

COOLEY LLP

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/s/ Shannon M. Eagan

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Shannon M. Eagan (212830)

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Attorneys for Plaintiff CYTOKINETICS, INC.

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Dated: July 8, 2016

CALFEE HALTER & GRISWOLD LLP

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*Admitted Pro Hac Vice*

Kimberly Moses (Ohio No. 0029601)

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WILSON, ELSER, MOSKOWITZ, EDELMAN &  
DICKER LLP

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/s/ Frances J. Torrence

Frances J. Torrence (154653)

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Attorneys for New Party Plaintiff DATATRAK  
INTERNATIONAL, INC.

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Dated: July 8, 2016

COBLENTZ PATCH DUFFY & BASS LLP

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/s/ Rees F. Morgan

Rees F. Morgan (229899)

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Attorneys for Defendant PHARM-OLAM  
INTERNATIONAL, LTD.

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**ORDER**

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Pursuant to the above stipulation, this case is **DISMISSED** with prejudice. The Clerk shall  
close the file.

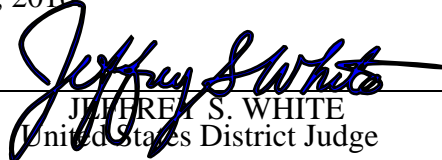
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**IT IS SO ORDERED**, this 11th day of July, 2016

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Dated: July 11, 2016

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JEFFREY S. WHITE  
United States District Judge

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