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*Counsel for Nominal Defendant and
Individual Defendants*

Counsel for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GERALD ROSS, Derivatively and on Behalf of
ASSERTIO THERAPEUTICS, INC.,

Plaintiff,

vs.

JAMES P. FOGARTY, KAREN A. DAWES,
ARTHUR J. HIGGINS, LOUIS J. LAVIGNE, JR.,
WILLIAM T. MCKEE, GAVIN T. MOLINELLI,
ROBERT G. SAVAGE, PETER D. STAPLE,
JAMES L. TYREE, SAMUEL R. SAKS, M.D.,
JAMES A. SCHOENECK, DAVID B. ZENOFF,
SRINIVAS G. RAO, M.D., PH.D. and R. SCOTT
SHIVELY,

Defendants, and

ASSERTIO THERAPEUTICS, INC., F/K/A
DEPOMED, INC.,

Nominal Defendant.

Case No. 17-cv-06592-JST

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER REGARDING
DISMISSAL**

Hearing Date: N/A
Courtroom 6, 2nd Floor

Hon. Jon S. Tigar

1 Plaintiff Gerald Ross (“Plaintiff”), individual defendants James P. Fogarty, Karen A. Dawes,
2 Arthur J. Higgins, Louis J. Lavigne, Jr., William T. McKee, Gavin T. Molinelli, Robert G. Savage,
3 Peter D. Staple, James L. Tyree, Samuel R. Saks, M.D., James A. Schoeneck, David B. Zenoff,
4 Srinivas G. Rao, M.D., PH.D. and R. Scott Shively, and nominal defendant Assertio Therapeutics,
5 Inc., f/k/a Depomed, Inc. (“Assertio”) hereby stipulate and agree as follows:

6 WHEREAS, the above-captioned shareholder derivative action (the “Action”), brought on
7 behalf and for the benefit of Assertio, was commenced on November 15, 2017 (ECF No. 1);

8 WHEREAS, other related shareholder derivative actions were brought on behalf of Assertio,
9 including (i) a consolidated shareholder derivative action styled as *In re Depomed, Inc. Derivative*
10 *Litigation*, Master File No.: RG17877280, pending in the Superior Court of the State of California
11 for the County of Alameda (the “State Court Action”) and (ii) a shareholder derivative action styled
12 as *Lutz v. Higgins, et al.*, Case No. 1:18-cv-02044-CFC, pending in the United States District Court
13 for the District of Delaware (the “Lutz Action”);

14 WHEREAS, on July 30, 2021, the parties to this Action, the State Court Action and the *Lutz*
15 Action executed a Stipulation of Settlement and Release Agreement (the “Settlement Stipulation”)
16 providing, among other things, for the release of certain claims, including all those asserted against
17 the defendants in this Action, and the parties’ stipulation to the dismissal of this Action, with prejudice,
18 following the date on which the Settlement Stipulation shall have become final and effective;

19 WHEREAS, on August 6, 2021, plaintiffs in the State Court Action filed an Unopposed Motion
20 for Preliminary Approval of Derivative Settlement (the “Derivative Settlement”);

21 WHEREAS, on October 28, 2021, Judge Brad Seligman entered an order preliminarily
22 approving the Derivative Settlement and ordering that notice of the Derivative Settlement be provided
23 to Assertio stockholders;

24 WHEREAS, notice of the Derivative Settlement was provided to Assertio stockholders in
25 accordance with the preliminary approval order;

26 WHEREAS, on December 14, 2021, following a settlement fairness hearing, Judge Seligman
27 entered an Order and Final Judgment (the “Judgment,” attached hereto as Exhibit A), granting final
28

1 approval of the Derivative Settlement and finding that the Derivative Settlement was fair,
2 reasonable, and adequate;

3 WHEREAS, pursuant to the terms of the Settlement Stipulation, Plaintiff shall dismiss this
4 Action with prejudice.

5 THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE, through their
6 undersigned counsel, subject to the approval of the Court, as follows:

7 1. The Action is dismissed with prejudice; and

8 2. The parties agree that except as otherwise set forth in the Settlement Stipulation and/or
9 ordered by the court in the State Court Action, each side shall bear his, her, or its own fees, costs,
10 and expenses.

11 **IT IS SO STIPULATED.**

12 Dated: December 20, 2021

/s/ Benjamin Heikali

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Counsel for Plaintiff

20 Dated: December 20, 2021

/s/ Michael A. Mugmon

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Counsel for Nominal Defendant and Individual Defendants

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~~PROPOSED~~ ORDER

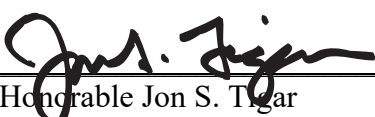
Based upon the above stipulation of the parties and for good cause appearing:

The Action is dismissed with prejudice.

The parties shall bear his, her, or its own fees, costs, and expenses except as otherwise set forth in the Settlement Stipulation and/or ordered by the court in the State Court Action.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April 14, 2022



The Honorable Jon S. Tigar
United States District Judge