



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

TARA M. WILLIAMS, derivatively )  
on behalf of PASSAGE BIO, INC., )

Plaintiff, )

v. )

MAXIME GOWEN, ATHENA )  
COUNTOURIOTIS, SANDIP )  
KAPADIA, SAQIB ISLAM, THOMAS )  
WOIWODE, LIAM RATCLIFFE, and )  
DERRELL PORTER, )

Defendants, )

and )

PASSAGE BIO, INC., )  
Nominal Defendant. )

C.A. No. 2023-0072-JTL

**STIPULATION AND AGREEMENT OF  
COMPROMISE, SETTLEMENT AND RELEASE**

This Stipulation and Agreement of Compromise (the “Stipulation” or “Agreement”), dated December 13, 2023, is entered into by and among the following parties, by and through their undersigned attorneys: plaintiff Tara M. Williams (“Plaintiff”), individually and derivatively on behalf of Passage Bio, Inc. (“Passage” or the “Company”); (ii) defendants Maxime Gowen, Athena Countouriotis, Sandip Kapadia, Saqib Islam, Thomas Woiwode, Liam Ratcliffe, and Derrell Porter (collectively, the “Individual Defendants”); and (iii) nominal defendant Passage

(with the Individual Defendants, “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Settling Parties” and each individually as a “Settling Party.”

The Stipulation is intended by the Settling Parties to fully, finally, and forever compromise, resolve, discharge, and settle all claims in the Released Claims against all the Released Persons and dismiss the Action with prejudice, upon the terms set forth below and subject to the approval of the Court of Chancery of the State of Delaware (the “Court”) pursuant to Court of Chancery Rule 23.1.<sup>1</sup>

## **I. BACKGROUND**

WHEREAS, Passage is a genetic medicines company incorporated in Delaware and headquartered in Philadelphia, Pennsylvania;

WHEREAS, the Individual Defendants are current and/or former members of the Board of Directors (the “Board”) of Passage;

WHEREAS, on April 22, 2022, Plaintiff served a demand to inspect the Company’s books and records pursuant to 8 *Del. C.* § 220 (the “Section 220 Demand”);

WHEREAS, on August 26, 2023, Plaintiff filed an action in this Court to enforce the Section 220 Demand, captioned *Williams v. Passage Bio*, C.A. 2022-

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

0762-JTL (Del. Ch.) (the “Section 220 Action”);

WHEREAS, on October 24, 2022 and January 3, 2023, Passage produced documents to Plaintiff that were responsive to the Section 220 Demand;

WHEREAS, on January 24, 2023, Plaintiff dismissed the 220 Action and commenced a derivative action captioned *Williams v. Gowen, et al.*, C.A. No. 2023-0072-JTL (Del. Ch.) (the “Action”) in this Court by filing a Verified Shareholder Derivative Complaint for breach of fiduciary duty, waste of corporate assets, and unjust enrichment (the “Complaint”);

WHEREAS, Plaintiff agreed to extend Defendants’ time to respond to the Complaint;

WHEREAS, on March 24, 2023, Defendants produced additional documents to Plaintiff;

WHEREAS, on August 29, 2023, Plaintiff served Defendants with a Request for Production and Plaintiff’s First Set of Interrogatories;

WHEREAS, since the filing of the Action, the Settling Parties have engaged in arm’s-length negotiations, through counsel, to attempt to reach a settlement of the claims asserted by Plaintiff in the Action;

WHEREAS, on September 6, 2023, after multiple rounds of negotiations, the Settling Parties reached an agreement in principle to settle all of the claims asserted in the Action upon the terms set forth in Section II.2.1 and Exhibit

A, and on December 13, 2023, executed and filed this stipulation and agreement of compromise (the “Settlement”);

WHEREAS, the Settling Parties did not discuss the appropriateness or amount of attorneys’ fees and expenses at any time prior to reaching agreement on the terms of the Settlement, and understood at all times that the Settlement was not contingent upon agreement or payment of any attorneys’ fees and expenses to Plaintiff’s Counsel;

WHEREAS, Plaintiff and Plaintiff’s Counsel believe the Action has merit, and Plaintiff’s entry into this Stipulation and the Settlement is not intended to be and shall not be construed as an admission or concession concerning the relative strength or merit of the claims alleged in the Action;

WHEREAS, Plaintiff and Plaintiff’s Counsel also recognize and acknowledge the significant risk, expense, and length of continued proceedings necessary to prosecute the Action through trial and through possible appeals, and have considered, in particular, the expense of continued proceedings that could be borne by Passage;

WHEREAS, Plaintiff’s Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as the Action, as well as the difficulties and delays inherent in such litigation, and

Plaintiff's Counsel are also mindful of the inherent problems of proof and possible defenses to the claims alleged in the Action;

WHEREAS, based upon Plaintiff's Counsels' evaluation, Plaintiff has determined that the Settlement is fair, reasonable, adequate, and in the best interests of Passage and Passage's stockholders, and have agreed to settle the Action upon the terms and subject to the conditions set forth herein;

WHEREAS, the Individual Defendants have denied, and continue to deny, any and all allegations of wrongdoing or liability asserted in the Action;

WHEREAS, without limiting the foregoing, the Individual Defendants have denied, and continue to deny, among other things: that they breached their fiduciary duties or any other duty owed to Passage or its stockholders in connection with the Company's compensation practices; that they were unjustly enriched as a result of any breach of fiduciary duty or other act, omission, or conduct; that they committed any violations of law or wrongdoing whatsoever; or that Plaintiff, Passage, or Passage's stockholders suffered any damage or were harmed as a result of any act, omission, or conduct by the Individual Defendants alleged in the Action or otherwise;

WHEREAS, the Individual Defendants have further asserted, and continue to assert, that at all relevant times, they acted in good faith and in a manner

that they reasonably believed to be in the best interests of Passage and its stockholders;

WHEREAS, Defendants are entering into this Stipulation and the Settlement solely to eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further litigation; and

WHEREAS, neither this Stipulation, nor any of its terms or provisions, nor entry of the Final Judgment, nor any document or exhibit attached to or referred to in this Stipulation, nor any action taken to carry out this Stipulation, 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.

## **II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff (individually on behalf of herself and derivatively on behalf of Passage) and Defendants each by and through their respective counsel, subject to the approval of the Court pursuant to Court of Chancery Rule 23.1, that in exchange for the consideration set forth below, the Released Claims shall be and hereby are compromised, settled, discontinued, and dismissed with prejudice, as to all Settling

Parties, and the Action shall be dismissed with prejudice as to the Defendants, upon the terms and subject to the conditions set forth herein as follows:

**1. Definitions**

As used in this Stipulation, the following terms have the meanings specified below:

**1.1.** “Effective Date” means the date by which all of the events and conditions specified in Section II.6.1 herein have been met and have occurred.

**1.2.** “Execution Date” means the date upon which all Settling Parties have executed this Stipulation.

**1.3.** “Final Judgment” means the Order and Final Judgment entered by the Court dismissing the Action with prejudice, substantially in the form annexed hereto as Exhibit D.

**1.4.** “Notice” means the Notice of Pendency of Proposed Settlement of Stockholder and Derivative Action, Settlement Hearing and Right to Appear, substantially in the form annexed hereto as Exhibit C.

**1.5.** “Person” means a natural person, individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, any business or legal entity, and any spouse, heir,

legatee, executor, administrator, predecessor, successor, representative, or assign of any of the foregoing.

**1.6.** “Plaintiff’s Counsel” means Rigrotsky Law, P.A. and Moore Kuehn, PLLC.

**1.7.** “Reforms” means the corporate governance reforms set forth in Section II.2.1 and the Director Compensation Policy attached as Exhibit A.

**1.8.** “Released Claims” means any and all claims which are or were alleged, asserted, set forth, or claimed in the Action; or which arise out of, or are based upon, any of the allegations, transactions, facts, matters, events, disclosures, occurrences, statements, acts or omissions alleged in or referred to in the Action, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (as defined herein), whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule, and that could have been alleged, asserted, set forth, or claimed in the Action or in any other action, court (whether state or federal), tribunal, forum or proceeding, including without limitation (i) any compensation paid by Passage to its non-employee directors in fiscal years 2020 and 2021; (ii) any non-employee director compensation plan, policies, guidelines, or processes that were used to determine non-employee director



compensation for fiscal years 2020 and 2021; and (iii) any decision of the Company's directors related to the foregoing; provided, however, that it is understood that Released Claims and any release provided by this Settlement shall not include any claims to enforce the Settlement.

**1.9.** "Released Persons" means the Individual Defendants and their predecessors, successors, assignees, subsidiaries, affiliates, agents, attorneys, insurers, and each of their past or present officers, directors, and employees.

**1.10.** "Releases" means the releases set forth in Section II.5 below.

**1.11.** "Releasing Persons" means Plaintiff (both individually and derivatively on behalf of Passage), any other Passage stockholder, Plaintiff's Counsel, and Passage. "Releasing Person" means, individually, any of the Releasing Persons.

**1.12.** "Scheduling Order" means an order scheduling a Settlement Hearing and approving the form of Notice and method of giving notice, substantially in the form annexed hereto as Exhibit B.

**1.13.** "Settlement Hearing" means the hearing set by the Court to consider final approval of the Settlement.

**1.14.** "Settlement" means the settlement among Plaintiff and Defendants on the terms and conditions set forth in this Agreement.

**1.15.** “Unknown Claims” means any Released Claim(s) that Plaintiff or Defendants do not know of or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, 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 Settling Parties agree that upon the Effective Date, the Settling Parties 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Settling Parties acknowledge that the foregoing waiver is an essential term of this Stipulation without which the consideration given herein would not have been given by the Parties.

## **2. Terms of the Settlement**

**2.1.** Within ten (10) business days of the Effective Date, Defendants shall implement the following Reforms, which shall be maintained until at least

December 31, 2027: (a) adoption of the Director Compensation Policy attached as Exhibit A hereto on the terms and restrictions set forth therein and in this Stipulation, which Policy shall be approved by the Board and publicly filed with the Securities and Exchange Commission (the “SEC”); (b) amendment of the charter of the Compensation Committee of the Board to include a provision requiring that the Compensation Committee consist of at least three independent Board members; and (c) disclosure in Passage’s annual proxy statement of (i) the constituents of the Company’s peer group utilized in setting non-employee director compensation and the relevant financial and business metrics, including market capitalizations, of each constituent within the Company’s peer group, (ii) a reasonable detailed description of the methodology for determining and approving the Company’s peer group, (iii) the identity of the compensation consultant retained by the Compensation Committee and any formal recommendation made by the compensation consultant, (iv) a description of the Company’s amended and/or revised compensation program, including the Director Compensation Policy, as set forth in the Policy and in this Stipulation, which description shall include the fact that initial and annual equity grants will be issued in terms of value while the Director Compensation Policy

remains in effect, and (v) any compensation paid to non-employee directors outside of the Director Compensation Policy.

**2.2.** Passage agrees and acknowledges that the Action and Plaintiff's efforts in connection therewith caused the Board to adopt, implement, and maintain the Reforms and that the Reforms confer substantial benefits on the Company and its stockholders.

**2.3.** The Settling Parties and their attorneys agree to use their individual and collective best efforts to obtain Court approval of the Stipulation. The Settling 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.

### **3. Scheduling Order, Notice, and Approval**

**3.1.** Promptly after execution of this Agreement, the Settling Parties shall submit this Agreement together with its exhibits to the Court, including the proposed Scheduling Order substantially in the form of Exhibit B attached hereto, requesting: (a) the approval of the manner of notice to Passage stockholders substantially in the form attached hereto as Exhibit D; (b) the Court's consideration of the proposed Settlement; and (c) a date for the Settlement Hearing.

**3.2.** Notice to current Passage stockholders shall consist of the Notice of Pendency of Settlement of Derivative Action, Settlement Hearing and Right to Appear (the “Notice”), substantially in the form attached hereto as Exhibit C, and shall be provided to Passage stockholders as follows: within ten (10) business days after the entry of the Scheduling Order, Passage shall mail the Notice to all record stockholders of Passage at their respective addresses currently set forth in Passage’s stock records. In addition, no later than fourteen (14) calendar days after entry of the Scheduling Order, the Company shall use reasonable efforts to give notice to all beneficial owners of Passage’s stock by (a) filing a Form 8-K with the SEC that discloses the Settlement and attaches the Notice as an exhibit, and (b) posting on its website a copy of the Stipulation and exhibits, including the Notice.

**3.3.** At least ten (10) business days prior to the Settlement Hearing, Defendants shall serve on counsel in the Action and file with the Court an appropriate affidavit with respect to the preparation, mailing, and public disclosure of the Notice in the manner set forth in Section II.3.2.

**3.4.** Passage shall be responsible for all costs associated with the disclosure of the Notice as described in Section II.3.2.

**3.5.** The Settling Parties believe the content and manner of the Notice constitutes adequate and reasonable notice to Passage stockholders pursuant to applicable law and due process.

**3.6.** Pending the Court's determination as to final approval of the Agreement, Plaintiff agrees to stay this proceeding and not to initiate any other proceedings other than those incident to the Settlement itself.

**3.7.** The Settling Parties will request the Court to order (in the Scheduling Order) that, pending final determination of whether the Settlement should be approved by the Court, Plaintiff in the Action and all Passage 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.

#### **4. Attorneys' Fees and Expenses**

**4.1.** Defendants acknowledge and agree that Plaintiff's Counsel are entitled to a fee award. Subject to the terms and conditions of the Stipulation and any Order of the Court, Passage has agreed to pay an award of attorneys' fees and expenses to Plaintiff's Counsel in an amount of \$390,000 (the "Fee and Expense Amount"), subject to approval by the Court or the Delaware Supreme Court. The Fee and Expense Amount shall be paid by Passage and/or its insurers. Plaintiff's Counsel may apply for attorneys' fees and expenses only in the Court and shall make no application for attorneys' fees or expenses in any other jurisdiction. Defendants shall not contest the Fee and Expense Amount. The Fee and Expense Amount shall be paid to Plaintiff's Counsel within ten (10) business days after the Court enters the

Final Judgment, subject to Plaintiff's Counsels' timely provision of the requisite payment information, including wire instructions and a completed Form W-9, and obligation to refund that amount within ten (10) business days if the Settlement is reversed, vacated or modified on appeal or by collateral attack. Except as otherwise provided herein, each of the Settling Parties shall bear his, her, or its own fees and costs and neither Passage nor any other Released Person shall have any obligations with respect to Plaintiff's Counsels' fees and/or expenses beyond the Fee and Expense Amount.

**4.2.** Plaintiff's Counsel may seek a special award to Plaintiff of up to \$1,500 ("Service Award"), in connection with her role in the litigation and in creating a benefit for the Company and its shareholders. The Service Award shall be paid out of the Fee and Expense Amount. Defendants shall not contest the Service Award.

**4.3.** Any failure of the Court to approve a request for the Fee and Expense Amount or Service Award in whole or in part shall not affect the remainder of the Settlement.

**4.4.** Except as provided in Section II.4 and II.3.4 of this Stipulation, Defendants shall have no obligation to pay or reimburse any fees, expenses, costs, or damages alleged or incurred by Plaintiff, by Passage stockholders, or by their attorneys, experts, advisors, or representatives with respect to the Released Claims.

## **5. Releases**

**5.1.** Upon the Effective Date, the Releasing Persons shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims against the Individual Defendants and each and all of the Released Persons; provided, however, that such release shall not affect any claims or impair or restrict the rights of any Settling Party to enforce the terms of this Stipulation.

**5.2.** Upon the Effective Date, the Released Persons and Passage, along with their predecessors, successors and assignees, 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, or relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against Plaintiff and Plaintiff's Counsel, and their predecessors, successors and assignees; provided, however, that such release shall not affect any claims or impair or restrict the rights of any Settling Party to enforce the terms of this Agreement.

## **6. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

**6.1.** The Settlement shall be conditioned on the occurrence of all of the following events: (a) Court approval of the Settlement; (b) entry of the Final Judgment in the Action approving the proposed Settlement and providing for the



dismissal with prejudice of the Action and the grant of the release of the Released Claims; (c) dismissal with prejudice of the Action without the award of any damages, costs, fees, or the grant of any further relief to any party, except as provided in Section II.4 and II.3.4 of this Stipulation; and (d) the expiration of the time to seek an appeal or otherwise review the Final Judgment.

**6.2.** If any of the conditions listed in Section II.6.1 are not met, this Stipulation and any Settlement documentation shall be null and void and of no force and effect. Furthermore, in the event that any of the conditions listed in Section II.6.1 are not met: the Settling Parties shall be restored to their positions on the date immediately prior to the Execution Date, 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 purposes in the Action or in any litigation or judicial proceeding; this Stipulation shall not be deemed to entitle any Settling Party to the recovery of costs and expenses incurred in connection with the intended implementation of the Settlement, except as provided in Section II.4 and II.3.4 of this Stipulation; and all releases delivered in connection with this Stipulation shall be null and void.

**7. Dismissal of the Action**

7.1. If the Court approves the Settlement, the Settling Parties shall promptly request that the Court enter the proposed Final Judgment, substantially in the form attached hereto as Exhibit D.

**8. The Stipulation Is Not an Admission**

8.1. This Stipulation reflects, among other things, the compromise and settlement of disputed claims among the Settling 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 Settling 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 Final 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.

## **9. Miscellaneous Provisions**

**9.1.** The Settling Parties acknowledge that it is their intent to consummate the terms and conditions of this Stipulation and agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their reasonable best efforts to accomplish the terms and conditions of the Stipulation expeditiously.

**9.2.** The Settling Parties agree that the terms of this Stipulation and the Settlement were negotiated in good faith by the Settling Parties and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their rights to rebut, in a manner that such Settling Party determines to be appropriate, any contention made in any public forum that the Action was brought or defended in bad faith or without a reasonable basis.

**9.3.** This Stipulation shall be deemed to have been mutually prepared by the Settling Parties hereto and shall not be construed against any of them by reason of authorship.

**9.4.** This Stipulation may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document. Any signature to the Stipulation by means of facsimile or electronically scanned and sent via email shall be treated in all manner and respects

as an original signature and shall be considered to have the same binding legal effect as if it were the original signed version thereof.

**9.5.** All Persons executing this Stipulation thereby represent that they have been authorized and empowered to do so.

**9.6.** Plaintiff and Plaintiff's Counsel represent and warrant that none of Plaintiff's claims referred to in this Stipulation or that could have been alleged in the Action have been assigned, encumbered, or in any manner transferred in whole or in part.

**9.7.** This Stipulation embodies and represents the full agreement of the Settling Parties and supersedes any and all prior agreements and understandings relating to the subject matter hereof between or among any of the Settling Parties hereto. No party to this agreement is relying on representations, warranties or statements of any nature whatsoever, whether written or oral, other than the representations, warranties and covenants expressly set forth in this Stipulation or its Exhibits. This Stipulation shall not be modified or amended, nor shall any provision of this Stipulation be deemed waived, unless such modification, amendment, or waiver is in writing and executed by or on behalf of the Settling Parties. The waiver by any Settling Party of any provision or the breach of this Stipulation shall not be deemed a waiver of any other provision or breach of this Stipulation.

**9.8.** If any provision of this Stipulation is held to be unlawful, invalid, or unenforceable: (i) such provision will be fully severable; (ii) this Stipulation will be construed and enforced as if such unlawful, invalid, or unenforceable provision had never comprised a part of this Stipulation; and (iii) the remaining provisions of this Stipulation will remain in full force and effect and will not be affected by the unlawful, invalid, or unenforceable provision or by its severance from this Stipulation.

**9.9.** This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

**9.10.** All Settling Parties submit to the exclusive jurisdiction of the Court (or any other state court in the State of Delaware should the Court lack subject matter jurisdiction) for purposes of implementing, enforcing, and interpreting the Stipulation. With respect to such action, each Settling Party irrevocably and unconditionally: (i) consents to the personal jurisdiction in the State of Delaware; (ii) waives any objection to venue in the State of Delaware and any claim that Delaware is an inconvenient forum; and (iii) consents to service of process by registered or certified mail directed to the undersigned counsel.

**9.11.** Any notice, request, instruction, correspondence or other document to be given hereunder by any Party to another shall be in writing and

delivered by e-mail and/or overnight (excluding Saturday and Sunday) delivery service as follows:

To the Company:

Susan W. Waesco (#4476)  
**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**  
1201 N. Market Street, 16th Floor  
Wilmington, DE 19801  
(302) 658-9200

To Plaintiff:

Seth D. Rigrotsky (#3147)  
Gina M. Serra (#5387)  
Herbert Mondros (#3308)  
**RIGRODSKY LAW, P.A.**  
300 Delaware Avenue, Suite 210  
Wilmington, DE 19801  
(302) 295-5310

**9.12.** This Agreement has been negotiated and drafted by all of the Parties and their representatives.

**IN WITNESS WHEREOF, IT IS HEREBY AGREED** by the undersigned as of the date noted above.

Dated: December 13, 2023

OF COUNSEL:

FENWICK & WEST LLP

Jay Pomerantz  
801 California Street  
Mountain View, CA 94041  
(650) 988-8500

**MORRIS, NICHOLS, ARSHT &  
TUNNELL LLP**

*/s/ Susan Waesco* \_\_\_\_\_

Susan W. Waesco (#4476)  
1201 North Market Street  
Wilmington, Delaware 19801  
(302) 658-9200

*Attorneys for Defendants*

OF COUNSEL:

**MOORE KUEHN, PLLC**

Justin Kuehn  
Fletcher Moore  
30 Wall Street, 8th Floor  
New York, NY 10005  
(212) 709-8245

**RIGRODSKY LAW, P.A.**

*/s/ Herbert Mondros* \_\_\_\_\_

Seth D. Rigrodsky (#3147)  
Gina M. Serra (#5387)  
Herbert Mondros (#3308)  
300 Delaware Avenue, Suite 210  
Wilmington, DE 19801  
(302) 295-5310

*Attorneys for Plaintiff*

# EXHIBIT A





PASSAGE BIO, INC.  
NON-EMPLOYEE DIRECTOR COMPENSATION POLICY  
(Effective as of [\_\_\_\_], 2024)

Each member of the Board of Directors (the “**Board**”) of Passage Bio, Inc. (the “**Company**”) who is a non-employee director of the Company (each such member, a “**Non-Employee Director**”) will receive the compensation described in this Non-Employee Director Compensation Policy (the “**Policy**”) for his or her Board service. The Board and its Compensation Committee shall adhere to the Policy in approving and awarding Non-Employee Director compensation. The Company’s compensation consultant shall be provided a copy of the Policy.

### Cash Compensation

Each Non-Employee Director will receive cash compensation as described below for service on the Board, with the amount of such compensation to be determined on an annual basis by the Board subject to the limits and requirements set forth in Restrictions & Requirements below.

*General Board Service Annual Cash Fee.* Each Non-Employee Director will be paid an annual cash fee as determined by the Board.

*Chairman / Committee Membership Annual Cash Fee.* In addition to the General Board Service Annual Cash Fee, each Non-Employee Director who serves as chair of the Board or chair or member of a committee of the Board will be paid additional annual cash fees for such service as determined by the Board.

The annual cash compensation amounts will be paid quarterly in arrears, pro-rated for any partial quarters served. All annual cash fees are vested upon payment. There are no per-meeting attendance fees for attending Board meetings.

### Equity Compensation

Each Non-Employee Director will be eligible to receive either stock options to purchase shares of the Company’s common stock (“**Options**”) or restricted stock units to acquire shares of the Company’s common stock (“**RSUs**” and together with Options, “**Awards**”) under the Company’s 2020 Equity Incentive Plan (the “**Plan**”) or any successor equity incentive plan as described below for service on the Board, with the amounts and terms of such equity compensation to be determined by the Board on an annual basis subject to the limits and requirements set forth in Restrictions & Requirements below.

#### 1. Equity Grants:

- a. **Initial Award for New Directors.** Each individual who is elected or appointed for the first time to be a Non-Employee Director (each, a “**New Director**”) will, upon the date that the individual commences service as a Non-Employee Director (or, if such date is not a market trading day, the first market trading day thereafter) (the “**Initial Award Grant Date**”), be granted an Award to purchase or acquire a number of shares to be determined based on a Value (as defined below)

designated by the Board (the “**Initial Award**”). The Initial Award shall vest pursuant to a vesting schedule established by Board, subject to the Non-Employee Director’s continued service through each applicable vesting date. If a Non-Employee Director’s service ends on the date of vesting, then the vesting shall be deemed to have occurred.

- b. **Annual Award.** On the date of each annual stockholders’ meeting (the “**Annual Meeting**” and such date, the “**Annual Award Grant Date**”), each individual who is a Non-Employee Director prior to, and will continue to serve as a Non-Employee Director following, such Annual Meeting (each, a “**Continuing Director**”) will be granted an Award to purchase or acquire a number of shares to be determined based on a Value designated by the Board (the “**Annual Award**”). The Annual Award shall vest pursuant to a vesting schedule established by Board, subject to the Non-Employee Director’s continued service through each applicable vesting date. If a Non-Employee Director’s service ends on the date of vesting, then the vesting shall be deemed to have occurred.
  - c. **Value.** For purposes of this Policy, “**Value**” (for the purposes of determining the number shares that will be subject to an Award) means the grant date fair value of the Award determined in accordance with ASC 718.
  - d. **Exercise Price.** Any Option granted pursuant to this Policy shall have an exercise price per share equal to 100% of the Fair Market Value (as defined in the Plan) of the underlying Common Stock on the date of grant, which shall be the closing price on the date of grant.
2. **Remaining Terms.** The remaining terms and conditions of each Option or RSU award will be as set forth in the Plan and Company’s standard Option Award Agreement or RSU Award Agreement, in the forms adopted from time to time by the Board or Compensation Committee.

## Expenses

The Company will reimburse each Non-Employee Director for ordinary, necessary and reasonable out-of-pocket expenses to cover in-person attendance at and participation in Board and committee meetings; *provided*, that the Non-Employee Director timely submit to the Company appropriate documentation substantiating such expenses in accordance with the Company’s travel and expense policy, as in effect from time to time.

## Restrictions & Requirements

The Company agrees to determine Non-Employee Director compensation as set forth above and to be bound by the terms of the Sections below titled “Limitations” and “Peer Group” (together, the “**Restrictions & Requirements**”) through December 31, 2027. After December 31, 2027, the Company will no longer be subject to the Restrictions & Requirements and may amend, modify or terminate the Restrictions & Requirements of this Policy at any time after December 31, 2027

in its sole discretion. In the event the Company undergoes a change of control, the Restrictions & Requirements shall not be applicable to any successor of the Company.

1. **Limitations.** The provisions in this “Limitations” Section shall supersede any other provision of this Policy to the contrary and shall remain in effect through December 31, 2027. These provisions are in addition to, and not in limitation of, Section 12.1 of the Plan.
  - a. **Continuing Directors.** The average annual compensation of all Continuing Directors for any calendar year (the “*Total Average Annual Non-Employee Director Compensation*”) shall not exceed the 62.5<sup>th</sup> percentile of total combined annual cash and equity Non-Employee Director compensation of the Company’s Peer Group (such limit to be determined on an annual basis, at the time the Board approves annual Non-Employee Director compensation). The average annual compensation calculation shall be made by dividing the total compensation payable to all Continuing Directors during a calendar year by the number of Continuing Directors who receive compensation in such year.
  - b. **New Directors.** Each New Director’s total annual cash compensation percentile shall not exceed the 62.5<sup>th</sup> percentile of the Company’s Peer Group (as determined at the time the Board approves annual Non-Employee Director compensation). Each New Director’s Initial Award shall have a Value that is no greater than 2.0x the Value of Annual Award awarded (or to be awarded) to Continuing Directors in that year (based on the most recent Board approved annual Non-Employee Director compensation amounts). For the avoidance of doubt, the Initial Award shall be excluded from the calculation of the Total Average Annual Non-Employee Director Compensation.
  - c. **Market Capitalization Limit.** While the Company’s market capitalization is below \$100 million measured as of the last day of the fiscal quarter immediately preceding the date on which the Board approves annual Non-Employee Director compensation (the “*Market Capitalization Measurement Date*”), the Total Average Annual Non-Employee Director Compensation shall not exceed \$125,000. This limit shall not apply to New Directors.
  - d. **Compensation for other Service.** For the avoidance of doubt, any cash or equity compensation awarded to a Non-Employee Director for service as an officer, employee or consultant of the Company shall be excluded from the calculation of the Total Average Annual Non-Employee Director Compensation.
  - e. **Initial Award & Annual Award by Value.** The Initial Awards and Annual Awards shall only be calculated and granted in terms of a designated Value (and not a fixed number of shares).
2. **Peer Group.** The provisions in this “Peer Group” Section shall supersede any other provisions to this Policy to the contrary, which provisions shall remain in effect through December 31, 2027.

- a. The Compensation Committee will annually retain a compensation consultant (the “**Consultant**”) to conduct an analysis of non-employee director compensation provided by constituent companies of the Company’s Peer Group and to annually review the Company’s peer group (“**Peer Group**”). The Consultant shall provide the Compensation Committee with a written report of its analysis and make recommendations concerning adjustments to the Peer Group and the levels of compensation paid to the Company’s Non-Employee Directors. A summary of the Compensation Committee’s review of the Consultant’s analysis and recommendations shall be reflected in the Compensation Committee’s minutes.
- b. Constituent companies of the Peer Group shall be determined on an annual basis and shall be limited to companies with market capitalizations 0.4-2.25x that of the Company’s market capitalization, each as determined on the Market Capitalization Measurement Date, except that if the Company’s market cap is below \$250 million on the Market Capitalization Measurement Date, the constituent companies of the Peer Group may have market capitalizations 0.333-3x that of the Company’s market capitalization. If a constituent company falls outside of the required market capitalization range, the company shall be excluded from the Peer Group as of the next time the Peer Group is reviewed and approved.
- c. If the Consultant recommends removal of a constituent company from the Peer Group for any reason, the constituent company shall be removed from the Peer Group.
- d. The Compensation Committee shall evaluate Non-Employee Director compensation on an annual basis and make a recommendation to the Board, even if (1) the Consultant is not recommending a compensation adjustment, modification, update or new award that year and/or (2) the Compensation Committee determines that it will not adjust, modify, or update the non-employee directors’ compensation or make a new award that year. A summary of the Board’s review of the Compensation Committee’s recommendation shall be reflected in the Board minutes where such recommendation was discussed.

### **Restriction Period & Amendment**

The Board may not amend, modify, or terminate this Policy through December 31, 2027.

# EXHIBIT B



# GRANTED WITH MODIFICATIONS

EFiled: Dec 27 2023 02:52PM EST  
Transaction ID: 636790  
Case No. 2023-0072-JTL



## IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TARA M. WILLIAMS, derivatively )  
on behalf of PASSAGE BIO, INC., )

Plaintiff, )

v. )

MAXIME GOWEN, ATHENA )  
COUNTOURIOTIS, SANDIP )  
KAPADIA, SAQIB ISLAM, THOMAS )  
WOIWODE, LIAM RATCLIFFE, and )  
DERRELL PORTER, )

Defendants, )

and )

PASSAGE BIO, INC., )  
Nominal Defendant. )

C.A. No. 2023-0072-JTL

### **[PROPOSED] SCHEDULING ORDER WITH RESPECT TO NOTICE AND SETTLEMENT HEARING**

WHEREAS, a Stipulation and Agreement of Compromise, Settlement and Release (the “Stipulation”)<sup>1</sup> has been entered into as of December 13, 2023 by and among plaintiff Tara M. Williams (“Plaintiff”); defendants Maxime Gowen, Athena Countouriotis, Sandip Kapadia, Saqib Islam, Thomas Woiwode, Liam Ratcliffe, and Derrell Porter (collectively, the “Individual Defendants”); and

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<sup>1</sup> The capitalized terms used in this Scheduling Order shall have the same meanings as they have in the Stipulation (certain of which are repeated here for ease of reference only).

nominal defendant Passage Bio, Inc. (“Passage” or the “Company,” and together with the Individual Defendants, “Defendants”); and

WHEREAS, the Stipulation sets forth the terms and conditions for the proposed Settlement and dismissal with prejudice of the Action, subject to review and approval by this Court pursuant to Court of Chancery Rule 23.1 upon notice to the current record holders of shares of the Company’s common stock as of the date of entry of this Scheduling Order (the “Notice Record Date”);

NOW, upon consent of Plaintiff and Defendants (the “Parties”), after review and consideration of the Stipulation filed with the Court and the exhibits annexed thereto, and after due deliberation,

IT IS HEREBY ORDERED this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, that:

1. A hearing (the “Settlement Hearing”) shall be held on \_\_\_\_\_, 2023 at \_\_:\_\_ .m., at the Court of Chancery Courthouse, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, or via a remote proceeding such as Zoom or by telephone, to:

a) determine whether the proposed Settlement, on the terms and conditions provided for in the Agreement, should be approved as fair, reasonable and adequate;

b) determine whether the Court should finally approve the Stipulation and enter the Final Judgment as provided in the Stipulation and dismiss the Action with prejudice, thereby extinguishing and releasing the Released Claims;

c) determine whether the Court should approve Plaintiff's Counsel's application for approval of the Fee and Expense Amount agreed upon by the Parties;

d) determine whether and in what amount a Service Award should be paid to Plaintiff from the Fee and Expense Amount;

e) hear and determine any objections to the Settlement, Plaintiff's Counsel's petition for attorneys' fees (including expenses), and/or the requested service award to Plaintiff; and

f) determine any other matters the Court may deem appropriate.

2. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the consideration of the application for attorneys' fees (including expenses) and a service award to Plaintiff, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, or a notation on the docket in the Action.

3. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties and without further notice to the current stockholders of the Company. Further, the



Court may render its Final Judgment, and order payment of attorneys' fees (including expenses), all without further notice to the current stockholders of the Company.

4. Within ten (10) business days after the entry of this Scheduling Order, the Company shall cause a notice of the Settlement Hearing in substantially the form annexed as Exhibit C to the Stipulation (the "Notice") to be mailed by U.S. Mail, First Class, postage pre-paid (or by more expedient means) to the record holders of shares of the Company's common stock as of the Notice Record Date, at their last known addresses on record with the Company or its transfer agent. All stockholders of record who hold shares of the Company's common stock on behalf of beneficial owners and who receive the Notice shall be requested to forward the Notice promptly to such beneficial owners. Defendants shall cause to be paid all costs and expenses incurred in providing Notice of the Settlement as provided in this Order and the Stipulation ("Notice Costs"), and in no event shall Plaintiff, the Released Persons, or any other Company stockholder, or their attorneys be responsible for any such Notice Costs.

5. No later than fourteen (14) calendar days after entry of this Scheduling Order, the Company shall use reasonable efforts to give notice to all beneficial owners of Passage's stock by (a) filing a Form 8-K with the SEC that discloses the

Settlement and attaches the Notice as an exhibit, and (b) posting on its website a copy of the Stipulation and exhibits, including the Notice.

6. The Court approves the Notice, in form and content, and finds that mailing and distribution of the Notice substantially in the manner and form set forth herein meets the requirements of Court of Chancery Rule 23.1, due process, and applicable law, and that the form and method of notice herein is the best notice practicable under the circumstances and constitutes due and sufficient notice of the Settlement Hearing to all persons entitled to receive such a notice. Counsel for the Company shall, at least fourteen (14) calendar days before the Settlement Hearing, file with the Court an appropriate affidavit with respect to the preparation and mailing of the Notice and compliance with paragraphs 4 and 5.

7. Until the earlier of receipt of Final Judgment or an order of the Court substantially denying or declining to approve the Settlement in accordance with the Stipulation, the Released Persons, or any individual, are barred and enjoined to the maximum extent permitted under law from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any of the Released Claims, either directly, representatively, derivatively or in any other capacity, against any of the Released Persons. The Parties agree to use their best efforts to prevent, stay, seek dismissal of, or oppose entry of any interim or final relief in favor of any of the Released Persons in any other litigation

against any of the Released Persons that challenges the Settlement or brings claims, the release of which are contemplated by this Stipulation.

8. As set forth in the Notice, any current stockholder that continues to own such share of the Company's stock as of the date of the Settlement Hearing who objects to the Settlement, the proposed Final Judgment to be entered, the application for attorneys' fees (including expenses) and a Service Award to Plaintiff, or who otherwise wishes to be heard (each, 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 Final Judgment to be entered thereon, or any allowance of fees and expenses to Plaintiff's Counsel or incentive award to Plaintiff, or otherwise be heard with respect to the matters considered at the Settlement Hearing, unless he, she, or it has, no later than twenty (20) 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 Courthouse, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, the following: (a) proof of ownership of the Company's stock as of the Notice Record Date and continuously to the present; (b) a written and signed notice of the Objector's intention to appear, which states the

name, address and telephone number of the Objector and, if represented, his, her, or its counsel; (c) a detailed statement of the objections to any matter before the Court; and (d) 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. Any such filings with the Court must also be served upon each of the following counsel (by e-service, hand, or overnight mail) such that they are received no later than twenty (20) calendar days prior to the Settlement Hearing:

Seth D. Rigrotsky (#3147)  
Gina Sera (#5387)  
Herbert Mondros (#3308)  
RIGRODSKY LAW, P.A.  
300 Delaware Avenue, Suite 210  
Wilmington, DE 19801  
(302) 295-5310

*Attorneys for Plaintiff*

Susan W. Waesco (#4476)  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 N. Market Street, 16th Floor  
Wilmington, DE 19801  
(302) 658-9200

*Attorneys for Defendants*

9. 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 this Action or any other action or proceeding or otherwise contesting the Settlement and the application for attorneys' fees (including expenses) and an incentive award to Plaintiff in the Action or any other proceeding, and will otherwise be bound by the Final Judgment to be entered and the releases to be given.

10. At least thirty (30) calendar days prior to the Settlement Hearing, Plaintiff's Counsel shall file with the Court a brief in support of the Settlement, Plaintiff's Counsel fee and expense petition and Plaintiff's request for a Service Award. Any brief in support of any objection(s) to the Settlement or to Plaintiff's Counsel's fee and expense petition shall be filed and served at least twenty (20) calendar days prior to the Settlement Hearing.

11. At least ten (10) calendar days prior to the Settlement Hearing, the Parties may file with the Court responsive briefs to any objections made to the Settlement, Plaintiff's Counsel's fee and expense petition and/or Plaintiff's request for a service award.

12. If the Settlement is approved by the Court following the Settlement Hearing, the Court shall enter an Order and Final Judgment substantially in the form attached to the Stipulation as Exhibit D.

13. The Agreement, and any actions taken in connection therewith, shall be null and void and of no force and effect if (a) the Agreement is terminated pursuant

to its terms or is not approved by the Court in all material respects; (b) the Final Judgment entered pursuant to the Agreement is reversed, vacated or modified in any material respect by this Court or any other court, unless counsel for each of the Settling Parties, within ten (10) business days from receipt of such ruling or event, agrees in writing with counsel for the other Settling Parties to proceed with the Agreement and Settlement, including only with such modifications, if any, as to which all other Parties in their sole judgment and discretion may agree; or (c) final approval of the Settlement otherwise fails to occur. Neither a modification nor a reversal on appeal of any Fee and Expense Amount awarded by the Court to Plaintiffs' Counsel or the Service Award to Plaintiff shall be deemed a material modification of the Final Judgment or the Agreement. In any such event, the Agreement (a) shall be without prejudice to the rights of any Party thereto; (b) shall not be deemed to be construed as evidence of, or an admission by any Party of, any fact, matter, or thing; and (c) 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. In any such event, the Settling Parties shall further be deemed to have reverted to their respective statuses in the Action as of the date and time immediately prior to the execution of the Agreement, and, except as otherwise expressly provided, the Settling Parties shall proceed in all respects as if the Agreement and any related orders had not been entered.

14. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement and determine a fee award, are hereby stayed and suspended until further order of the Court.

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 and any Objectors, and the Court retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

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Vice Chancellor J. Travis Laster

This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** J Travis Laster

**File & Serve**

**Transaction ID:** 71687226

**Current Date:** Dec 27, 2023

**Case Number:** 2023-0072-JTL

**Case Name:** Tara M. Williams v. Maxime Gowen, et al.

**Court Authorizer:** J Travis Laster

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**Court Authorizer**

**Comments:**

The settlement hearing will take place on March 4, 2024, at 1:30 p.m.

**/s/ Judge J Travis Laster**



# EXHIBIT C

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

TARA M. WILLIAMS, derivatively )  
on behalf of PASSAGE BIO, INC., )

Plaintiff, )

v. )

MAXIME GOWEN, ATHENA )  
COUNTOURIOTIS, SANDIP )  
KAPADIA, SAQIB ISLAM, THOMAS )  
WOIWODE, LIAM RATCLIFFE, and )  
DERRELL PORTER, )

Defendants, )

and )

PASSAGE BIO, INC., )

Nominal Defendant. )

C.A. No. 2023-0072-JTL

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF  
STOCKHOLDER DERIVATIVE ACTION, SETTLEMENT HEARING,  
AND RIGHT TO APPEAR**

**TO: ALL CURRENT STOCKHOLDERS OF PASSAGE BIO, INC.  
(TICKER: PASG)**

**IF YOU HOLD COMMON STOCK OF PASSAGE BIO, INC.  
FOR THE BENEFIT OF ANOTHER, PLEASE PROMPTLY  
TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL  
OWNER.**

The purpose of this Notice is to inform you of (i) the pendency of the above-captioned action (the “Action”), which was brought in the Court of Chancery of the State of Delaware (the “Court”) by a stockholder of Passage Bio, Inc. (“Passage” or the “Company”) asserting claims derivatively on behalf of the Company; (ii) the proposed settlement of the Action (the “Settlement”), subject to Court approval and subject to other conditions of the Settlement being satisfied, as provided for in a Stipulation and Agreement of Compromise, Settlement and Release dated December 13, 2023 (the “Stipulation”), which was filed with the Court and is publicly available for review; and (iii) your right to participate in a hearing to be held on March 4, 2024, at 1:30 p.m., before the Court at the Court of Chancery Courthouse, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801 (the “Settlement Hearing”). The purposes of the Settlement Hearing are to determine whether the Court should: (i) approve the proposed Settlement as fair, reasonable and adequate; (ii) dismiss the Action with prejudice; (iii) enter an Order and Final Judgment approving the Settlement; (iv) approve a petition for an award of attorneys’ fees and expenses to Plaintiff’s counsel in the Action; (v) approve a petition for a service award to Plaintiff; and (vi) hear and determine any objections to the Settlement, Plaintiff’s counsel’s petition for attorneys’ fees and expenses, or to Plaintiff’s petition for a service award.

The Court directed that this Notice be mailed to you because Passage’s records indicate that you are a Stockholder of Passage. The Court has directed us to send you this Notice because you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this Action generally affects your legal rights. The issuance of this Notice is not an expression by the Court of any findings of fact or any opinion concerning the merits of any claim in the Action, and the Court has not yet decided whether to approve the Settlement.

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS  
ENTIRETY. THIS NOTICE RELATES TO A PROPOSED  
SETTLEMENT OF THE LITIGATION REFERRED TO IN THE**

**CAPTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS OR ADEQUACY OF THE PROPOSED SETTLEMENT, AND FROM PURSUING THE RELEASED CLAIMS (AS DEFINED BELOW).**

The Stipulation was entered into as of December 13, 2023 by and among Plaintiff Tara M Williams (“Plaintiff”); Defendants Maxime Gowen, Athena Countouriotis, Sandip Kapadia, Saqib Islam, Thomas Woiwode, Liam Ratcliffe, and Derrell Porter (collectively, “Defendants”); and Nominal Defendant Passage. Plaintiff, Defendants, and Passage are collectively referred to herein as the “Parties.”

This Notice describes the rights you may have in the Action and pursuant to the Stipulation and what steps you may take, but are not required to take, in relation to the Settlement. If the Court approves the Settlement, the Parties will ask the Court at the Settlement Hearing to enter an Order and Final Judgment dismissing the Action with prejudice in accordance with the terms of the Stipulation.

**WHAT IS THE PURPOSE OF THIS NOTICE?**

1. The purpose of this Notice is to explain the Action, the terms of the proposed Settlement, and how the Settlement affects the legal rights of the Company’s stockholders.
2. In a derivative action, one or more people and/or entities who are current stockholders of a corporation sue on behalf of and for the benefit of the corporation, seeking to enforce the corporation’s legal rights.
3. As described more fully below, current stockholders have the right to object to the proposed Settlement, the application by Plaintiff’s counsel for an award of fees and expenses and Plaintiff’s application for a service award. They have the right to appear and be heard at the Settlement Hearing, which will be held before The Honorable J. Travis Laster on March 4, 2024, at 1:30 p.m., Court of Chancery Courthouse, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801 or as may be undertaken via a remote proceeding such as Zoom or by telephone. At the Settlement Hearing, the Court will: (a) determine whether the proposed Settlement should be approved as fair, reasonable and adequate; (b) determine whether the Court should finally approve the Stipulation and

enter the Order and Final Judgment as provided in the Stipulation and dismiss the Action with prejudice, thereby extinguishing and releasing the Released Claims; (c) determine whether and in what amount an award of attorneys' fees (including expenses) should be paid to Plaintiff's Counsel; (d) determine whether and in what amount a service award should be paid to Plaintiff; (e) hear and determine any objections to the Settlement, Plaintiff's Counsel's petition for attorneys' fees (including expenses), or Plaintiff's petition for a service award; and (e) rule on any other matters the Court may deem appropriate.

4. The Court has reserved the right to adjourn or continue the Settlement Hearing, including consideration of the application by Plaintiff's counsel for an award of attorney's fees and expenses and/or Plaintiff's application for a service award, without further notice to you other than by announcement at the Settlement Hearing or any adjournment thereof, or notation on the docket in the Action. The Court has further reserved the right to approve the Settlement, at or after the Settlement Hearing, with such modifications as may be consented to by the Parties and without further notice of any kind.

WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

**THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THE ACTION AND OF A HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY, OR MAY NOT, WISH TO TAKE IN RELATION TO THIS LITIGATION.**

5. On April 22, 2022, Plaintiff served a demand to inspect the Company's books and records pursuant to 8 *Del. C.* § 220 (the "Section 220 Demand");

6. On August 26, 2023, Plaintiff filed an action in this Court to enforce the Section 220 Demand, captioned *Williams v. Passage Bio*, C.A. 2022-0762-JTL (Del. Ch.) (the "220 Action");

7. On January 24, 2023, Plaintiff dismissed the 220 Action and filed a

Verified Stockholder Derivative Complaint (the “Complaint”) in this Court, purportedly on behalf of Passage and against the Defendants. The Complaint alleges that the Defendants breached their fiduciary duty of loyalty by granting and accepting allegedly excessive and unfair compensation in each of 2020 and 2021;

8. Since the filing of the Action, the Parties have engaged in arm’s-length negotiations, through counsel, to attempt to reach a settlement of the claims asserted by Plaintiff in the Action.

9. In order to avoid the uncertainty of litigation, possible appeals, and further legal expenses, the Parties desire to end the Action, and to compromise and settle the Action in its entirety.

10. On September 6, 2023, after months of negotiations, Plaintiff and Defendants reached an agreement in principle to settle all of the claims asserted in the Action on the terms set forth in Exhibit A to the Stipulation and detailed below.

11. The Parties executed the Stipulation on December 13, 2023.

#### WHAT ARE THE TERMS OF THE SETTLEMENT?

12. Set forth below is a summary of the principal terms of the proposed Settlement, as agreed to by the Parties, subject to the approval of the Court. The following statements are a summary, and reference is made to the Stipulation and Exhibit A thereto, which are publicly available, for a full and complete statement of the terms of the Settlement.

13. In consideration for the full settlement and release of the Released Claims (as defined below), and subject to the terms and conditions set forth in the Stipulation, Defendants shall implement within ten (10) days of entry of Final Judgment and maintain until at least December 31, 2027 the following Corporate Governance Reforms (the “Reforms”), which are fully set forth in Exhibit A to the Stipulation:

- a. The Company shall adopt a written Non-Employee Director Compensation Policy (the “Director Compensation Policy”) governing the compensation to be received by each non-employee director of the Company, which shall be approved by the Passage board of directors (the “Board”) and publicly filed.

- b. The Director Compensation Policy shall include the following provisions limiting annual overall director compensation:
- i. For continuing directors, total average annual non-employee director compensation (*i.e.*, cash and equity value) shall not exceed the 62.5th percentile of the Company's peer group.
  - ii. For new directors, total average non-employee director cash compensation shall not exceed the 62.5<sup>th</sup> percentile of the Company's peer group, which shall be determined in accordance with the provisions in Paragraph 3. New directors shall also be entitled to receive a one-time equity award, the value of which shall be no greater than 2.0x the annual equity grant awarded to continuing directors in that year.
  - iii. While the Company's market capitalization is below \$100 million, the total average annual compensation of the Company's continuing non-employee directors shall not exceed \$125,000. This limit shall not apply to new directors.
- c. The Director Compensation Policy shall also include the following provisions:
- i. The Compensation Committee will annually retain a compensation consultant to conduct an analysis of non-employee director compensation at peer companies and annually review Passage's peer group. The consultant shall provide the Compensation Committee with a written report of its analysis and make recommendations concerning adjustments to the peer group and the levels of compensation paid to the Company's non-employee directors. A summary of the Compensation Committee's review of the consultant's analysis and recommendations shall be reflected in the Compensation Committee's minutes.
  - ii. Constituents of the peer group shall be determined on an annual basis and shall be limited to companies with market capitalizations 0.4-2.25x that of the Company's, except that while Passage's market cap is below \$250 million, the constituents of the peer group may have market capitalizations

.333-3x that of the Company's. If a peer company falls outside of the required market cap range, the peer shall be excluded from the peer group.

- iii. If the consultant recommends removal of a peer company from the peer group for any reason, the peer shall be removed from the peer group.
  - iv. The Compensation Committee shall evaluate non-employee director compensation on an annual basis and make a recommendation to the Board, even if (1) the consultant is not requesting a compensation adjustment, modification, update or new award that year and/or (2) the Compensation Committee determines that it will not adjust, modify, or update the directors' compensation or make a new award that year. A summary of the Board's review of the Compensation Committee's recommendation shall be reflected in the Board minutes where such recommendation was discussed.
- d. The initial and annual equity grants awarded to Passage's non-employee directors shall only be issued in terms of value.
- e. The Compensation Committee Charter will be amended to include a provision requiring that the Compensation Committee consist of at least three independent Board members, rather than the two independent members currently required.
- f. The Company shall disclose in its annual proxy statement:
- i. The constituents of the Company's peer group and relevant financial and business metrics of each constituent, including market capitalizations.
  - ii. A reasonably detailed description of the methodology for determining and approving the Company's peer group.
  - iii. The identity of the Company's compensation consultant and any formal recommendation made by the compensation consultant.



- iv. A description of the amended and/or revised compensation program, including the Director Compensation Policy, as set forth in this agreement. This shall include the fact that initial and annual equity grants are now issued in terms of value.
- v. Any compensation paid to non-employee directors outside of its director compensation policy.

14. Defendants shall pay, or shall cause to be paid, the reasonable and necessary costs and expenses incurred in providing this Notice to the Public Stockholders (the “Notice Costs”).

**WHAT ARE THE PARTIES’ REASONS FOR THE SETTLEMENT?**

15. The Settlement set forth in the Stipulation reflects the results of the Parties’ negotiations and the terms of the Stipulation, and an agreement-in-principle was reached only after arm’s-length negotiations.

16. Plaintiff and Plaintiff’s Counsel thoroughly considered the facts and law underlying the claims asserted in the Action. Plaintiff’s agreement to settle the Action is not intended to be and shall not be construed as an admission or concession concerning the relative strength or merit of the claims. However, Plaintiff and Plaintiff’s Counsel also recognize the significant risk, expense, and length of continued proceedings necessary to prosecute the Action through trial and possible appeals, and took these factors into account.

17. Plaintiff believes that the Released Claims had merit when filed and continue to have merit, and Plaintiff is settling the Released Claims because Plaintiff believes that the Settlement will provide substantial value to the Company and its stockholders. Plaintiff has concluded that the Settlement is fair, reasonable, and in the best interests of the Company and its stockholders, and that it is reasonable to pursue the Settlement based on the terms and procedures outlined in the Stipulation.

18. In light of the changes to Passage’s practices and procedures for non-employee director compensation, and on the basis of information available to them, including publicly available information, Plaintiff and Plaintiff’s Counsel have determined that the proposed Settlement is fair, reasonable, adequate, and in the best interests of Passage. The Settlement provides the needed changes to the Company’s non-employee director compensation practices and procedures without the risk that continued litigation could result in obtaining similar or lesser relief after continued

extensive and expensive litigation, including trial and possible appeals, the outcome of which is inherently uncertain.

19. Defendants have denied, and continue to deny, that they have committed or threatened to commit any violations of law, breaches of duty, breaches of contract, or other wrongdoing toward the Company, Plaintiff, or anyone else concerning any of the claims, allegations, or requests for relief set forth in the complaints filed in this Action. Defendants have agreed to the Settlement solely because they consider it desirable that the claims against them in the Action be settled and dismissed with prejudice in order to, among other things, (i) avoid the substantial expense, inconvenience and distraction of continued litigation, and (ii) avoid any possibility of a finding of liability, however remote, and finally put to rest the claims asserted against the Defendants in the Action.

**WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED?  
WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

20. If the Settlement is approved, the Court will enter a Final Order and Judgment (“Judgment”) approving the Settlement in accordance with the Stipulation, at which time the Action will be dismissed with prejudice on the merits. The first date by which such order is finally affirmed on appeal or is no longer subject to appeal, and the time for any petition for re-argument, appeal or review, by leave, writ of certiorari, or otherwise, has expired, constitutes “Final Approval.” Upon receipt of Final Approval, and subject to the conditions set forth in the Stipulation, the following releases will occur:

Stipulation §5.1. Upon the Effective Date (defined in §23, *infra*), the Releasing Persons (defined below) shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims (defined below) against the Individual Defendants and each and all of the Released Persons; provided, however, that such release shall not affect any claims or impair or restrict the rights of any of the Parties to enforce the terms of this Stipulation.

Stipulation §5.2. Upon the Effective Date, the Released Persons (defined below) and Passage, along with their predecessors, successors and assignees, 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 (defined below)),

arising out of, or relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against Plaintiff and Plaintiff's Counsel, and their predecessors, successors and assignees; provided, however, that such release shall not affect any claims or impair or restrict the rights of any of the Parties to enforce the terms of this Agreement.

Releasing Persons. Releasing Persons means Plaintiff (both individually and derivatively on behalf of Passage), any other Passage stockholder, Plaintiff's Counsel, and Passage.

Released Claims. Released Claims means any and all claims which are or were alleged, asserted, set forth, or claimed in the Action; or which arise out of, or are based upon, any of the allegations, transactions, facts, matters, events, disclosures, occurrences, statements, acts or omissions alleged in or referred to in the Action, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims (as defined herein), whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule, and that could have been alleged, asserted, set forth, or claimed in the Action or in any other action, court (whether state or federal), tribunal, forum or proceeding, including without limitation (i) any compensation paid by Passage to its non-employee directors in fiscal years 2020 and 2021; (ii) any non-employee director compensation plan, policies, guidelines, or processes that were used to determine non-employee director compensation for fiscal years 2020 and 2021; and (iii) any decision of the Company's directors related to the foregoing; provided, however, that it is understood that Released Claims and any release provided by this Settlement shall not include any claims to enforce the Settlement.

Released Persons. Released Persons means the Individual Defendants and their predecessors, successors, assignees, subsidiaries, affiliates, agents, attorneys, insurers, and each of their past or present officers, directors, and employees.

Unknown Claims. Unknown Claims means any Released Claim(s) that Plaintiff or Defendants do not know of or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, 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 Settling Parties agree that upon the Effective Date, the Settling Parties 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties agree and acknowledge that this waiver is an essential term of the Agreement, without which the consideration given herein would not have been given by the Parties.

21. Upon entry of the Judgment, Defendants and the Company, fully, finally, and forever release, settle, and discharge, and shall forever be enjoined from prosecuting all claims (including Unknown Claims), arising out of, or relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action against the Releasers. For the avoidance of doubt, notwithstanding anything to the contrary herein, nothing in this Stipulation is intended to release, and nothing herein shall operate as a release of, any (i) rights, claims or actions that Passage or any Defendant may have against any insurer for payment of the Settlement amount or (ii) rights, claims or actions that Passage or any of the Defendants may have with respect to any insurance policy implicated by the Action.

22. Pending Court approval of the Stipulation, the Parties agree to stay any and all proceedings in the actions other than those incident to the Settlement. Except as necessary to pursue the Settlement and determine a fee award, pending final determination of whether the Stipulation should be approved, all Parties to the Action (including Plaintiff, the Defendants, and Passage) agree not to institute, commence, prosecute, continue, or in any way participate in, whether directly or indirectly, representatively, individually, derivatively on behalf of Passage, or in any other capacity, any action or other proceeding asserting any Released Claims. Nothing herein shall in any way impair or restrict the rights of any Party to defend this Stipulation or to otherwise respond in the event any Person objects to the

Stipulation, the proposed Judgment to be entered, and/or the Fee and Expense Amount or Service Award.

23. “Effective Date” means the date that the Judgment, which approves in all material respects the releases provided for in the Stipulation and dismisses the Action with prejudice, becomes Final.

HOW WILL THE ATTORNEYS BE PAID?

24. Defendants acknowledge and agree that Plaintiff’s Counsel is entitled to a fee award. Subject to the terms and conditions of the Stipulation and any Order of the Court, Passage has agreed to pay an award of attorneys’ fees and expenses to Plaintiff’s Counsel in an amount of \$390,000 (the “Fee and Expense Amount”), subject to approval by the Court or the Delaware Supreme Court.

25. Plaintiff’s Counsel also intend to apply to the Court for a special award to Plaintiff for the time and expenses she expended in the prosecution of the Action of up to fifteen hundred dollars (\$1,500) to be payable from the fees and expenses the Court awards to Plaintiff’s Counsel in connection with the Fee and Expense Application (the “Service Award Application”). Defendants and Passage will not object to or otherwise take any position on the Service Award Application.

26. Any award to Plaintiff’s Counsel for fees and expenses and any service award to Plaintiff shall be determined by the Court.

WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD?  
DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?

27. The Court will consider the Settlement and all matters related to the Settlement at the Settlement Hearing. The Settlement Hearing will be held before The Honorable J. Travis Laster on March 4, 2024, at 1:30 p.m., Court of Chancery Courthouse, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, or as may be undertaken via a remote proceeding such as Zoom or by telephone. Any current stockholder who objects to the Settlement, the application for the Fee and Expense Amount by Plaintiff’s Counsel, or Plaintiff’s Service Award, or who otherwise wishes to be heard, may appear in person or through 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 such person shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Order and Final Judgment to be entered thereon, or

the allowance of fees and expenses to Plaintiff's Counsel, or otherwise be heard with respect to the matters considered at the Settlement Hearing unless, no later than twenty (20) calendar days before the Settlement Hearing, such person files with the Register in Chancery, Court of Chancery Courthouse, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, the following: (a) proof of ownership of the Company's stock as of the Notice Record Date and continuously to the present; (b) a written and signed notice of the Objector's intention to appear, which states the name, address and telephone number of the Objector and, if represented, his, her, or its counsel; (c) a detailed statement of the objections to any matter before the Court; and (d) 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. Any such filings with the Court must also be served upon each of the following counsel (by e-service, hand, or overnight mail) such that they are received no later than twenty (20) calendar days prior to the Settlement Hearing:

Seth D. Rigrotsky  
Gina M. Serra  
Herbert Mondros  
RIGRODSKY LAW, P.A.  
300 Delaware Avenue, Suite 210  
Wilmington, DE 19801  
(302) 295-5310  
sdr@rl-legal.com  
hwm@rl-legal.com  
gma@rl-legal.com

*Counsel for Plaintiff*

Susan W. Waesco (#4476)  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 N. Market Street, 16th Floor  
Wilmington, DE 19801

*Counsel for Defendants*

28. 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 this Action or

any other action or proceeding or otherwise contesting the Settlement and the application for attorneys' fees (including expenses) and an incentive award to Plaintiff in the Action or any other proceeding, and will otherwise be bound by the Order and Final Judgment to be entered and the releases to be given. Passage Stockholders do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

**CAN I SEE THE COURT FILE?  
WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

29. This Notice does not purport to be a comprehensive description of the Action, the allegations related thereto, the terms of the Settlement, or the Settlement Hearing. For a more detailed statement of the matters involved in the Action, you may inspect the pleadings, the Stipulation, the Orders entered by the Court, and other papers filed in the Action at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center (formerly New Castle County Courthouse), 500 North King Street, Wilmington, Delaware 19801, during regular business hours of each business day. If you have questions regarding the Settlement, you may write or call Plaintiff's Counsel: Seth D. Rigrodsky, Gina M. Serra, Herbert Mondros, RIGRODSKY LAW, P.A., 300 Delaware Avenue, Suite 210, Wilmington, DE 19801, (302) 295-5310.

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

Dated: December 27, 2023

BY ORDER OF THE COURT OF  
CHANCERY OF THE STATE OF  
DELAWARE

# EXHIBIT D





IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TARA M. WILLIAMS, derivatively )  
on behalf of PASSAGE BIO, INC., )

Plaintiff, )

v. )

MAXIME GOWEN, ATHENA )  
COUNTOURIOTIS, SANDIP )  
KAPADIA, SAQIB ISLAM, THOMAS )  
WOIWODE, LIAM RATCLIFFE, and )  
DERRELL PORTER, )

Defendants, )

and )

PASSAGE BIO, INC., )  
Nominal Defendant. )

C.A. No. 2023-0072-JTL

**[PROPOSED] ORDER AND FINAL JUDGMENT**

A hearing having been held before this Court on \_\_\_\_\_, 2023 pursuant to this Court’s Scheduling Order dated \_\_\_\_\_, 2023 (the “Scheduling Order”), and upon a Stipulation and Agreement of Compromise, Settlement and Release, dated December 13, 2023 (the “Stipulation”),<sup>1</sup> of the above-captioned action (the “Action”), the parties to the Stipulation having appeared by

<sup>1</sup> The capitalized terms used in this Order and Final Judgment shall have the same meanings as they have in the Stipulation (certain of which are repeated here for ease of reference only).

their attorneys of record, the Court having heard and considered the submissions and evidence presented in support of the proposed Settlement and the application for an award of attorneys' fees (including expenses), the opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Scheduling Order, and the Court having determined that Notice was adequate and sufficient, and the entire matter of the proposed Settlement having been heard and considered by the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this \_\_ day of \_\_\_\_\_, 202\_, as follows:

1. The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement of the Action, as well as personal jurisdiction over all of the Parties and each of the current stockholders of Passage Bio, Inc. (the "Company") and it is further determined that Plaintiff, Defendants, and the Company are bound by this Order and Final Judgment.

2. The Notice of Pendency and Proposed Settlement of Actions (the "Notice") has been given to the Company's common stockholders pursuant to and in the manner directed by the Scheduling Order, proof of the mailing of the Notice has been filed with the Court, and a full opportunity to be heard has been offered to all of the parties to the Stipulation, the current stockholders of the Company, and persons in interest. The form and manner of the Notice is hereby determined to have

been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of Court of Chancery Rule 23.1 and due process.

3. The Court finds, based upon the record in the Action, that Plaintiff and Plaintiff's Counsel have adequately represented the interests of the Company.

4. Based on the record in this Action, each of the provisions of Court of Chancery Rule 23.1 has been satisfied, and the Action has been properly maintained according to the provisions of Court of Chancery Rule 23.1.

5. The Court finds the Settlement is fair, reasonable, and adequate and in the best interests of the Company and the Company's stockholders, and it is hereby approved. The parties to the Stipulation are hereby authorized and directed to comply with, and to consummate, the Settlement in accordance with its terms and provisions, and the Register in Chancery is directed to enter and docket this Order and Final Judgment in the Action.

6. The Action is hereby dismissed with prejudice as to all Defendants and the Company, and against Plaintiff, the Company, and all current stockholders of the Company. As between Plaintiff and Defendants and the Company, the parties are to bear their own costs, except as otherwise provided in paragraph 10 below or as otherwise provided in the Stipulation and the Scheduling Order.

7. Upon the Effective Date, the Releasing Persons claims shall be deemed to have, and by operation of this Order and Final Judgment approving this Settlement shall have, completely discharged, dismissed with prejudice on the merits, released and settled, to the fullest extent permitted by law, the Released Claims against the Released Persons and shall be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any of the Released Claims against any of the Released Persons; however, such release shall not affect any claims or impair or restrict the rights of any Settling Party to enforce the terms of the Agreement.

8. The Parties are hereby authorized, without further approval from the Court, to agree to adopt such amendments, modifications, and expansions of the Stipulation as are consistent with this Order and Final Judgment and the Stipulation and that do not limit the rights of Plaintiff, Defendants, the Company, or the Company's stockholders under the Stipulation. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

9. Neither this Order and Final Judgment, nor the Settlement, nor the Stipulation, nor any act or omission in connection with any of the foregoing shall be deemed a presumption, concession, or admission by any Party of any fault, liability, wrongdoing, or any infirmity or weakness of any claim or defense, as to any facts or

claims (including the Released Claims) that have been or might be alleged or asserted in the Action, or any other action or proceeding that has been will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, for any purpose other than as permitted by applicable court rules and rules of evidence. This Order and Final Judgment is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action or any wrongdoing by Defendants' or Plaintiff's Releasees.

10. Plaintiff's Counsel are awarded attorneys' fees (including expenses) in the sum of \$ \_\_\_\_\_ (the "Fee and Expense Award"). The Court finds the Fee and Expense Award to be fair and reasonable and shall be paid or caused to be paid in accordance with the terms of the Stipulation. Plaintiff is awarded a Service Award of \$ \_\_\_\_\_ to be payable from the fees and expenses awarded by the Court to Plaintiff's Counsel in connection with the Fee and Expense Award, which special award the Court finds to be fair and reasonable.

11. No proceedings or Court order with respect to the Fee and Expense Award shall in any way disturb or affect the Court's approval of the Settlement or the other provisions of this Order and Final Judgment (including precluding Final Judicial Approval or otherwise preventing this Order and Final Judgment from being

entitled to preclusive effect), and any such proceedings or Court order shall be considered separate from this Order and Final Judgment. 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 Order and Final Judgment.

12. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration, enforcement, and consummation of the Settlement and this Order and Final Judgment.

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Vice Chancellor J. Travis Laster