

1 ROBBINS GELLER RUDMAN  
& DOWD LLP  
2 JAMES I. JACONETTE (179565)  
655 West Broadway, Suite 1900  
3 San Diego, CA 92101  
Telephone: 619/231-1058  
4 619/231-7423 (fax)

**FILED**  
**SAN MATEO COUNTY**

AUG 14 2020

Clerk of the Superior Court  
By [Signature]  
DEPUTY CLERK

5 Lead Counsel for Plaintiffs and the Putative Class

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF SAN MATEO

9 In re MENLO THERAPEUTICS INC. )  
10 SECURITIES LITIGATION )  
11 \_\_\_\_\_ )  
12 This Document Relates To: )  
13 ALL ACTIONS. )  
14 \_\_\_\_\_ )

Lead Case No. 18CIV06049  
CLASS ACTION  
Assigned for All Purposes to Dept. 16  
JUDGMENT AND ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT

Judge: Honorable Richard H. DuBois  
Dept: 16  
Date Action Filed: 11/08/18

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1           WHEREAS, the Court is advised that the Parties,<sup>1</sup> through their counsel, have agreed, subject to  
2 Court approval following notice to the Class and a hearing, to settle this Action upon the terms and  
3 conditions set forth in the Stipulation of Settlement dated March 26, 2020 (the “Stipulation”); and

4           WHEREAS, on April 24, 2020, the Court entered its Order Preliminarily Approving Settlement  
5 and Providing for Notice, which preliminarily approved the Settlement, and approved the form and  
6 manner of notice to the Class of the Settlement, and said notice has been made, and the fairness hearing  
7 having been held; and

8           NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and proceedings  
9 herein, and it appearing to the Court upon examination that the Settlement set forth in the Stipulation is  
10 fair, reasonable, and adequate, and upon a Settlement Fairness Hearing having been held after notice to  
11 the Class of the Settlement to determine if the Settlement is fair, reasonable, and adequate and whether  
12 the Judgment should be entered in this Action;

13           **THE COURT HEREBY FINDS AND CONCLUDES THAT:**

14           A.     The provisions of the Stipulation, including definitions of the terms used therein, are  
15 hereby incorporated by reference as though fully set forth herein.

16           B.     This Court has jurisdiction of the subject matter of this Action and over all of the Parties  
17 and all Class Members for purposes of the Settlement.

18           C.     The form, content, and method of dissemination of notice given to the Class was  
19 adequate and reasonable and constituted the best notice practicable under the circumstances, including  
20 individual notice to all Class Members who could be identified through reasonable effort.

21           D.     Notice, as given, complied with the requirements of California law, satisfied the  
22 requirements of due process, and constituted due and sufficient notice of the matters set forth herein.

23           E.     The Settlement, as set forth in the Stipulation, is fair, reasonable, and adequate.  
24

25 <sup>1</sup> As used herein, the term “Parties” means Plaintiffs Pavel Silvestrov and Hugh McKay (“Plaintiffs”),  
26 on behalf of themselves and the Class (as defined below), and Defendants Menlo Therapeutics Inc.  
27 (“Menlo” or the “Company”), Steven Basta, Kristine Ball, Paul Berns, Albert Cha, Ted Ebel, David  
28 McGirr, Aaron Royston, and Scott Whitcup (the “Individual Defendants” and with Menlo, the “Menlo  
Defendants”), and Jefferies LLC, Piper Sandler & Co. (formerly known as Piper Jaffray & Co.),  
Guggenheim Securities, LLC, and JMP Securities LLC (the “Underwriter Defendants”) (all,  
collectively, “Defendants”).

1 (i) The Settlement was negotiated at arm's length by Plaintiffs on behalf of the Class  
2 and by Defendants, all of whom were represented by highly experienced and skilled counsel. The case  
3 settled only after, among other things: (a) a mediation conducted by an experienced mediator who was  
4 familiar with this Action; (b) the exchange between the Plaintiffs and the Menlo Defendants of detailed  
5 mediation statements prior to the mediation which highlighted the factual and legal issues in dispute;  
6 (c) follow-up negotiations between the Plaintiffs and the Menlo Defendants with the assistance of the  
7 mediator; (d) Plaintiffs' Counsel's extensive investigation, which included, among other things, a  
8 review of Menlo's press releases, U.S. Securities and Exchange Commission filings, analyst reports,  
9 media reports, and other publicly disclosed reports and information about the Defendants; (e) the  
10 drafting and submission of detailed complaints; (f) motion practice; and (g) the review and analysis of  
11 over 2,100,000 pages of non-public documents produced by the Menlo Defendants. Accordingly, both  
12 the Plaintiffs and Defendants were well-positioned to evaluate the settlement value of this Action. The  
13 Stipulation has been entered into in good faith and is not collusive.

14 (ii) If the Settlement had not been achieved, both Plaintiffs and Defendants faced the  
15 expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either  
16 Plaintiffs' or Defendants' arguments, but notes these arguments as evidence in support of the  
17 reasonableness of the Settlement.

18 F. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the interest of  
19 the Class Members in connection with the Settlement.

20 G. Plaintiffs, all Class Members, and Defendants are hereby bound by the terms of the  
21 Settlement set forth in the Stipulation.

22 **IT IS HEREBY ORDERED THAT:**

23 1. The Settlement on the terms set forth in the Stipulation is finally approved as fair,  
24 reasonable, and adequate. The Settlement shall be consummated in accordance with the terms and  
25 provisions of the Stipulation. The Parties are to bear their own costs, except as otherwise provided in  
26 the Stipulation.

27 2. The Court hereby certifies this Action as a class action for purposes of this Settlement  
28 only, pursuant to California Code of Civil Procedure §382, on behalf of all persons and entities who

1 purchased or otherwise acquired Menlo common stock pursuant and/or traceable to the Registration  
2 Statement and Prospectus issued in connection with Menlo's initial public offering ("IPO") on or about  
3 January 29, 2018. For purposes of this Settlement only, the Class includes all Persons who purchased  
4 or otherwise acquired Menlo's common stock between January 29, 2018 and July 24, 2018, inclusive.  
5 Excluded from the Class are: the Defendants (meaning, Menlo, the Individual Defendants, and the  
6 Underwriter Defendants) and their respective successors and assigns; past and current executive officers  
7 and directors of Menlo and the Underwriter Defendants; members of the immediate families of the  
8 Individual Defendants; the legal representatives, heirs, successors or assigns of the Individual  
9 Defendants; any entity in which any of the above excluded persons have or had a majority ownership  
10 interest; and any person who validly requests exclusion from the Class. The foregoing exclusion shall  
11 not cover "Investment Vehicles," which for these purposes shall mean any investment company or  
12 pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds,  
13 fund of funds, private equity funds, real estate funds, and hedge funds, in which any Underwriter  
14 Defendant or any of its affiliates has or may have a direct or indirect interest or as to which any  
15 Underwriter Defendant or any of its affiliates may act as an investment advisor, general partner,  
16 managing member, or in other similar capacity, other than an investment vehicle of which the  
17 Underwriter Defendant or any of its affiliates is a majority owner or holds a majority beneficial interest  
18 and only to the extent of such Underwriter Defendant's or affiliate's ownership or interest. Also  
19 excluded from the Class are those Persons who would otherwise be Class Members but who timely and  
20 validly exclude themselves therefrom.

21 3. All Released Persons as defined in the Stipulation are released in accordance with, and  
22 as defined in, the Stipulation.

23 4. Upon the Effective Date, Plaintiffs and each Class Member shall be deemed to have, and  
24 by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and  
25 discharged all Released Claims against the Released Persons, whether or not such Class Member  
26 executes and delivers a Proof of Claim.

27  
28

1           5.       Upon the Effective Date, each of the Defendants shall be deemed to have, and by  
2 operation of this Judgment shall have, fully, finally, and forever released Plaintiffs, Plaintiffs' Counsel,  
3 and each and all of the Class Members from all Released Defendants' Claims.

4           6.       All Class Members who have not objected to the Settlement in the manner provided in  
5 the Notice of Proposed Settlement of Class Action ("Notice") are deemed to have waived any  
6 objections by appeal, collateral attack, or otherwise.

7           7.       All Class Members who have failed to properly submit requests for exclusion (requests  
8 to opt out) from the Class are bound by the terms and conditions of the Stipulation and this Judgment.

9           8.       All other provisions of the Stipulation are incorporated into this Judgment as if fully  
10 rewritten herein.

11          9.       Plaintiffs and all Class Members are hereby barred and enjoined from, instituting,  
12 commencing, maintaining, or prosecuting in any court or tribunal any of the Released Claims against  
13 any of the Released Persons.

14          10.      Neither the Stipulation nor the Settlement, nor any act performed or document executed  
15 pursuant to or in furtherance of the Stipulation or the Settlement:

16               (a)     shall be offered or received against Defendants as evidence of, or evidence in  
17 support of, a presumption, concession, or admission with respect to any liability, negligence, fault, or  
18 wrongdoing, or in any way referred to for any other reason as against Defendants, in any civil, criminal,  
19 or administrative action or proceeding, other than such proceedings as may be necessary to effectuate  
20 the provisions of the Stipulation; however, Defendants may refer to it to effectuate the liability  
21 protection granted them hereunder;

22               (b)     shall be construed as or received in evidence as an admission, concession, or  
23 presumption against Plaintiffs or any of the Class Members that any of their claims are without merit, or  
24 that any defenses asserted by Defendants have any merit, or that damages recoverable in this Action  
25 would have exceeded the Settlement Fund; and

26               (c)     Notwithstanding the foregoing, Defendants, Plaintiffs, Class Members and/or the  
27 Released Persons may file the Stipulation and/or this Judgment in any action that may be brought  
28 against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral

1 estoppel, release, good faith settlement, judgment bar, reduction, or any other theory of claim preclusion  
2 or issue preclusion or similar defense or counterclaim.

3 11. The Court hereby finds and concludes that due and adequate notice was directed to all  
4 Persons and entities who are Class Members advising them of the Plan of Allocation and of their right  
5 to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are Class  
6 Members to be heard with respect to the Plan of Allocation.

7 12. The Court hereby finds and concludes that the formula for the calculation of the claims  
8 of Authorized Claimants, which is set forth in the Notice sent to Class Members, provides a fair and  
9 reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the  
10 Stipulation among Class Members, with due consideration having been given to administrative  
11 convenience and necessity.

12 13. Nothing in the Settlement restricts the ability of any Party to advocate in favor of or  
13 against the applicability of any offset to any claims asserted in any other action based on any amount  
14 paid to Authorized Claimants through the Settlement.

15 14. The Court hereby awards Plaintiffs' Counsel attorneys' fees in the amount of one-third  
16 of the Settlement Amount (or \$3,166,666), plus Plaintiffs' Counsel's expenses in the amount of  
17 \$52,421.52, together with the interest earned thereon for the same time period and at the same rate as  
18 that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is  
19 appropriate and that the amount of fees awarded is fair and reasonable given the contingent nature of  
20 the case and the substantial risks of non-recovery, the time and effort involved, and the result obtained  
21 for the Class.

22 15. The awarded attorneys' fees and expenses and interest earned thereon shall immediately  
23 be paid to Lead Counsel from the Settlement Fund subject to the terms, conditions, and obligations of  
24 the Stipulation, which terms, conditions, and obligations are incorporated herein.

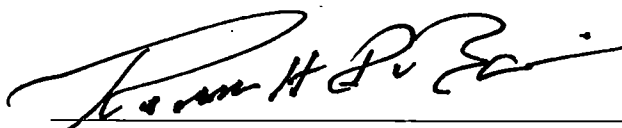
25 16. Payments are awarded to Plaintiffs Pavel Silvestrov and Hugh McKay in the amounts of  
26 \$9,500 and \$2,500, respectively. Such payment is appropriate considering their active participation as  
27 Plaintiffs in this Action, as attested to by the declarations submitted to the Court. Such payment is to be  
28 made from the Settlement Fund.

1           17.     In the event that the Stipulation is terminated in accordance with its terms: (i) this  
2 Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Action shall  
3 proceed as provided in the Stipulation.

4           18.     Without affecting the finality of this Judgment in any way, this Court retains continuing  
5 jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement  
6 Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and  
7 determining applications for attorneys' fees, interest, and expenses in the Action; and (d) all parties  
8 hereto for the purpose of construing, enforcing, and administering the Stipulation.

9           IT IS SO ORDERED.

10          DATED: 8-14-2020

  
\_\_\_\_\_  
THE HONORABLE RICHARD H. DUBOIS  
JUDGE OF THE SUPERIOR COURT

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28