

**SUPREME COURT STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION**

SPENCER SAVAGE and YOUSEF )  
BARAKAT, Derivatively on Behalf of iBIO, ) Index No: 162407/2015  
INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROBERT B. KAY, ARTHUR Y. ELLIOTT, )  
JAMES T. HILL, GLENN CHANG, PHILIP )  
K. RUSSELL, JOHN D. MCKEY, and )  
SEYMOUR FLUG, )  
 )  
Defendants, )  
 )  
and, )  
 )  
iBIO, INC., )  
 )  
Nominal Defendant. )  
 )

---

**NOTICE OF PENDENCY OF PROPOSED SETTLEMENT OF  
SHAREHOLDER DERIVATIVE ACTION**

**TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF COMMON STOCK OF  
iBIO, INC. (“iBIO”)**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY AS YOUR  
RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THE LITIGATION.**

**YOU ARE HEREBY NOTIFIED** that the above-captioned consolidated shareholder derivative action (the “Litigation”) is being settled on the terms set forth in the Stipulation of Settlement dated as of September 20, 2016 (the “Stipulation”). This Notice is provided by Order of the Supreme Court of the State of New York, County of New York: Commercial Division, (the “Court”). It is not an expression of any opinion by the Court with respect to the truth of the allegations in the Litigation or the merits of the claims or defenses asserted by or against any party. It is solely to notify you of the terms of the proposed Settlement, and your rights related

thereto. The Court has made no findings or determinations concerning the merits of the Litigation. Capitalized terms not otherwise defined shall have the definitions set forth in the Stipulation.

## **I. WHY THE COURT HAS ISSUED THIS NOTICE**

Your rights may be affected by the settlement of the Litigation. The parties to the Litigation have agreed upon terms to settle the Litigation and have signed the Stipulation setting forth those settlement terms.

## **II. SUMMARY OF THE LITIGATION**

On or about December 4, 2015, Spencer Savage, acting by and through counsel, filed a lawsuit styled *Spencer Savage, Derivatively on Behalf of Nominal Defendant iBio, Inc., v. Robert B. Kay, et al.*, Index No: 162407/2015, in the Supreme Court, New York County, Commercial Division (the “Litigation”). On or about March 16, 2016, Plaintiff Savage amended his complaint and Plaintiff Yousef Barakat joined the Litigation as an additional Plaintiff (“Amended Complaint”). Plaintiffs essentially alleged, among other things, that the Individual Defendants failed in their duties to supervise the management and controls of the Company’s affairs, and that this failure resulted in the Company issuing statements that were the subject of a securities class action lawsuit filed in the U.S. District Court for the District of Delaware and captioned *Vamsi Andavarapu v. iBio, et al.*, Case No. 1:14-cv-1343-RGA (the “Securities Litigation”). The U.S. District Court for the District of Delaware finally approved a settlement of the Securities Litigation on April 21, 2016. After that date, the Settling Parties, through counsel, engaged in negotiations to settle this Litigation. The Settling Parties, subject to the approval of this Court and after thorough negotiation, have agreed to the terms hereof in settlement of this Litigation.

### III. TERMS OF THE PROPOSED DERIVATIVE SETTLEMENT

The Stipulation provides that the Company has implemented and/or shall implement the following Corporate Governance Changes:

(a) **Committee Rotation**: Starting prospectively from the date the settlement is approved, the chair of the Audit/Compensation/Nominating and Governance Committee will rotate at least once every five years.

(b) **Director Orientation**: The Company shall implement a Director Orientation program which shall include presentations from appropriate personnel regarding the Company's general policies and procedures and key operational and strategic initiative risks. A new director will undergo the orientation program at the latest within three months of his or her election to the Board.

(c) **Reputational Risk**: The charter of each Board committee will be amended to provide that the committee will consider the potential effects on the Company's reputation of Company actions and public statements within its scope of responsibility.

(d) **Oversight**: The Company shall enhance its oversight of material market communications by appointing a senior officer to ensure their accurate and timely dissemination and that timely corrective disclosures to any inaccurate statements would be made as soon as practicable after any material misstatement or omission in the original disclosure is discovered by the Company.

(e) **Code of Business Conduct and Ethics**: The Company's policy of requiring employees and directors to re-certify on an annual basis their knowledge and compliance with the Code of Business Conduct and Ethics shall be amended to further require that employees and directors confirm that they are not aware of any acts which they believe are not compliant with this Code and applicable laws and regulations.

The Stipulation also provides for the entry of judgment dismissing the Litigation on the merits with prejudice, and a complete release of the Released Claims as detailed in the Stipulation.

#### **IV. REASONS FOR THE SETTLEMENT**

The Settling Parties have determined that it is desirable and beneficial that the Litigation, and all of the disputes related thereto, be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation.

##### **A. Why Did Plaintiffs Agree to Settle?**

Plaintiffs' Counsel conducted an extensive investigation relating to the claims and the underlying events and transactions alleged in the Litigation. Plaintiffs believe that the Litigation has substantial merit, and Plaintiffs' entry into the Stipulation 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 Litigation. However, Plaintiffs and Plaintiffs' Counsel recognize and acknowledge the significant risk, expense, and length of continued proceedings necessary to prosecute the Litigation against the Individual Defendants through trial and through possible appeals. Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in such litigation. Plaintiffs' Counsel are also mindful of the inherent problems of establishing that demand on the Board was futile, and the possible defenses to the claims alleged in the Litigation.

Based on Plaintiffs' Counsel's thorough review and analysis of the relevant facts, allegations, defenses, and controlling legal principles, Plaintiffs' Counsel believe that the Settlement set forth in the Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon iBio and its shareholders. Based upon Plaintiffs' Counsel's evaluation, Plaintiffs have determined that the Settlement is in the best interests of iBio and its shareholders and have

agreed to settle the Litigation upon the terms and subject to the conditions set forth in the Stipulation.

**B. Why Did the Individual Defendants Agree to Settle?**

Defendants have denied and continue to deny each and all of the claims and allegations of wrongdoing made by Plaintiffs in the Litigation and maintain furthermore that they have meritorious defenses. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation, and Defendants contend that many of the allegations in the Amended Complaint are materially inaccurate. The Individual Defendants also have denied and continue to deny, among other allegations, the allegations that Plaintiffs, iBio, or its shareholders have suffered damage or that Plaintiffs, iBio or its shareholders were harmed in any way by the conduct alleged in the Litigation or otherwise. The Individual Defendants have further asserted that at all times they acted in good faith and in a manner they reasonably believe to be and that was in the best interests of iBio and its shareholders. Nonetheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendants also have taken into account the uncertainty and risks inherent in any litigation. Further, the Individual Defendants and iBio acknowledge that the Settlement confers substantial benefits on iBio and is fair, reasonable, adequate, and in the best interests of iBio and its shareholders.

**V. THE FEE AND EXPENSE AMOUNT**

Plaintiffs' Counsel have not received any payment for their work in connection with the Litigation, nor have they been reimbursed for out-of-pocket expenses. After negotiating the substantive terms of the Settlement, Plaintiffs' Counsel and Defendants' Counsel discussed a fair and reasonable sum to be paid to Plaintiffs' Counsel for attorneys' fees and expenses (the "Fee and

Expense Amount”), which includes a Plaintiff Case Contribution Award for the Plaintiffs for their contributions to the Litigation. The Fee and Expense Amount agreed to by the Settling Parties is \$160,000 and includes from that amount the Plaintiff Case Contribution Award to the Plaintiffs in the amount of \$2,000 each. Any fee awarded by the Court is designed to compensate Plaintiffs' Counsel and the Plaintiffs for the results achieved in the Litigation and the risks of undertaking the prosecution of the Litigation on a contingent basis.

## **VI. SETTLEMENT HEARING**

Pursuant to an Order of the Supreme Court, New York County, Commercial Division, a hearing will be held on April 24, 2017 at 3:00pm, before Justice O. Peter Sherwood, at Part 39, Room 252 in the New York County Courthouse, 60 Centre Street, New York, New York 10007, to determine whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to iBio and should be approved by the Court, and to determine whether the Final Order and Judgment as provided in Exhibit C to the Stipulation (the “Judgment”) should be entered. The Court will also determine whether the Fee and Expense Amount (including the Plaintiff Case Contribution Award) provided by the Stipulation should be awarded to Plaintiffs' Counsel and the Plaintiffs; except that disallowance by the Court of any fees or expenses or interest that has accrued thereon requested by or awarded to Plaintiffs or Plaintiffs' Counsel (including without limitation the Fee and Expense Award and the Plaintiff Case Contribution Award), any appeal from or any order relating thereto, and any modification or reversal on appeal of any such order, shall not operate to terminate or cancel the Stipulation or affect its other terms, including the Released Claims or the Effective Date, or affect or delay the finality of the Judgment approving the Stipulation. The Court may adjourn the Settlement Hearing without further notice to current iBio shareholders.

Pending final determination of whether the Settlement should be approved, no iBio shareholder (either directly, derivatively, or in any other capacity) shall commence, prosecute, pursue,

or litigate any Released Claim against any Released Persons in any court, administrative agency, or other tribunal asserting agency any of the Released Claims.

#### **VII. RIGHT TO ATTEND THE SETTLEMENT HEARING**

You may enter an appearance in the Litigation, at your own expense, individually or through counsel of your choice. If you do not enter an appearance, you will be represented by Plaintiffs' Counsel. If you want to object at the Settlement Hearing, then you must first comply with the procedures for objecting, which are set forth below. The Court has the right to change the hearing dates or times without further notice. Thus, if you are planning to attend the Settlement Hearing, you should confirm the date and time before going to the Court. If you have no objection to the Settlement, you do not need to appear at the Settlement Hearing or take any other action.

#### **VIII. THE PROCEDURES FOR OBJECTING TO THE SETTLEMENT**

Any iBio shareholder who wishes to object to the Settlement and/or show cause why it should not be approved, why the Judgment should or should not be entered thereon, or why the Fee and Expense Amount should not be awarded, shall state all reasons for the objection and shall also: (a) state the case name and number, Spencer Savage, et al., v. Robert B. Kay, et al., Index No. 162407/2015; (b) provide proof of current ownership of iBio stock as well as documentary evidence of when such stock ownership was acquired; (c) clearly identify any and all evidence that the objector may present at the Settlement Hearing in connection with his, her, or its objection(s); (d) identify any case, by name, court, and docket number, in which the objector or his, her, or its attorney, if any, has objected to a settlement in the last three years; and (e) include a proof of service signed under penalty of perjury.

All objections and accompanying materials shall be filed and served at least fourteen (14) calendar days prior to the Settlement Hearing as follows: (a) personally filed with the Clerk of the

Court, 60 Centre Street, New York, New York 10007, and (b) served by first class U.S. Mail and/or through the Court's electronic filing system on counsel for the Settling Parties as follows:

**GAINEY, McKENNA & EGGLESTON**

Thomas J. McKenna  
Gregory M. Egleston  
440 Park Avenue South  
New York, NY 10016  
Telephone: (212) 983-1300  
Email: [tjmckenna@gme-law.com](mailto:tjmckenna@gme-law.com)  
Email: [ggleston@gme-law.com](mailto:ggleston@gme-law.com)

*Attorneys for Plaintiffs*

**WILLKIE FARR & GALLAGHER LLP**

Antonio Yanez, Jr.  
Matthew W. Edwards  
787 Seventh Avenue  
New York, NY 10019-6099  
Tel: (212) 728-8000  
Email: [ayanez@willkie.com](mailto:ayanez@willkie.com)  
Email: [medwards@willkie.com](mailto:medwards@willkie.com)

*Attorneys for Defendant Robert B. Kay  
and Nominal Defendant iBio, Inc.*

**AGUILAR BENTLEY LLC**

Lisa D. Bentley  
Anna Aguilar  
5 Penn Plaza, 19th Floor  
New York, New York 10001  
Tel: (212) 835-1521  
Email: [lbentley@aguilarbentley.com](mailto:lbentley@aguilarbentley.com)  
Email: [aaguilar@aguilarbentley.com](mailto:aaguilar@aguilarbentley.com)

*Attorneys for Defendants Arthur Y. Elliott,  
James T. Hill, Glenn Chang, Philip K.  
Russell, John D. McKey, and Seymour Flug*

Any iBio shareholder wishing to be heard at the Settlement Hearing is required to include a notice of intention to appear at the Settlement Hearing together with his, her, or its written objection. Only shareholders who have filed with the Court and served on the Settling Parties'

counsel valid and timely written notices of objection and accompanying materials will be entitled to be heard at the hearing, unless the Court orders otherwise.

Any iBio shareholder who does not make his, her, or its objection in the manner provided in this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness or adequacy of the proposed Settlement and to the Fee and Expense Amount as set forth in the Stipulation.

**IX. HOW TO OBTAIN ADDITIONAL INFORMATION**

This Notice summarizes the Stipulation. It is not a complete description of the Litigation or the terms of the Settlement contained in the Stipulation.

This Notice and the Stipulation can be viewed on the Company's website at [www.ibioinc.com](http://www.ibioinc.com) and on the website of Plaintiffs' Counsel at [www.gme-law.com](http://www.gme-law.com). Inquiries regarding the proposed Settlement also may be made to counsel for Plaintiffs as follows:

**GAINEY, McKENNA & EGLESTON**

Thomas J. McKenna  
Gregory M. Egleston  
440 Park Avenue South  
New York, NY 10016  
Telephone: (212) 983-1300  
Email: [tjmckenna@gme-law.com](mailto:tjmckenna@gme-law.com)  
Email: [gegleston@gme-law.com](mailto:gegleston@gme-law.com)

*Attorneys for Plaintiffs*

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE  
REGARDING THIS NOTICE.**

DATED: January 26, 2017