

# AERIE PHARMACEUTICALS INC

## **FORM 8-K** (Current report filing)

Filed 07/26/17 for the Period Ending 07/25/17

Address	7020 KIT CREEK ROAD SUITE 270 RESEARCH TRIANGLE PARK, NC 27709
Telephone	919-313-9650
CIK	0001337553
Symbol	AERI
SIC Code	2836 - Biological Products, Except Diagnostic Substances
Industry	Biotechnology & Medical Research
Sector	Healthcare
Fiscal Year	12/31

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

---

**FORM 8-K**

---

**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): July 26, 2017 (July 25, 2017)**

---

**Aerie Pharmaceuticals, Inc.**

(Exact name of registrant as specified in its charter)

---

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-36152**  
(Commission  
File Number)

**20-3109565**  
(I.R.S. Employer  
Identification Number)

**2030 Main Street, Suite 1500**  
**Irvine, California 92614**  
(Address of principal executive offices) (Zip code)

**Registrant's telephone number, including area code: (949) 526-8700**

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

---

---

**Item 5.02(e) Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Aerie Pharmaceuticals, Inc. (the “Company”) entered into an amended and restated employment agreement with its chief executive officer, Vicente Anido, Jr. on July 25, 2017 (the “Amended Employment Agreement”), which Amended Employment Agreement amended and restated the terms of Dr. Anido’s prior employment agreement entered into on September 20, 2013. The term of the Amended Employment Agreement commenced on July 25, 2017 and shall continue until July 25, 2020, with automatic extensions for successive one (1) year periods thereafter (the initial term together with any successive term, the “Term”), unless either party provides written notice of non-renewal at least 180 days’ prior to the end of the then applicable term. The Amended Employment Agreement provides that Dr. Anido is entitled to a current base salary of \$710,000 and eligibility to receive a target annual bonus equal to 67% of his base salary, with the actual amount of the annual bonus to be determined by the board of directors of the Company based on achievement of the relevant performance goals. Additionally, concurrent with entry into the Amended Employment Agreement, the Company granted to Dr. Anido 53,619 shares of restricted stock pursuant to the Company’s Amended and Restated Omnibus Incentive Plan (the “Omnibus Plan”) and the terms of the award agreement thereunder between Dr. Anido and the Company.

In the event of a termination of Dr. Anido’s employment by the Company without Cause (as such term is defined in the Amended Employment Agreement) or by Dr. Anido for Good Reason (as such term is defined in the Amended Employment Agreement), Dr. Anido will be entitled to (i) a lump sum severance payment equal to six months of base salary, (ii) commencing on the date that is six months following the termination date, continued payment of Dr. Anido’s base salary at the rate in effect at the time of termination for a period of six months, (iii) 12 months of Company-paid health insurance continuation coverage less the amount payable by an active employee for such coverage (or, under certain circumstances, substantially economic equivalent payments) and (iv) payment of the greater of (x) the target annual performance bonus for the year in which termination occurs and (y) the average of the annual performance bonuses received by Dr. Anido for the three years immediately preceding the date of termination (the payments provided under clauses (i), (ii), (iii) and (iv), collectively, the “Severance Payments”). In the event Dr. Anido’s employment is terminated by the Company with or without Cause, or he resigns for or without Good Reason, unless treatment more favorable to Dr. Anido is provided in the applicable equity plan or award agreement, he will have a post-termination exercise period of 90 days during which he may exercise the portion of his options to purchase shares of common stock of the Company that was vested as of the termination date. In the event Dr. Anido’s employment is terminated by the Company for Cause, or he resigns without Good Reason, Dr. Anido will not be entitled to receive any Severance Payments.

In the event of a termination of Dr. Anido’s employment by the Company without Cause or by Dr. Anido for Good Reason at any time during the twelve (12) months following a Change in Control (as defined in the Omnibus Plan), Dr. Anido would be entitled to (i) a lump sum severance payment equal to six months of base salary, (ii) commencing on the date that is six months following the termination date, continued payment of Dr. Anido’s base salary at the rate in effect at the time of termination for a period of 18 months, (iii) 24 months of Company-paid health insurance continuation coverage less the amount payable by an active employee for such coverage (or, under certain circumstances, substantially economic equivalent payments) and (iv) payment of the greater of (x) the target annual performance bonus for the year in which termination occurs and (y) the average of the annual performance bonuses received by Dr. Anido for the three years immediately preceding the date of termination (the payments provided under clauses (i), (ii), (iii) and (iv), collectively, the “Change in Control Severance Payments”).

The payment of any Severance Payments or Change in Control Severance Payments is subject to Dr. Anido’s execution and delivery of an effective release of claims against the Company.

The Amended Employment Agreement also provides that during and after the Term, Dr. Anido has an obligation of confidentiality and non-disclosure in regard to any confidential and proprietary information owned by, or received by or on behalf of, the Company or any of its affiliates. Additionally, Dr. Anido shall not (and shall not assist any person to), directly or indirectly, without the Company’s prior written consent during the Term and for a period of twelve months thereafter (a) hire, contact, induce or solicit for employment any person who is, or within six months prior to such hiring, contacting, inducing or soliciting, was an employee of the Company or any of its affiliates (provided, that, the prohibition on hiring applies only during the Term and for a period of six months thereafter) or (b) (x) induce or solicit any customer, client or vendor of, or other person having a business relationship with, the Company or any of its affiliates to terminate its relationship or otherwise cease doing business in whole or in part with the Company or any of its affiliates or (y) interfere with any relationship between the Company or any of its affiliates and any of their respective customers, clients, vendors or other business contacts.

---

Through September 20, 2017, in the event that any of the payments or benefits provided by the Company to Dr. Anido would constitute “parachute payments” (“Parachute Payments”) within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “Code”), and would be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any interest or penalties with respect to such excise tax (collectively, the “Excise Tax”), Dr. Anido will be entitled to a “gross-up” payment equal to the sum of such excise tax and related interest or penalties plus the amount necessary to put him in the same after-tax position that he would have been in had he not incurred any tax liability under Section 4999 of the Code.

Following September 20, 2017, if any of the payments or benefits provided or to be provided by the Company or its affiliates to Dr. Anido or for Dr. Anido’s benefit pursuant to the terms of the Amended Employment Agreement or otherwise constitute Parachute Payments, then such Parachute Payments to be made to Dr. Anido shall be payable either (1) in full or (2) as to such lesser amount which would result in no portion of such Parachute Payments being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in Dr. Anido’s receipt on an after-tax basis, of the greatest amount of economic benefits under the Amended Employment Agreement, notwithstanding that all or some portion of such benefits may be subject to the Excise Tax. If a reduction in Parachute Payments is necessary so that no portion of the Parachute Payments is subject to the Excise Tax, reduction shall occur in the manner that results in the greatest economic benefit to Dr. Anido.

The above summary is qualified in its entirety by reference to the full text of the Amended Employment Agreement, which is included as Exhibit 10.1 hereto.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

The following exhibit relating to Item 5.02(e) is filed herewith:

10.1 Amended and Restated Employment Agreement, dated July 25, 2017, by and between Aerie Pharmaceuticals, Inc. and Vicente Anido, Jr.

---

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**AERIE PHARMACEUTICALS, INC.**

Date: July 26, 2017

By: /s/ Richard J. Rubino  
Richard J. Rubino  
Chief Financial Officer and Secretary

---

**EXHIBIT INDEX**

**Exhibit**

**Description**

---

10.1

Amended and Restated Employment Agreement, dated July 25, 2017, by and between Aerie Pharmaceuticals, Inc. and Vicente Anido, Jr.

## EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the “**Agreement**”) is made this 25<sup>th</sup> day of July, 2017 (the “**Effective Date**”), by and between **Aerie Pharmaceuticals, Inc.**, a Delaware corporation with principal executive offices at 135 US Highway 206, Suite 9, Bedminster, NJ 07921 (the “**Company**”), and **Vicente Anido, Jr., Ph.D.**, residing at XXXXXXXXXXXXXXXXXXXXXXXXXXXX (the “**Executive**”) (each of Executive and the Company a “**Party**” and together, the “**Parties**”).

### WITNESSETH:

WHEREAS, Executive is currently employed by the Company pursuant to that certain existing Employment Agreement, dated as of September 20, 2013 (the “**Prior Agreement**”), by and between the Company and Executive;

WHEREAS, the Company desires to continue to employ Executive, and Executive desires to continue to be employed by the Company, as the Company’s Chief Executive Officer on the terms and conditions contained herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

1. Employment. The Company agrees to employ Executive, and Executive agrees to be employed by the Company, upon the terms and subject to the conditions of this Agreement.

2. Term. Subject to Section 8 hereof, the Company agrees to continue to employ Executive, and Executive agrees to continue to be employed by the Company, in each case pursuant to this Agreement, for a period commencing on Effective Date, and ending on the day preceding the third (3rd) anniversary of the Effective Date (the “**Initial Term**”); *provided, however*, that the period of Executive’s employment pursuant to this Employment Agreement shall be automatically extended for successive one (1) year periods thereafter (each, a “**Renewal Term**”), in each case unless either Party hereto provides the other Party with written notice that such period shall not be so extended at least one hundred eighty (180) days in advance of the expiration of the Initial Term or the then-current Renewal Term, as applicable (the Initial Term and any Renewal Term, collectively, the “**Term**”). Each additional one (1) year Renewal Term shall be added to the end of the next scheduled expiration date of the Initial Term or Renewal Term, as applicable, on the day following the last date on which notice may be given pursuant to the preceding sentence.

3. Duties; Place of Performance; Etc.

(a) Executive shall serve as Chairman and Chief Executive Officer of the Company and shall report to the Board of Directors of the Company (the “**Board**”). Subject to the direction of the Board, Executive shall have such powers and perform such duties as are customarily performed by the Chief Executive Officer of a similarly situated company including, without limitation, using his reasonable best efforts:

- 
- (i) to lead, in conjunction with the Board, the development of the Company's strategy;
  - (ii) to lead and oversee the implementation of the Company's long and short term plans in accordance with its strategy;
  - (iii) to ensure the Company is appropriately organized and staffed and to have the authority to hire and terminate staff as necessary to enable it to achieve the approved strategy;
  - (iv) to ensure that expenditures of the Company are within the authorized annual budget of the Company;
  - (v) to assess the principal risks of the Company and to ensure that these risks are being monitored and managed;
  - (vi) to ensure effective internal controls and management information systems are in place;
  - (vii) to ensure that the Company has appropriate systems to enable it to conduct its activities both lawfully and ethically;
  - (viii) to ensure that the Company maintains high standards of corporate citizenship and social responsibility wherever it does business;
  - (ix) to communicate effectively with shareholders, employees, Government authorities, other stakeholders and the public;
  - (x) to keep abreast of all material undertakings and activities of the Company and all material external factors affecting the Company and to ensure that processes and systems are in place to ensure that the management of the Company is adequately informed;
  - (xi) to ensure that the Directors are properly informed and that sufficient information is provided to the Board to enable the Directors to form appropriate judgments;
  - (xii) to ensure the integrity of all public disclosure by the Company;
  - (xiii) to develop Board agendas;
  - (xiv) to request that special meetings of the Board be called when appropriate;
  - (xv) to determine the date, time and location of the annual meeting of shareholders and to develop the agenda for the meeting;
  - (xvi) to sit on committees of the Board where appropriate as determined by the Board; and
  - (xvii) to abide by specific internally established control systems and authorities;



(xviii) to lead by personal example and encourage all employees to conduct their activities in accordance with all applicable laws and the Company's standards and policies.

(b) Executive shall also have such other powers and duties as may be from time to time directed by the Board, provided that the nature of Executive's powers and duties so prescribed shall not be inconsistent with Executive's position and duties herein.

(c) Executive shall devote such portion of his business time, attention and energies to the business and affairs of the Company as may be necessary to perform his duties hereunder and shall use his best efforts to advance the interests of the Company. Executive shall not during the Term be actively engaged in any other business activity unless it is authorized by the Company, whether or not such business activity is pursued for gain, profit or other pecuniary advantage, which will interfere with the performance by Executive of his duties hereunder or Executive's availability to perform such duties or that will adversely affect, or negatively reflect upon, the Company. Following execution of this Agreement, should Executive desire to become engaged as a consultant, owner, director officer or advisor of any other venture, Executive must first obtain the prior written consent of the Board, which consent may be withheld in the Board's sole discretion; *provided, however*, that Executive may, without any further approval by the Board, serve on up to two (2) for profit boards outside the Company.

(d) The duties to be performed by Executive hereunder shall be performed primarily at the various offices of the Company or such other place as the Board may authorize; *provided, however*, that Executive understands that his duties will require periodic travel, which may be substantial at times. The Company understands and agrees that Executive will not be required to relocate from his current primary residence at any time he is employed by the Company.

4. Compensation. As full compensation for the performance by Executive of his duties under this Agreement, the Company shall pay Executive as follows:

(a) Base Salary. Executive's initial base salary (the "**Base Salary**") shall be Seven Hundred Ten Thousand Dollars (\$710,000.00) per annum, payable in accordance with the Company's normal payroll practices. Executive's Base Salary may be increased at the discretion of the Board but may not be decreased by the Board except as a proportional reduction, as to the salaries of all other officers of the Company at the level of Vice President and above as part of an overall reduction in salaries decided by the Board in good faith as being in the best interests of the Company and its stockholders, and will only be so reduced during such time as all such other executive officer salaries remain so reduced.

(b) Performance Bonus.

(i) During the Term, Executive shall be eligible to receive an annual cash performance bonus (the "**Performance Bonus**") based on a target of sixty seven percent (67%) of Executive's Base Salary with respect to each fiscal year of the Company. The actual amount of any such Performance Bonus shall be determined by the Board and based on the achievement of specific objectives to be established by the Board, or a designated committee thereof, on an annual basis (the "**Performance Goals**").

(ii) The Performance Goals for 2017, which have been previously established by the Board, shall govern Executive's Performance Bonus for 2017. Thereafter, during the Term of this Agreement, the Board shall establish the applicable Performance Goals at the same time the performance goals are determined for the Company's other senior executives.

(iii) Any Performance Bonus payable to Executive pursuant to this Section 4(b) shall be paid to Executive on or before March 15<sup>th</sup> of the subsequent calendar year.

(c) Withholding. The Company shall withhold all applicable federal, state and local taxes and social security and such other amounts as may be required by law from all amounts payable to Executive under this Section 4.

(d) Equity Compensation.

(i) Performance Restricted Stock. The Company will grant to Executive a number of shares of restricted stock having a value of three million dollars (\$3 million) pursuant to a Restricted Stock Agreement substantially in the form attached hereto as Exhibit A. The number of shares to be granted will equal three (3) million divided by the "Fair Market Value (as defined in the Company's Amended and Restated Omnibus Incentive Plan (the "**Plan**")) of the Company's common stock on the Effective Date. This Restricted Stock Agreement is incremental and is in addition to any normal grant of stock options and restricted shares.

(ii) Additional Equity Grants. During the Term, Executive will be eligible to receive additional grants of stock options, restricted stock or other equity incentive awards under or outside of the Plan and under any successor equity incentive plans of the Company, as the Board in its sole discretion determines to be appropriate.

(e) Expenses. The Company shall reimburse Executive for all normal, usual and necessary expenses incurred by Executive in furtherance of the business and affairs of the Company, including reasonable travel and entertainment, upon timely receipt by the Company of appropriate vouchers or other proof of Executive's expenditures and otherwise in accordance with any expense reimbursement policy as may from time to time be adopted by the Company.

(f) Insurance. At all times while Executive is serving as an officer and/or director of the Company, the Company will procure and maintain directors and officers liability insurance in amounts and durations determined by the Board. Such insurance shall designate Executive as a named insured and shall provide Executive with the same rights and benefits as are accorded to the most favorably insured of the Company's officers and directors.

(g) Executive Benefits. Executive will receive the Company's standard employee benefits package (including health and disability insurance paid by the Company, participation in the Company's 401(k) plan subject to the terms and conditions thereof) as such package and policies are in effect from time to time, and as such benefits package may be adjusted by the Board in good faith during the Term, as applicable to all employees, which benefits package can be increased, but cannot be decreased unless such decrease is effected in connection with, and is proportional to, an overall reduction in the relevant benefits to all executive officers, and will only be so reduced during such time as all such other relevant executive officer benefits remain so reduced.

---

(h) Vacation. Executive shall be entitled to four (4) weeks of paid vacation per annum, in addition to nationally recognized holidays.

5. Confidential Information and Inventions.

(a) Executive recognizes and acknowledges that in the course of his duties he has received and will continue to receive confidential or proprietary information owned by the Company, its Affiliates or third parties with whom the Company or any such Affiliates has an obligation of confidentiality. Accordingly, during and after the Term, Executive agrees to keep confidential and not disclose or make accessible to any other person or use for any other purpose other than in connection with the fulfillment of his duties under this Agreement, any Confidential and Proprietary Information (as defined below) owned by, or received by or on behalf of, the Company or any of its Affiliates. “**Confidential and Proprietary Information**” shall include, but shall not be limited to, confidential or proprietary scientific or technical information, data, formulas and related concepts, business plans (both current and under development), client lists, promotion and marketing programs, trade secrets, or any other confidential or proprietary business information relating to development programs, costs, revenues, marketing, investments, sales activities, promotions, credit and financial data, manufacturing processes, financing methods, plans or the business and affairs of the Company or of any Affiliate or client of the Company. Executive expressly acknowledges the trade secret status of the Confidential and Proprietary Information and that the Confidential and Proprietary Information may constitute a protectable business interest of the Company. Executive agrees not to:

(i) use any such Confidential and Proprietary Information for personal use or for others; and

(ii) permanently remove any Company material or reproductions (including but not limited to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) thereof from the Company’s offices at any time during his employment by the Company, except as required in the execution of Executive’s duties to the Company; *provided, however*, that Executive shall not be prevented from using or disclosing any Confidential and Proprietary Information:

A. that Executive can demonstrate was known to him prior to March 21, 2013;

B. that is now, or becomes in the future, available to persons who are not required, by contract or otherwise, to treat such information as confidential unless such persons acquired the Confidential and Proprietary Information through acts or omissions of Executive; or

C. that Executive is compelled to disclose pursuant to the order of a court or other governmental or legal body having jurisdiction over such matter, provided that (1) Executive shall use his reasonable best efforts to give Company sufficient advance written notice of such required disclosure to permit it to seek a protective order or other similar order with respect to such Confidential and Proprietary Information, and (2) thereafter Executive shall disclose only the minimum Confidential and Proprietary Information required to be disclosed in

---

order to fully and truthfully comply, whether or not a protective order or other similar order is obtained by the Company. The Confidential and Proprietary Information that is disclosed pursuant to this paragraph shall remain Confidential and Proprietary Information for all other purposes.

Notwithstanding the foregoing, nothing herein shall preclude Executive's right to communicate, cooperate or file a complaint with any U.S. federal, state or local governmental or law enforcement branch, agency or entity (collectively, a "**Governmental Entity**") with respect to possible violations of any U.S. federal, state or local law or regulation, or otherwise make disclosures to any Governmental Entity, in each case, that are protected under the whistleblower or similar provisions of any such law or regulation; provided that in each case such communications and disclosures are consistent with applicable law. In addition, Executive acknowledges that Executive has received notice of the immunity from liability to which Executive is entitled for the disclosure of confidential information or a trade secret to the government or in a court filing as provided by Federal law, as set forth in Exhibit B to this Employment Agreement.

(b) Executive agrees to immediately return to the Company all Company material and reproductions thereof (including but not limited, to writings, correspondence, notes, drafts, records, invoices, technical and business policies, computer programs or disks) in his possession upon request and in any event immediately upon termination of employment.

(c) Except with prior written authorization by the Company, Executive agrees not to disclose or publish any of the Confidential and Proprietary Information, or any confidential, scientific, technical or business information of any other party to whom the Company or any of its Affiliates owes a legal duty of confidence, at any time during or after his employment with the Company.

(d) Executive agrees that all inventions, discoveries, improvements and patentable or copyrightable works, relating to the Company's business ("**Inventions**") initiated, conceived or made by him, either alone or in conjunction with others, during the Term shall be the sole property of the Company to the maximum extent permitted by applicable law and, to the extent permitted by law, shall be "works made for hire" as that term is defined in the United States Copyright Act (17 U.S.C.A., Section 101). The Company shall be the sole owner of all patents, copyrights, trade secret rights, and other intellectual property or other rights in connection therewith. Executive hereby assigns to the Company all right, title and interest he may have or acquire in all such Inventions; *provided, however*, that the Board may in its sole discretion agree to waive the Company's rights pursuant to this Section 6(d) with respect to any Invention that is not directly or indirectly related to the Company's business. Executive further agrees to assist the Company in every proper way (but at the Company's expense) to obtain and from time to time enforce patents, copyrights or other rights on such Inventions in any and all countries, and to that end Executive will execute all documents necessary:

(i) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and

(ii) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

(e) Executive acknowledges that Executive or other employees, agents or advisors of the Company or its Affiliates in the course of their services on behalf of the Company, may locate, identify and/or evaluate molecules, compounds, products and product candidates having commercial potential in the specific segments of the pharmaceutical or biotechnology research and development industries in which the Company is then operating (the “**Corporate Opportunities**”). Executive understands, acknowledges and agrees that Executive shall not pursue any such Corporate Opportunity for himself or for others unless on behalf of the Company or unless such Corporate Opportunity is first offered to the Company and the Board rejects such Corporate Opportunity. Notwithstanding the foregoing, nothing in this Agreement shall be construed as a limitation of Executive’s fiduciary duties as an officer and director of the Company.

(f) The provisions of this Section 5 shall survive any termination of this Agreement.

6. Non-Solicitation; Non-Disparagement.

(a) During the Term and for a period of twelve (12) months thereafter, Executive shall not, directly or indirectly, without the prior written consent of the Company engage in any Prohibited Solicitation. For purposes of this Agreement, a “**Prohibited Solicitation**” shall mean Executive’s (a) directly or indirectly hiring, contacting, inducing or soliciting (or assisting any person to hire, contact, induce or solicit) for employment any person who is, or within six (6) months prior to the date of such hiring, contacting, inducing or soliciting was, an employee of the Company or any of its Affiliates, or (b) directly or indirectly inducing or soliciting (or assisting any person to induce or solicit) any customer, client or vendor of, or other person having a material business relationship with, the Company or any of its Affiliates to terminate its relationship or otherwise cease doing business in whole or in part with the Company or any of its Affiliates, or directly or indirectly interfering with (or assist any person to interfere with) any relationship between the Company or any of its Affiliates and any of their respective customers, clients, vendors or any third party with whom the Company has a material business relationship. Notwithstanding the foregoing, the prohibition on hiring any person described in clause (a) of the immediately preceding sentence shall apply during the Term and shall continue for a period of six (6) months and be limited to a person who is, or within the three (3) months prior to the date of such hiring was, an employee of the Company or any of its Affiliates. Moreover, there shall be no prohibition on Executive’s hiring any person who was terminated or otherwise laid off by the Company.

(b) Executive and the Company mutually agree that both during the Term and at all times thereafter, neither party shall directly or indirectly make or encourage any other individual to make any public or private comments, orally or in written form (including, without limitation by e-mail or other electronic transmission), whether or not true, that would “disparage” the other party and in the case of the Company, any of its officers, directors, managers, or significant stockholders. “Disparaging” statements are those which impugn the character, capabilities, reputation or integrity of the aforesaid individuals or entity or which accuse the aforesaid

---

individuals or entity of acting in violation of any law or governmental regulation or of condoning any such action, or otherwise acting in an unprofessional, dishonest, disreputable, improper, incompetent or negligent manner, but shall not include truthful statements required by due legal process. Notwithstanding the foregoing, nothing in this Agreement shall preclude the parties hereto or their successors from making truthful statements in the proper performance of their jobs or that are required by applicable law, regulation or legal process, and the parties shall not violate this provision in making truthful statements in response to disparaging statements made by the other party.

(c) In the event that either party materially breaches any provisions of Section 5 or this Section 6, then, in addition to any other rights that the either party may have, either party shall be entitled to seek injunctive relief to enforce the restrictions contained in such Sections, which injunctive relief shall be in addition to any other rights or remedies available under the law or in equity.

(d) The right and remedy enumerated in Section 6(c) shall be independent of and shall be in addition to and not in lieu of any other rights and remedies available at law or in equity. If any of the covenants contained in this Section 6, or any part of any of them, is hereafter construed or adjudicated to be invalid or unenforceable, the same shall not affect the remainder of the covenant or covenants or rights or remedies which shall be given full effect without regard to the invalid portions. If any of the covenants contained in this Section 6 are held to be invalid or unenforceable because of the duration of such provision or the area covered thereby, the parties agree that the court making such determination shall have the power to reduce the duration and/or area of such provision and in its reduced form such provision shall then be enforceable. No such holding of invalidity or unenforceability in one jurisdiction shall bar or in any way affect a party's right to the relief provided in this Section 6 or otherwise in the courts of any other state or jurisdiction within the geographical scope of such covenants as to breaches of such covenants in such other respective states or jurisdictions, such covenants being, for this purpose, severable into diverse and independent covenants.

(e) In the event that an actual proceeding is brought in equity to enforce the provisions of Section 5 or this Section 6, Executive shall not urge as a defense that there is an adequate remedy at law nor shall the Company be prevented from seeking any other remedies that may be available. Executive agrees that he shall not raise in any proceeding brought to enforce the provisions of Section 5 or this Section 6 that the covenants contained in such Sections limit his ability to earn a living.

(f) The provisions of this Section 6 shall survive any termination of this Agreement, provided that the Company has not breached its obligations under this Agreement.

7. Representations and Warranties. The parties hereby represent and warrant to the other as follows:

(a) Neither the execution or delivery of this Agreement nor the performance by Executive of his duties and other obligations hereunder violate or will violate any statute or law or conflict with or constitute a default or breach of any covenant or obligation, including without limitation any non-competition restrictions, under any prior employment agreement, contract, or

other instrument to which Executive is a party or by which he is bound (whether immediately, upon the giving of notice or lapse of time or both).

(b) Executive and Company each have the full right, power and legal capacity to enter and deliver this Agreement and to perform their respective duties and other obligations hereunder. This Agreement constitutes the legal, valid and binding obligation of each party enforceable against the other in accordance with its terms. No approvals or consents of any person or entities are required for either party to execute and deliver this Agreement or perform his duties and other obligations hereunder.

(c) Executive represents and warrants to the Company that he has not brought and shall not bring with him to the Company, or use in the performance of his responsibilities for the Company, any materials or documents of a former employer which are not generally available to the public or which did not belong to you prior to your employment with the Company, unless you have obtained written authorization from the former employer or other owner for their possession and use and provided the Company with a copy thereof.

8. Termination. Either party may terminate this Agreement and Executive's employment at any time for any reason or no reason at all upon written notice to the other; *provided, however*, that Executive shall be entitled to receive severance from the Company in the event of a termination as described in Section 9 below upon a termination by the Company without Cause, by Executive for Good Reason or upon a Change in Control, each as defined in Section 9.

9. Payments Upon Termination; Severance.

(a) In the event that Executive's employment is terminated by the Company without Cause, or by Executive for Good Reason, then, subject to Sections 9(e) and 10, the Company shall:

(i) immediately pay in a lump sum Executive's earned and accrued Base Salary, accrued but unused vacation, and any earned but unpaid Performance Bonus through the date of termination, at the rate in effect at the time of termination and reimburse Executive for any unreimbursed business expenses incurred prior to the date of termination (the "**Accrued Compensation**");

(ii) (1) pay Executive on the first regular payroll pay day after the date of termination a lump sum severance payment equal to six (6) months of Base Salary; and (2) commencing on the date that is six (6) months following the termination date, continue to pay Executive's Base Salary at the rate in effect at the time of termination (without regard to any reduction in Base Salary that served as the basis for a resignation for Good Reason) for a period of six (6) months (the twelve (12) month period ending on the first anniversary of Executive's termination date, "**Severance Period**") in accordance with the Company's ordinary payroll practice;

(iii) pay Executive on the first regular payroll pay day after the date of termination a lump sum Performance Bonus in an amount equal to the greater of (1) the target

bonus for the applicable calendar year; and (2) the average of the Performance Bonus received by Executive for the three years immediately preceding the date of termination.

(iv) provided that Executive makes a timely election to continue coverage, pay directly to the insurance provider the premium for COBRA continuation coverage for Executive and Executive's dependents, less the amount payable by an active employee for such coverage, during the Severance Period or until he becomes eligible for health insurance through new employment, whichever comes first; *provided, however*, that, if such payments on behalf of Executive would result in the imposition of an excise tax on the Company pursuant to Section 4980D of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall, in lieu of making such payments directly to the insurance provider, provide an alternative arrangement (which may include making such payments directly to Executive on a fully grossed-up basis), that will be substantially economically equivalent on an after-tax basis to the economic intent of this 9(a)(iv) and that will not result in such excise tax being imposed on the Company (the benefits described in Sections 9(a)(ii), (iii) and (iv) are collectively referred to as the "**Severance Benefits**"); and

(v) unless more favorable treatment is provided in the applicable equity plan or award agreement, the vesting applicable to all unvested options and other equity incentive awards granted prior to or during the Term (collectively, the "**Equity Awards**") shall cease immediately and Executive shall have a period of ninety (90) days to exercise any and all vested Equity Awards, after which time all Equity Awards shall expire; *provided, however*, that no such Equity Award shall be exercisable after the expiration of its maximum term pursuant to the terms thereof.

(b) In the event that Executive's employment is terminated by the Company for Cause, or by Executive other than for Good Reason, then:

(i) the Company shall immediately pay in a lump sum the Accrued Compensation;

(ii) Executive shall not be entitled to receive any Severance Benefits; and

(iii) Unless more favorable treatment is provided in the applicable equity plan or award agreement, the vesting applicable to all unvested Equity Awards shall cease immediately and Executive shall have a period of ninety (90) days to exercise any and all vested Equity Awards, after which time all Equity Awards shall expire; *provided, however*, that no such Equity Award shall be exercisable after the expiration of its maximum term pursuant to the terms thereof.

(c) If, at any time during the twelve (12) months following a Change in Control, Executive's employment is terminated by such successor corporation without Cause or by Executive for Good Reason, then:

(i) the Company shall immediately pay in a lump sum the Accrued Compensation;



(ii) Executive shall be entitled to receive the Severance Benefits; *provided, however*, that the Severance Period shall be for a period of twenty-four (24) months from the date of termination with the effect that the Base Salary portion of the Severance Benefits will be consist of (1) providing Executive with a lump sum severance payment equal to six (6) months of Base Salary; and (2) commencing on the date that is six (6) months following the termination date, continuing to pay Executive's Base Salary at the rate in effect at the time of termination (without regard to any reduction in Base Salary that served as the basis for a resignation for Good Reason) for a period of eighteen (18) months;

(iii) unless more favorable treatment is provided in the applicable equity plan or award agreement, all unvested Equity Awards shall immediately vest in full and remain exercisable, if applicable, for a period of ninety (90) days following the date of such termination; *provided, however*, that no such Equity Award shall be exercisable after the expiration of its maximum term. In order to give effect to the foregoing provision, notwithstanding anything to the contrary set forth in Executive's equity award agreements regarding immediate forfeiture of unvested shares upon termination of service or the duration of post-termination of service exercise periods, following any termination of Executive's employment, none of Executive's Equity Awards that are options shall terminate with respect to any vested or unvested portion subject to such Equity Awards before ninety (90) days following such termination; and

(iv) provided that Executive makes a timely election to continue coverage, pay directly to the insurance provider the premium for COBRA continuation coverage for Executive and Executive's dependents for twenty-four months, less the amount payable by an active employee for such coverage, during the Severance Period or until he becomes eligible for health insurance through new employment, whichever comes first; *provided, however*, that, if such payments on behalf of Executive would result in the imposition of an excise tax on the Company pursuant to Section 4980D of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall, in lieu of making such payments directly to the insurance provider, provide an alternative arrangement (which may include making such payments directly to Executive on a fully grossed-up basis), that will be substantially economically equivalent on an after-tax basis to the economic intent of this 9(c)(iv) and that will not result in such excise tax being imposed on the Company.

(d) The Company and Executive agree that if the Board approves a decision to liquidate, dissolve or terminate the business or operations of the Company (other than in connection with the sale of the assets or merger of the Company) (a "**Liquidation**"), Executive will immediately resign from all currently held employment, officer and director positions. Immediately upon any such resignation, Executive will be fully relieved of all duties and responsibilities as an employee, officer and director of the Company, and consistent therewith, the Company understands and agrees that Executive will not be required to oversee, participate or assist in any way in the Company's subsequent Liquidation. Executive's resignation under these circumstances will be deemed voluntary, in good faith and for the benefit of the Company. Notwithstanding anything herein to the contrary, the Company shall not be required to pay Executive any Severance Benefits in the event of a Liquidation.

(e) This Section 9 sets forth the only severance obligations of the Company with respect to the termination of Executive's employment with the Company, and Executive acknowledges that, upon the termination of his employment, he shall not be entitled to any payments or benefits which are not explicitly provided in this Section 9. Further, notwithstanding anything to the contrary contained herein, the Company shall have no obligation to pay, and Executive shall have no right to receive, any of the Severance Benefits provided for in this Section 9 (the "**Payments**") following termination of Executive's employment unless Executive has executed and delivered to the Company the release of claims substantially in the form attached hereto as Exhibit C (the "**Release**") and the period during which the Release can be revoked has expired within the 60-day period following Executive's date of termination (the date the Release becomes irrevocable, the "**Release Effective Date**"). Except as required by Section 10, the Payments will commence on the first payroll period following the release Effective Date; *provided, however*, that (i) if the Payments (or any portion thereof) constitute "deferred compensation" within the meaning of Section 409A (as defined in Section 10) and (ii) the 60-day period described in the preceding sentence spans two (2) calendar years, then the Payments (or such portion thereof that constitutes "deferred compensation") will commence on the later of the Release Effective Date and the first payroll date of the Company in the second calendar year. Any portion of the Payments that is delayed due to the application of the preceding sentence shall be made on the date that the Payments commence. For the avoidance of doubt, there is no obligation on the part of the Executive to execute the Release and the failure to execute the Release shall not relieve the Company of its obligation to pay to Executive the Accrued Compensation as provided above in this Section 9.

(f) Unless otherwise agreed to by Executive and the Board, upon termination of Executive's employment hereunder for any reason, Executive shall be deemed to have resigned as director of the Company, effective as of the date of such termination.

(g) The Company shall withhold all applicable federal, state and local taxes and social security and such other amounts as may be required by law from all amounts payable to Executive under this Section 9.

(h) The provisions of this Section 9 shall survive any termination of this Agreement.

(i) For purposes of this Agreement, "**Cause**" shall include any of the following:

(i) Executive's willful failure to perform the material duties and obligations hereunder, or willful misconduct by Executive in respect of such duties or obligations, including, without limitation, willful failure, disregard or refusal by Executive to abide by specific, objective and lawful directions received by him in writing constituting an action of the Board, which willful failure, disregard or refusal is not cured by Executive within a reasonable time-frame following written notice from the Company.

(ii) any willful, intentional or grossly negligent act by Executive having the reasonably foreseeable effect of actually and substantially injuring, whether financial or otherwise, the business or reputation of the Company;

(iii) Executive's indictment for any felony;

(iv) Executive being convicted of a misdemeanor involving moral turpitude that causes, or could reasonably be expected to cause, substantial harm to business or reputation of the Company;

(v) conduct by Executive that constitutes unlawful harassment prohibited by law (including, without limitation, age, sex or race discrimination) as determined by the Company, after a reasonable and good-faith investigation by the Company following a written allegation by another employee of the Company; *provided, however*, that Cause shall not exist under this clause (v) unless the Company gives written notice to Executive where such notice describes with particularity the alleged act(s) at issue and has given Executive a reasonable and good faith opportunity to be heard at a meeting of the Board with or without counsel, and the Board provides Executive with a summary of its findings;

(vi) any conduct on the part of Executive that constitutes a breach of his fiduciary duties to the Company as determined by the Board;

(vii) any misappropriation or embezzlement of the property of the Company or its Affiliates (whether or not a misdemeanor or felony) by Executive; and

(viii) a material breach by Executive of this Agreement.

(j) For purposes of this Agreement, “**Good Reason**” shall mean:

(i) any material diminution by the Company of Executive’s title, duties, authority or compensation hereunder, other than (1) as a proportional reduction, consistent with the reductions in the salaries of all other executive officers of the Company at the level of Vice President and above as part of an overall reduction in salaries of executive officers of the Company, and will only be so reduced during such time as all such other executive officer salaries remain so reduced or (2) in connection with a Liquidation; or

(ii) a material breach by the Company of this Agreement;

(iii) any requirement that Executive relocate his primary residence; or

(iv) this Agreement is not assumed in full in writing by any successor to the Company on or prior to the closing of such succession, including any acquiror of all or substantially all of the assets of the Company, to whom this Agreement is not automatically assigned in full by operation of law upon such succession.

Notwithstanding the foregoing, should Executive wish to terminate this Agreement for Good Reason, he must provide the Company with written notice of such Good Reason within thirty (30) days of the occurrence of such event and reasonably cooperate with the Company in remedying the condition causing Good Reason for a period of not more than sixty (60) days (the “**Cure Period**”). If, following the Cure Period, the condition causing Good Reason remains uncured, then Executive may terminate this Agreement upon written notice to the Company within thirty (30) days following the Cure Period.

(k) For purposes of this Agreement, “ **Change in Control** ” shall have the meaning set forth in the Plan.

10. Certain Tax Provisions.

(a) Section 409A. Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under this Agreement (the “**Severance Benefits**”) that constitute “ **deferred compensation** ” within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the “ **Code** ”) and the regulations and other guidance thereunder and any state law of similar effect (collectively “ **Section 409A** ”) shall not commence in connection with Executive’s termination of employment unless and until Executive has also incurred a “ **separation from service** ” (as such term is defined in Treasury Regulation Section 1.409A-1(h) (“ **Separation From Service** ”), unless the Company reasonably determines that such amounts may be provided to Executive without causing Executive to incur the additional 20% tax under Section 409A. If Executive is, upon the separation from service, a “ **specified employee** ” of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) of the Code, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Severance Benefit payments shall be delayed until the earlier to occur of: (i) the date that is six months and one day after Executive’s Separation From Service, or (ii) the date of Executive’s death (such applicable date, the “ **Specified Employee Initial Payment Date** ”), the Company (or the successor entity thereto, as applicable) shall pay to Executive a lump sum amount equal to the sum of the Severance Benefit payments that Executive would otherwise have received through the Specified Employee Initial Payment Date if the payment of the Severance Benefits had not been so delayed pursuant to this Section.

(b) Section 280G.

(ii) Notwithstanding any other provision of this Agreement or any other plan, arrangement or agreement to the contrary, (A) until September 20, 2017, Section 11(b) of the Prior Agreement shall continue to apply and (B) following September 20, 2017, if any of the payments or benefits provided or to be provided by the Company or its Affiliates to Executive or for Executive’s benefit pursuant to the terms of this Agreement or otherwise constitute parachute payments (“ **Parachute Payments** ”) within the meaning of Section 280G (as may be amended or replaced) of the Internal Revenue Code of 1986, as amended (the “ **Code** ”) then such Parachute Payments to be made to Executive hereunder shall be payable either (1) in full or (2) as to such lesser amount which would result in no portion of such Parachute Payments being subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any interest or penalties with respect to such excise tax (collectively, the “ **Excise Tax** ”), whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in Executive’s receipt on an after-tax basis, of the greatest amount of economic benefits under this Agreement, notwithstanding that all or some portion of such benefits may be subject to the Excise Tax. If a reduction in Parachute Payments is necessary so that no portion of the Parachute Payments is subject to the Excise Tax, reduction shall occur in the manner that results in the greatest economic benefit to Executive. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata. If this Section 10(b)(i) is applied to reduce an amount payable to Executive, and the IRS

successfully asserts that, despite the reduction, Executive has nonetheless received payments that are in excess of the maximum amount that could have been paid to him without being subjected to any Excise Tax, then, unless it would be unlawful for the Company to make such a loan or similar extension of credit to Executive, Executive may repay such excess amount to the Company though such amount constitutes a loan to Executive made at the date of payment of such excess amount, bearing interest at 120% of the applicable federal rate (as determined under section 1274(d) of the Code in respect of such loan).

(iii) The independent registered public accounting firm engaged by the Company for general audit purposes as of the day prior to the date of the event triggering a Parachute Payment (the “**Triggering Event**”) shall make all determinations required to be made under this Section 10(b). The Company shall bear all expenses with respect to the determinations by such independent registered public accounting firm required to be made hereunder.

(iv) The independent registered public accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Executive within thirty (30) calendar days after the Triggering Date (if requested at that time by the Company or Executive) or such other time as requested by the Company or Executive. If the independent registered public accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the reduction in clause (i) above, it shall furnish the Company and Executive with a written opinion reasonably acceptable to Executive that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and Executive.

#### 11. Miscellaneous.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware, without giving effect to its principles of conflicts of laws. Venue shall take place in the exclusive jurisdiction of the federal and state courts in the State of Florida.

(b) Executive will be subject to such indemnification as is provided under the Company’s Bylaws and that certain Indemnification Agreement entered into by and among the Company and Executive dated March 21, 2013 as amended September 20, 2013 (the “**Indemnification Agreement**”), and under director and officer liability insurance provided by the Company.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

(d) This Agreement, and Executive’s rights and obligations hereunder, may not be assigned by Executive. The Company may assign its rights, together with its obligations, hereunder in connection with any sale, transfer or other disposition of all or substantially all of its business or assets provided the assignee entity which succeeds to the Company expressly assumes the Company’s obligations hereunder and complies with the terms of this Agreement.

---

(e) This Agreement cannot be amended orally, or by any course of conduct or dealing, but only by a written agreement signed by the parties hereto.

(f) The failure of either party to insist upon the strict performance of any of the terms, conditions and provisions of this Agreement shall not be construed as a waiver or relinquishment of future compliance therewith, and such terms, conditions and provisions shall remain in full force and effect. No waiver of any term or condition of this Agreement on the part of either party shall be effective for any purpose whatsoever unless such waiver is in writing and signed by such party.

(g) All notices, requests, consents and other communications, required or permitted to be given hereunder, shall be in writing and shall be delivered personally or by an overnight courier service or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at the addresses set forth on the first page of this Agreement, and shall be deemed given when so delivered personally or by overnight courier, or, if mailed, five (5) days after the date of deposit in the United States mails. Either party may designate another address, for receipt of notices hereunder by giving notice to the other party in accordance with this clause (h).

(h) This Agreement, the Indemnification Agreement and that certain letter agreement between the Company and Executive dated March 21, 2013, pursuant to which Executive was appointed as Chairman of the Board, set forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof, including the Prior Agreement. No representation, promise or inducement has been made by either party that is not embodied in this Agreement, and neither party shall be bound by or liable for any alleged representation, promise or inducement not so set forth.

(i) As used in this Agreement, “ **Affiliate** ” of a specified Person shall mean and include any Person controlling, controlled by or under common control with the specified Person.

(j) The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(k) This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

[Signature page follows.]

---

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**AERIE PHARMACEUTICALS, INC.**

By: /s/ Richard Rubino

Name: Richard Rubino  
Title: Chief Financial Officer

**EXECUTIVE**

By: /s/ Vicente Anido, Jr., Ph.D.

Name: Vicente Anido, Jr., Ph.D.

---

**Exhibit A**

[Restricted Stock Agreement]



---

**Exhibit B**

18 U.S.C. 1833(b) provides:

(1) IMMUNITY.—An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that—

(A) is made—

(i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and

(ii) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT.—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—

(A) files any document containing the trade secret under seal; and

(B) does not disclose the trade secret, except pursuant to court order.

---

**Exhibit C**

**YOU SHOULD CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE OF CLAIMS .**

**Release**

1. In consideration of the payments and benefits to be made under the Employment Agreement, dated as of July 25, 2017 (the “**Employment Agreement**”), by and between Vicente Anido, Jr., Ph.D (the “**Executive**”) and Aerie Pharmaceuticals, Inc. (the “**Company**”) (each of Executive and the Company, a “**Party**” and collectively, the “**Parties**”), the sufficiency of which Executive acknowledges, Executive, with the intention of binding Executive and Executive’s heirs, executors, administrators and assigns, does hereby release, remise, acquit and forever discharge the Company and each of its subsidiaries and affiliates (the “**Company Affiliated Group**”), their present and former officers, directors, executives, shareholders, agents, attorneys, employees and employee benefit plans (and the fiduciaries thereof), and the successors, predecessors and assigns of each of the foregoing (collectively, the “**Company Released Parties**”), of and from any and all claims, actions, causes of action, complaints, charges, demands, rights, damages, debts, sums of money, accounts, financial obligations, suits, expenses, attorneys’ fees and liabilities of whatever kind or nature in law, equity or otherwise, whether accrued, absolute, contingent, unliquidated or otherwise and whether now known or unknown, suspected or unsuspected, which Executive, individually or as a member of a class, now has, owns or holds, or has at any time heretofore had, owned or held, arising on or prior to the date hereof, against any Company Released Party that arises out of, or relates to, the Employment Agreement, Executive’s employment with the Company or any of its subsidiaries and affiliates, or any termination of such employment, including claims (i) for severance or vacation benefits, unpaid wages, salary or incentive payments, (ii) for breach of contract, wrongful discharge, impairment of economic opportunity, defamation, intentional infliction of emotional harm or other tort, (iii) for any violation of applicable state and local labor and employment laws (including, without limitation, all laws concerning unlawful and unfair labor and employment practices) and (iv) for employment discrimination under any applicable federal, state or local statute, provision, order or regulation, and including, without limitation, any claim under Title VII of the Civil Rights Act of 1964 (“**Title VII**”), the Civil Rights Act of 1988, the Fair Labor Standards Act, the Americans with Disabilities Act (“**ADA**”), the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), the Age Discrimination in Employment Act (“**ADEA**”), and any similar or analogous state statute, excepting only:

- A. rights of Executive arising under, or preserved by, this Release or Section 9 of the Employment Agreement;
- B. the right of Executive to receive COBRA continuation coverage in accordance with applicable law;
- C. claims for benefits under any health, disability, retirement, life insurance or other, similar employee benefit plan (within the meaning of Section 3(3) of ERISA) of the Company Affiliated Group;

- 
- D. rights to indemnification Executive has or may have under the by-laws or certificate of incorporation of any member of the Company Affiliated Group or as an insured under any director's and officer's liability insurance policy now or previously in force; and
  - E. rights granted to Executive during Executive's employment or service as a director related to the Company's common stock.

2. Executive acknowledges and agrees that this Release is not to be construed in any way as an admission of any liability whatsoever by any Company Released Party, any such liability being expressly denied.

3. This Release applies to any relief no matter how called, including, without limitation, wages, back pay, front pay, compensatory damages, liquidated damages, punitive damages, damages for pain or suffering, costs, and attorneys' fees and expenses.

4. Executive specifically acknowledges that Executive's acceptance of the terms of this Release is, among other things, a specific waiver of Executive's rights, claims and causes of action under Title VII, ADEA, ADA and any state or local law or regulation in respect of discrimination of any kind; provided, however, that nothing herein shall be deemed, nor does anything contained herein purport, to be a waiver of any right or claim or cause of action which by law Executive is not permitted to waive.

5. Executive acknowledges that Executive has been given a period of [twenty-one (21)] [forty-five (45)] days to consider whether to execute this Release. If Executive accepts the terms hereof and executes this Release, Executive may thereafter, for a period of seven (7) days following (and not including) the date of execution, revoke this Release. If no such revocation occurs, this Release shall become irrevocable in its entirety, and binding and enforceable against Executive, on the day next following the day on which the foregoing seven-day period has elapsed. If such a revocation occurs, Executive shall irrevocably forfeit any right to payment of the Severance Benefits (as defined in the Employment Agreement), but the remainder of the Employment Agreement shall continue in full force.

6. Executive acknowledges and agrees that Executive has not, with respect to any transaction or state of facts existing prior to the date hereof, filed any complaints, charges or lawsuits against any Company Released Party with any governmental agency, court or tribunal.

7. Executive acknowledges that Executive has been advised to seek, and has had the opportunity to seek, the advice and assistance of an attorney with regard to this Release, and has been given a sufficient period within which to consider this Release.

8. Executive acknowledges that this Release relates only to claims that exist as of the date of this Release.

---

9. Executive acknowledges that the severance payments and benefits Executive is receiving in connection with this Release and Executive's obligations under this Release are in addition to anything of value to which Executive is entitled from the Company.

10. Each provision hereof is severable from this Release, and if one or more provisions hereof are declared invalid, the remaining provisions shall nevertheless remain in full force and effect. If any provision of this Release is so broad, in scope, or duration or otherwise, as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

11. This Release constitutes the complete agreement of the Parties in respect of the subject matter hereof and shall supersede all prior agreements between the Parties in respect of the subject matter hereof except to the extent set forth herein. For the avoidance of doubt, however, nothing in this Release shall constitute a waiver of any Company Released Party's right to enforce any obligations of Executive under the Employment Agreement that survive the Employment Agreement's termination, including without limitation, any non-competition covenant, non-solicitation covenant or any other restrictive covenants contained therein.

12. The failure to enforce at any time any of the provisions of this Release or to require at any time performance by another party of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or to affect the validity of this Release, or any part hereof, or the right of any party thereafter to enforce each and every such provision in accordance with the terms of this Release.

13. This Release may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile shall be deemed effective for all purposes.

14. This Release shall be binding upon any and all successors and assigns of Executive.

15. Except for issues or matters as to which federal law is applicable, this Release shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without giving effect to the conflicts of law principles thereof.

IN WITNESS WHEREOF, this Release has been signed by Executive as of \_\_\_\_\_.

\_\_\_\_\_  
Executive