

**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): **February 16, 2018**

JAGUAR HEALTH, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation)

001-36714

(Commission File Number)

46-2956775

(IRS Employer Identification No.)

201 Mission Street, Suite 2375

San Francisco, California

(Address of principal executive offices)

94105

(Zip Code)

Registrant's telephone number, including area code: **(415) 371-8300**

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 (see General Instruction A.2. below):

- 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 1.01 Entry into a Material Definitive Agreement.

Second Amendment to Note Purchase Agreement and Notes

On February 16, 2018, Napo Pharmaceuticals, Inc. ("Napo"), a wholly-owned subsidiary of Jaguar Health, Inc. (the "Company"), entered into the Second Amendment to Note Purchase Agreement and Notes and Payoff Agreement (the "Second Amendment") with each of the purchasers (the "Purchasers") party to the Note Purchase Agreement, dated March 1, 2017, by and among the Napo and the Purchasers (as amended, the "Note Purchase Agreement"). In connection with the Second Amendment, Napo amended the original issue discount exchangeable promissory notes previously issued to the Purchasers on April 27, 2017 pursuant to the Note Purchase Agreement (the "Second Tranche Notes") to extend the maturity date of the Second Tranche Notes from April 1, 2018 to May 1, 2018.

In connection with the Second Amendment, the Company also issued 3,783,444 shares (the "Shares") of Common Stock to the Purchasers as repayment of the remaining \$435,949.92 aggregate principal amount of the original issue discount exchangeable promissory notes previously issued by Napo to the Purchasers on March 1, 2017 pursuant to the Note Purchase Agreement (the "First Tranche Notes") and \$18,063.24 in accrued and unpaid interest thereon.

The Shares were offered and sold pursuant to an exemption from the registration requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

The form of Second Tranche Note and the Second Amendment are filed as Exhibits 4.1 and 10.1, respectively, to this Current Report on Form 8-K, and such documents are incorporated herein by reference. The foregoing is only a brief description of the material terms of the Second Tranche Note and the Second Amendment, does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to such exhibits.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information contained above in Item 1.01 is hereby incorporated by reference into this Item 2.03 in its entirety.

Item 3.02 Unregistered Sales of Equity Securities.

The information contained above in Item 1.01 is hereby incorporated by reference into this Item 3.02 in its entirety.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
4.1	Form of Second Amended Original Issue Discount Exchangeable Promissory Note.
10.1	Second Amendment to the Note Purchase Agreement and Notes and Payoff Agreement, dated February 16, 2018, by and among Jaguar Health, Inc. and the purchasers named therein.

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SIGNATURES

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

JAGUAR HEALTH, INC.

By: /s/ Karen S. Wright
Name: Karen S. Wright
Title: Chief Financial Officer

Date: February 16, 2018

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THE SECURITIES OF THE COMPANY OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), IN RELIANCE UPON REGULATION D PROMULGATED UNDER THE ACT, AND THE SECURITIES OFFERED HEREBY HAVE NOT BEEN QUALIFIED UNDER APPLICABLE STATE SECURITIES LAWS IN THE STATES WHERE THIS OFFERING IS MADE. THEREFORE, THE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE ACT OR QUALIFICATION UNDER SUCH STATE SECURITIES LAWS OR AN OPINION OF COUNSEL THAT SUCH REGISTRATION AND QUALIFICATION IS NOT REQUIRED. THESE SECURITIES MAY BE SUBJECT TO ADDITIONAL RESTRICTIONS PURSUANT TO EXEMPTIONS IN THE VARIOUS STATES WHERE THEY ARE BEING SOLD.

THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER SET FORTH IN THE PURCHASE AGREEMENT (AS DEFINED HEREIN) BY AND BETWEEN THE ORIGINAL HOLDER HEREOF AND THE COMPANY WHICH MAY BE OBTAINED UPON REQUEST.

THIS NOTE IS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR PURPOSES OF SECTION 1271 ET SEQ. OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. PURSUANT TO TREASURY REGULATION SECTION 1.1275-3, A HOLDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE, AND YIELD TO MATURITY FOR THIS NOTE BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE ISSUERS AT THE FOLLOWING ADDRESS: 201 MISSION STREET, SUITE 2375, SAN FRANCISCO, CA 94105, ATTENTION: CHIEF EXECUTIVE OFFICER.

Original Issue Date: [], 2017

Principal Amount: \$[]
Purchase Price: \$[]

**SECOND AMENDED ORIGINAL ISSUE DISCOUNT
EXCHANGEABLE PROMISSORY NOTE DUE MAY 1, 2018**

Napo Pharmaceuticals, Inc., a Delaware corporation (the "Company"), for value received, hereby promises to pay to [] (the "Holder"), the principal sum of [] Dollars (\$[]) with interest as provided below. This Second Amended Original Issue Discount Exchangeable Promissory Note (this "Note") is being issued as of [], 2017 (the "Effective Date") pursuant to that certain Note Purchase Agreement dated [], 2017 between the Company and the parties identified therein (as amended, the "Purchase Agreement"). This Note constitutes an amendment and substitution for that certain Original Issue Discount Exchangeable Promissory Note dated as of [], 2017 in the aggregate principal amount of \$[] executed by the Company and made payable to the order of the Holder (the "Original Note"). The indebtedness evidenced by the Original Note, as reduced to the amount provided in this Note, is continuing indebtedness evidenced hereby, and nothing herein shall be deemed to constitute a payment, settlement or novation of the Original Note, or to release or otherwise adversely affect any lien, mortgage or security interest securing such indebtedness or any rights of the Holder against any guarantor, surety or other party primarily or secondarily liable for such indebtedness. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Purchase Agreement.

1. Payment

(a) Payments to Holder. The Company shall make payments hereunder to the Holder, at the address provided to the Company by the Holder in writing, in lawful money of the United States of America.

(b) Interest. The Company promises to pay interest on the unpaid principal amount hereof from the Effective Date until paid in full at a rate per annum equal to three percent (3%). Accrued and unpaid interest hereunder shall be paid on the Maturity Date, at the Company's election, either (x) in cash or (y) in shares of Jaguar Common Stock as determined in the following sentence, provided that if Jaguar Common Stock is (i) neither listed on Nasdaq or the Bulletin Board or (ii) not registered under the Securities Act as of the date due for any applicable interest payment, the Company shall be required to pay such interest due in cash. The number of shares of Jaguar Common Stock issued to the Holder pursuant to this Section 1(b) shall be determined by dividing the amount of interest then due to such Holder by the Jaguar Average Closing Price with such interest payment due date as the Valuation Date (rounded down to the nearest whole share). All computations of interest shall be made on the basis of a 365 or 366 day year, as applicable, for the actual number of days elapsed in the relevant period. In no event shall the interest rate payable on this Note exceed the maximum rate of interest permitted to be charged under applicable law.

(c) Prepayment. Except in connection with a Change of Control, Merger, occurrence of the Merger Termination Date or Event of Default, the Company may not at any time prepay the principal or any accrued and unpaid interest of this Note in whole or in part, without the prior written consent of the Required Purchasers; provided, however, that in connection with any prepayment permitted hereunder, the Company shall give reasonable advance notice of such prepayment to the Purchaser. Unless otherwise set forth herein, all permitted prepayments of this Note will be applied first to unpaid interest and then to principal. For purposes of this Note, a "Change of Control" means: (i) the merger, consolidation or other business combination of Jaguar with any entity in which the stockholders of Jaguar immediately prior to such transaction in the aggregate cease to own at least 50% of the voting power of the voting securities of the entity surviving or resulting from such transaction (or the ultimate parent thereof), (ii) the sale, transfer, lease, assignment or other disposal of all or substantially all of the assets of Jaguar or (iii) any transaction or series of transactions in which more than 50% of the voting power of Jaguar's voting securities is transferred to any person or group other than pursuant to a transaction or series of transaction primarily for capital raising purposes.

(d) Maturity Date. Unless this Note is terminated earlier in accordance with the terms hereof, the maturity date for this Note shall be May 1, 2018 at which time the Holder shall receive payment in full of the outstanding principal and interest of this Note (such date, the "Maturity Date"). Unless earlier repaid or exchanged in accordance with the terms hereof, the outstanding principal amount and all accrued and unpaid interest under this Note shall be paid in full on the Maturity Date.

2. Default and Remedies

(a) The occurrence of any one or more of the following shall constitute an "Event of Default" hereunder:

(i) The Company fails to repay the principal or interest on this Note within five (5) business days following the due date thereof.

- (ii) The Company fails to deliver the Initial Exchange Shares within three (3) Trading Days after receiving a notice of exchange as provided in Section 3 below.
- (iii) The Company makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a receiver of or for the major part of its properties.
- (iv) A trustee or receiver is appointed for the Company or for a material part of its properties and the order of such appointment is not discharged, vacated or stayed within ninety (90) days after such appointment.
- (v) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy or similar Laws or Laws for the relief of debtors, are instituted by or against the Company and, if so instituted, are consented to by the Company, or, if contested, are not dismissed by the adverse parties or by an order, decree or judgment within ninety (90) days after such institution.
- (vi) Jaguar Common Stock ceases to trade on either Nasdaq or the Bulletin Board.
- (vii) The occurrence of a default under any material agreement of the Company.

(b) If any Event of Default occurs under Sections 2(a)(i), 2(a)(ii), or 2(a)(vi), the Required Purchasers may declare the entire outstanding principal amount of the Notes and all accrued but unpaid interest thereon and all other payments payable on the Notes to be forthwith due and payable in cash immediately, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company, to the fullest extent permitted by applicable law. If an Event of Default specified in Sections 2(a)(iii), 2(a)(iv) or 2(a)(v) occurs and is continuing, then the outstanding principal balance, accrued interest thereon and all other payments payable hereunder shall become and be immediately due and payable in cash without any declaration or other act on the part of the Holder or the Requisite Investors. The Requisite Investors by notice to the Company may rescind an acceleration and its consequences. No such rescission shall affect any subsequent default or impair any right thereto. Notwithstanding anything to the contrary set forth herein, in no event will any right or remedy conferred to the Holder under this Section 2(b) be exercised prior to the earliest of (i) July 1, 2017, or (ii) the consummation of the Merger.

(c) No right, power or remedy conferred hereby or now or hereafter available at law, in equity, by statute or otherwise shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise, but all rights, powers and remedies of the Holder shall be cumulative and not alternative.

3. Exchange.

(a) Subject to Section 5.6 of the Purchase Agreement, the Holder may, at any time prior to the Maturity Date and subsequent to the earlier of the Merger Effective Date or the Merger Termination Date, exchange this Note for the number of Initial Exchange Shares equal to the quotient obtained by dividing (i) the outstanding principal balance of this Note plus all accrued and unpaid interest thereon by (ii) the Conversion Price. The Holder shall provide written notice to the Company, which shall be obligated to exchange this Note for such Initial Exchange Shares within three (3) Trading Days after the receipt of the notice.

(b) Subject to the conditions set forth in the following sentence and Section 5.6 of the Purchase Agreement, the Holder shall, at any time prior to the Maturity Date, exchange this Note for the number of Initial Exchange Shares equal to the quotient obtained by dividing (x) the outstanding principal balance of this Note plus all accrued and unpaid interest thereon by (y) the Conversion Price. The Holder's obligation to exchange this Note is conditioned upon (i) either the Merger Effective Date or the Merger Termination Date having occurred, (ii) a registration statement, in accordance with Section 4.13 of the Purchase Agreement, being effective, and (iii) shares of common stock to be issued under the Merger Agreement must have a closing sale price in excess of \$1.00 as reported on its principal trading market for the immediately preceding 10 Trading Days (excluding any Trading Day during which the daily volume is less than 50,000 shares of shares of common stock to be issued under the Merger Agreement).

4. Tax Information Statements. Napo shall use commercially reasonable efforts to provide the Holder of this Note with information as may be necessary for the Holder to satisfy U.S. federal income tax obligations, including without limitation I.R.S. Form 1099-OID.

5. [Reserved]

6. Amendment Provisions. This Note may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by the Company, the Required Purchasers and, prior to the Merger, Nantucket, and then only to the extent set forth therein.

7. Severability. If any provision of this Note is determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions of this Note shall not in any way be affected or impaired thereby and this Note shall nevertheless be binding between the Company and the Holder.

8. Successors and Assigns. This Note shall be binding upon, and shall inure to the benefit of, the Company and the Holder thereof and their respective permitted successors and assigns. The Company may not assign any of its rights or obligations hereunder or under any Transaction Document without the prior written consent of the Required Purchasers. Holder (or its transferees and/or assigns) may assign any rights and/or delegate any obligations hereunder or under any Transaction Document to an Affiliate but not to any other third party without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), provided that any such assignee agrees in writing to be subject to the terms of the NDA.

9. No Notice. Except as expressly forth herein, the Company hereby waives notice of default, presentment or demand for prepayment, protest or notice of nonpayment of dishonor and all other notices or demands relative to this instrument.

10. No Waiver. The failure in any one or more instances of a party to insist upon performance of any of the terms, covenants or conditions of this Note or to exercise any right or privilege conferred hereby, or the waiver by said party of any breach of any of the terms, covenants or conditions of this Note shall not be construed as a subsequent waiver of any such terms, covenants, conditions, rights or privileges, but the same shall

continue and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

11. Time of the Essence. Time is of the essence with respect to all obligations hereunder.

12. No Usury. If any provision of this Note would require the Company to pay interest hereunder at a rate exceeding the maximum rate permitted by applicable law, the Company shall instead pay interest on the outstanding principal balance of this Note at the maximum rate permitted by applicable law.

13. Business Days; Holidays. If payment hereunder becomes due and payable on a Saturday, Sunday or legal holiday under the laws of the United States or the State of Illinois, the due date thereof shall be extended to the next succeeding business day.

14. Governing Law. This Note shall be governed and controlled by the internal Laws of the State of Delaware as to interpretation, enforcement, validity, construction and effect and in all other respects, including, without limitation, the legality of the interest rate and other charges.

15. Notices. All notices required or permitted to be given hereunder shall be in writing and may be delivered in accordance with Section 7.2 of the Purchase Agreement.

16. Expenses of Enforcement. The Company shall pay on demand all expenses of the Holder (including reasonable attorney's fees) incurred in connection with the Holder's enforcement of its rights and remedies arising under the Transaction Documents.

IN WITNESS WHEREOF, the Company has duly caused this Second Amended Original Issue Discount Exchangeable Promissory Note to be signed in its name and on its behalf by its duly authorized officer as of the Effective Date first written above.

NAPO PHARMACEUTICALS, INC.

By: _____

Name: Lisa A. Conte

Its: Chief Executive Officer

**SECOND AMENDMENT TO
NOTE PURCHASE AGREEMENT AND NOTES
AND PAYOFF AGREEMENT**

This SECOND AMENDMENT TO NOTE PURCHASE AGREEMENT AND NOTES AND PAYOFF AGREEMENT (this “Second Amendment”), dated as of February 16, 2018 (the “Effective Date”), by and among Napo Pharmaceuticals, Inc., a Delaware Corporation (“Napo” or the “Company”) and each party identified on the signature pages hereto as a purchaser of the Notes (as defined below) pursuant to the Note Purchase Agreement (as defined below) (collectively, the “Purchasers” and each, a “Purchaser”).

WITNESSETH:

WHEREAS, the Company and the Purchasers are parties to that certain Note Purchase Agreement dated as of March 1, 2017 (as amended, the “Note Purchase Agreement”), pursuant to which the Company issued (i) \$656,250 in aggregate principal amount of Original Issue Discount Exchangeable Promissory Notes to the Purchasers at a purchase price of \$525,000 on March 1, 2017 (as amended, collectively, the “Original First Tranche Notes”) and (ii) \$656,250 in aggregate principal amount of Original Issue Discount Exchangeable Promissory Notes to the Purchasers at a purchase price of \$525,000 on April 27, 2017 (as amended, collectively, the “Original Second Tranche Notes” and, together with the Original First Tranche Notes, the “Original Notes”);

WHEREAS, the Company and the Purchasers are parties to that certain First Amendment to the Note Purchase Agreement and Notes, dated December 29, 2017 (the “First Amendment”), pursuant to which the Original First Tranche Notes were partially repaid and the Original Notes were amended to, among other things, (a) increase the principal amount outstanding under the Original Notes by twelve percent (12%), (b) lower the price at which the Notes are exchangeable for shares of the Company’s common stock (the “Common Stock”) from \$0.56 per share to \$0.20 per share, and (c) extend the maturity date of the Original Notes;

WHEREAS, as of the date hereof, the unpaid principal balance of the Original First Tranche Notes is \$435,949.92, and the accrued, but unpaid interest thereon is \$18,063.24;

WHEREAS, as a complete settlement and satisfaction of the Original First Tranche Notes and as consideration for the extension of the maturity of the Original Second Tranche Notes from April 1, 2018 to May 1, 2018 (the “Notes Extension”), the Company has offered, subject to the terms and conditions hereof, to pay in kind all outstanding obligations of Company under the Original First Tranche Notes by causing Jaguar Health, Inc. (“Jaguar”) to issue and deliver to the Purchasers 3,783,444 shares of Common Stock (the “Payoff Shares”); and

WHEREAS, the Purchasers are willing to accept the Company’s offer to pay in kind the obligations of the Company under the Original First Tranche Notes to the Purchasers by delivering the Payoff Shares to the Purchasers as a complete payoff and satisfaction of the

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Original First Tranche Notes and as consideration for the Note Extension, upon the terms and conditions set forth in this Second Amendment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants, representations, warranties and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** Capitalized terms used and not otherwise defined herein shall have the same meanings as set forth in the Note Purchase Agreement.
2. **Issuance of Payoff Shares.** On the Effective Date, the Company shall cause to be delivered to the Purchasers the Payoff Shares to be allocated as set forth on Exhibit A hereto.
3. **Amendments to the Original Second Tranche Notes.**
 - a. The Original Second Tranche Notes are hereby amended such that they shall be in the forms attached hereto as Exhibits B-1 and B-2 (such Original Second Tranche Notes as amended, the “Amended Second Tranche Notes”).
 - b. The Purchasers shall exchange the Original Second Tranche Notes in consideration for the Amended Second Tranche Notes. Upon the execution of this Second Amendment by the Company and the Purchasers, the Purchasers shall send the Original Second Tranche Notes to the Company’s principal address set forth in Section 7.2 of the Note Purchase Agreement. Promptly upon receipt thereof, the Company shall deliver the Amended Second Tranche Notes to the Purchasers at the addresses set forth on the signature pages of the Note Purchase Agreement.
 - c. For the avoidance of doubt, other than the changes identified in Exhibits B-1 and B-2, there are no other changes to the Purchasers rights under this Agreement or the Amended Second Tranche Notes.
4. **Purchasers’ Obligations and Agreements.** The Purchasers agree that, upon receipt of the Payoff Shares that are duly and properly registered for resale under that certain registration statement on Form S-3 (File No. 333-222805):
 - a. all obligations and liabilities of Company and its affiliates under the Original First Tranche Notes shall be deemed paid in full and extinguished;
 - b. the Purchasers will not have any further rights under the Original First Tranche Notes;
 - c. neither Company nor any of its affiliates shall have any further obligation under the Original First Tranche Notes;
 - d. the Original First Tranche Notes shall automatically terminate and be of no further force and effect; and

- e. each Purchaser will promptly deliver to the Company its Original First Tranche Note, marked cancelled.
5. **Mutual Release.** In consideration of the agreements set forth herein, the Company and each Purchaser hereby agree as follows:

a. Release by Company:

- i. Company does hereby release, acquit and forever discharge each Purchaser and their respective past and present officers, directors, attorneys, affiliates, members, managers, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length (each, a "Company Released Claim" and collectively, the "Company Released Claims"), that Company hereunder has as of the Effective Date or may acquire in any way arising out of, connected with or related to the Original First Tranche Notes.
- ii. Each person signing below on behalf of Company hereunder acknowledges that he or she has read each of the provisions of this Section 5(a). Each such person fully understands that this Section 5(a) has important legal consequences, and each such person realizes that they are releasing any and all Company Released Claims that Company may have. Company hereby acknowledges that each of them has had an opportunity to obtain a lawyer's advice concerning the legal consequences of each of the provisions of this Section 5(a).
- iii. Company hereby specifically acknowledges and agrees that: (x) none of the provisions of this Section 5(a) shall be construed as or constitute an admission of any liability on the part of any Purchaser; (y) the provisions of this Section 5(a) shall constitute an absolute bar to any Company Released Claim of any kind, whether any such Company Released Claim is based on contract, tort, warranty, mistake or any other theory, whether legal, statutory or equitable; and (z) any attempt to assert a Company Released Claim barred by the provisions of this Section 5(a) shall subject Company to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.
- iv. Company expressly waives any and all rights and benefits conferred upon it by Section 1542 of the Civil Code of the State of California (and any similar or like statute or other law which may be applicable), which states as follows:

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"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Company expressly agrees and understands that the release given by it pursuant to this provision applies to all unknown, unsuspected and unanticipated Claims which it may have against the Purchasers that it has released. Company understands and acknowledges that the significance and consequence of this waiver of Section 1542 of the California Civil Code (and any similar or like statute or other law which may be applicable) is that even if it should eventually suffer additional damages relating in any way to any dispute, that Company will not be permitted to make any claim for those damages against the Purchasers that it has released pursuant to this Agreement. Furthermore, Company acknowledges that it intends these consequences even as to claims for damages that may now exist as of the date of this Agreement but which are not known to exist, and which, if known would materially affect its decision to execute these releases, regardless of whether their lack of knowledge, or the lack of knowledge of any one of them, is the result of ignorance, oversight, error, negligence, or any other cause.

b. Release by the Purchasers.

- i. Each Purchaser hereunder, for itself and on behalf of its respective successors and assigns, does hereby release, acquit and forever discharge Company and Jaguar and all of their respective past and present officers, directors, attorneys, affiliates, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length (each, a "Purchaser Released Claim" and collectively, the "Purchaser Released Claims"), that any Purchaser hereunder now has as of the Effective Date or may acquire in any way arising out of, connected with or related to the Original First Tranche Notes.
- ii. Each person signing below on behalf of any Purchaser hereunder acknowledges that he or she has read each of the provisions of this Section 5(b). Each such person fully understands that this Section 5(b) has important legal consequences, and each such person realizes that they are releasing any and all Purchaser Released Claims that any such Purchaser may have. Each Purchaser hereunder hereby acknowledges that it has had an opportunity to obtain a lawyer's advice concerning the legal consequences of each of the provisions of this Section 5(b).

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- iii. Each Purchaser hereby specifically acknowledges and agrees that: (x) none of the provisions of this Section 5(b) shall be construed as or constitute an admission of any liability on the part of Company; (y) the provisions of this Section 5(b) shall constitute an absolute bar to any Purchaser Released Claim of any kind, whether any such Purchaser Released Claim is based on contract, tort, warranty, mistake or

any other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Purchaser Released Claim barred by the provisions of this Section 5(b) shall subject each Purchaser to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

- iv. Each Purchaser expressly waives any and all rights and benefits conferred upon it by Section 1542 of the Civil Code of the State of California (and any similar or like statute or other law which may be applicable), which states as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Each Purchaser expressly agrees and understands that the release given by it pursuant to this provision applies to all unknown, unsuspected and unanticipated Claims which it may have against the Company that it has released. Each Purchaser understands and acknowledges that the significance and consequence of this waiver of Section 1542 of the California Civil Code (and any similar or like statute or other law which may be applicable) is that even if it should eventually suffer additional damages relating in any way to any dispute, that no Purchaser will be permitted to make any claim for those damages against the Company that it has released pursuant to this Agreement. Furthermore, each Purchaser acknowledges that it intends these consequences even as to claims for damages that may now exist as of the date of this Agreement but which are not known to exist, and which, if known would materially affect its decision to execute these releases, regardless of whether their lack of knowledge, or the lack of knowledge of any one of them, is the result of ignorance, oversight, error, negligence, or any other cause.

6. **Conditions to Effectiveness.** This Second Amendment shall become effective when executed and delivered by each of the parties hereto.

7. **Ratifications.** Except as expressly modified and superseded by this Second Amendment as set forth in Section 2 hereof, the terms and provisions of the Note Purchase Agreement are ratified and confirmed and shall continue in full force and effect.

8. **Severability.** Any provision of this Second Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Second Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

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9. **APPLICABLE LAW.** THIS SECOND AMENDMENT AND ALL OTHER DOCUMENTS EXECUTED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE.

10. **Counterparts.** This Second Amendment may be executed and delivered in any number of counterparts, and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one and the same instrument. Execution of this Second Amendment via facsimile or other electronic transmission (e.g., .pdf) shall be effective, and signatures received via facsimile or other electronic transmission shall be binding upon the parties hereto and shall be effective as originals.

11. **Headings.** The headings, captions, and arrangements used in this Second Amendment are for convenience only and shall not affect the interpretation of this Second Amendment.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Second Amendment as of the day and year first above written.

COMPANY:

NAPO PHARMACEUTICALS, INC.

By: /s/ Lisa A. Conte
Name: Lisa A. Conte
Title: Chief Executive Officer

PURCHASERS:

MEF I, LP

By: Magna GP LLC, in its capacity as General Partner

By: /s/ Joshua Sason
Name: Joshua Sason
Title: Managing Member

Address:

40 Wall Street
58th Floor

New York, New York 10005

RIVERSIDE MERCHANT PARTNERS

By: /s/ David A. Bocchi

Name: David A. Bocchi

Title: Managing Member

Address:

1581 Franklin Ave.

P.O. Box 149

Garden City, New York 11530

[Signature Page to Third Amendment to Note Purchase Agreement]

Exhibit A

ALLOCATION OF PAYOFF SHARES

Purchaser	Payoff Shares
MEF I, LP	1,891,722 shares
Riverside Merchant Partners LLC	1,891,722 shares
TOTAL	3,783,444 shares
