Capnia, Inc.
Form PRER14A
February 09, 2017

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

Filed by the Registrant Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

CAPNIA, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

Common Stock, par value $0.001 per share, of Capnia, Inc.

(2) Aggregate number of securities to which transaction applies:

Up to 38,286,194 shares of Capnia, Inc. common stock which consists of (a) a maximum of up to 24,397,306 shares of Capnia, Inc. common stock to be issued in connection with the merger transaction and (b) a maximum of up to 13,888,888 shares of Capnia, Inc. common stock issuable in connection with the financing transactions of Capnia, Inc. anticipated to close at or substantially contemporaneous with the closing of the merger transaction.

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

Solely for purposes of calculating the filing fee, the maximum aggregate value was determined based upon the sum of (a) 24,397,306 shares of Capnia, Inc. common stock to be issued in connection with the merger transaction multiplied by $0.86, which is the average of the high and low price per share of Capnia, Inc. common stock reported on January 27, 2017, and (b) a maximum of up to 13,888,888 shares of Capnia, Inc. common stock issuable in connection with the financing transactions of Capnia, Inc. anticipated to close at or substantially contemporaneously with the closing of the merger transaction (inclusive of 2,083,333 shares to be issued to Aspire Capital Fund, LLC), multiplied by $0.96. In accordance with Securities Exchange Act of 1934, as amended, the filing fee was determined by multiplying 0.0001159 by the sum calculated in the preceding sentence.

(4) Proposed maximum aggregate value of transaction:

$34,315,015.64

(5) Total fee paid:

$3,977.11

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

$3,977.11

(2) Form, Schedule or Registration Statement No.:

Schedule 14A

(3) Filing Party:

Capnia, Inc.

(4) Date Filed:

January 5, 2017 as revised January 31, 2017

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PRELIMINARY SUBJECT TO COMPLETION DATED FEBRUARY 9, 2017

TO THE STOCKHOLDERS OF CAPNIA, INC.

YOUR VOTE IS VERY IMPORTANT

, 2017

Dear Stockholders,

A special committee of the board of directors of Capnia, Inc., or Capnia, and the board of directors of Essentialis, Inc., or Essentialis, have adopted and approved an Agreement and Plan of Merger (referred to as the merger agreement) pursuant to which, subject to stockholder approvals and certain other closing conditions, Company E Merger Sub, Inc., or Merger Sub, a wholly-owned subsidiary of Capnia will merge with and into Essentialis, with Essentialis continuing as the surviving entity (referred to herein as the merger). **If the merger is completed, Capnia will issue up to a maximum of 24,397,306 shares of Capnia common stock, par value $0.001 per share, or Capnia common stock, in connection with the transactions contemplated by the merger agreement, or the merger transaction.** No fractional shares of Capnia common stock will be issued in the merger.

In addition, Capnia has also received indications of interest from investors who have indicated that they will purchase 8,333,333 shares of Capnia common stock at a price of $0.96 per share immediately following the merger, if the merger is completed on or before April 30, 2017 and subject to other customary conditions (referred to as the merger financing). In addition, on January 27, 2017, Capnia entered into a common stock purchase agreement, or the purchase agreement, with Aspire Capital Fund, LLC, or Aspire, pursuant to which Aspire will purchase up to 2,083,333 shares of Capnia common stock at a price of $0.96 per share at the effective time of the merger (referred to as the Aspire financing). Additionally, funds affiliated with Sabby Management, LLC, or Sabby, have a right to participate in any financings by Capnia pursuant to the securities purchase agreement between Sabby and Capnia dated as of June 29, 2016, and may purchase up to an additional 3,472,222 shares of Capnia common stock for an aggregate purchase price of $3,333,333 (referred to as the Sabby participation right, together with the merger financing and the Aspire financing is referred to as the concurrent financing, and the concurrent financing, together with the merger transaction, are referred to as the transactions). **If the concurrent financing is completed, Capnia could issue up to a maximum of up to 13,888,888 shares of Capnia common stock in connection with the concurrent financing (assuming Sabby exercises the Sabby participation right in full).**

If the transactions are completed, Capnia will issue up to a maximum of 38,286,194 shares of Capnia common stock in the aggregate in the transactions. The shares to be issued in connection with the merger would represent approximately 35.56%, the shares to be issued in connection with the concurrent financing would represent approximately 20.24% (assuming full exercise of the Sabby participation right), and the shares held by existing Capnia stockholders following the transactions would represent approximately 52.30% (inclusive of shares issued to Sabby upon exercise of the Sabby participation right in full), in each case, of the outstanding shares of Capnia common stock, including shares of Capnia common stock issued upon conversion of Capnia Series B preferred stock, and assuming the maximum number of shares are issued in the transactions.

In addition to the concurrent financing transactions, under the terms of the purchase agreement, Aspire has also committed, subject to certain conditions contained in the purchase agreement, to purchase up to an additional 7,208,334 of shares of Capnia common stock from time to time over a 30-month period following the filing of a resale registration statement for these shares, in the form of an equity line (referred to as the Aspire equity line).

Capnia is also proposing to amend its 2014 Equity Incentive Plan, or the 2014 Plan, to increase the total number of shares of its common stock reserved for issuance under the 2014 Plan by 8,929,188 shares of common stock, to a new total of 13,467,951 shares.

Capnia common stock is listed on The Nasdaq Capital Market and trades under the symbol CAPN. As of February 8, 2017, the last trading day before the date of this proxy statement, the last reported sales price of Capnia common stock at the end of regular trading hours, as reported on The Nasdaq Capital Market, was $0.83.

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In connection with the merger, Capnia stockholders are invited to attend a special meeting of Capnia stockholders to be held on Monday, March 6, 2017, at 8:30 a.m., Pacific Time, at Capnia s principal executive offices located at 1235 Radio Road, Suite 110, Redwood City, California 94065.

At the Capnia special meeting, Capnia stockholders will be asked (i) to vote on a proposal to approve the issuance of up to a maximum of 24,397,306 shares of Capnia common stock in the merger pursuant to the terms of the merger agreement (referred to as the merger share issuance proposal); (ii) to vote on a proposal to approve the issuance of up to a maximum of up to 11,805,555 shares of Capnia common stock in connection with the merger financing and the Sabby participation right (referred to as the merger financing share issuance proposal); which is conditioned upon approval of the merger share issuance proposal (the merger financing share issuance proposal); (iii) to vote on a proposal to approve the issuance of up to 2,083,333 shares of Capnia common stock in connection with the Aspire financing (the Aspire financing share issuance proposal), which is conditioned on the approval of the Aspire equity line proposal; (iv) to vote on a proposal to approve the issuance of up to 7,208,334 shares of Capnia common stock in connection with the Aspire equity line (the Aspire equity line proposal, and together with the merger share issuance proposal, the merger financing share issuance proposal and the Aspire financing share issuance proposal, the share issuance proposals); (v) to approve an amendment to the 2014 Plan to add 8,929,188 shares of Capnia common stock to the total number of shares of Capnia common stock reserved for issuance under the 2014 Plan (referred to as the 2014 Plan amendment proposal); and (vi) to vote on a proposal to adjourn the Capnia special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to approve the share issuance proposals (referred to as the adjournment proposal). A special committee of the board of directors of Capnia, acting with the authority of the full board, unanimously determined that the merger agreement, the merger, and the other transactions contemplated by the merger agreement, including the concurrent financing, as well as the 2014 Plan amendment and the Aspire equity line, are advisable and in the best interests of Capnia s stockholders, and unanimously approved and adopted the merger agreement, the 2014 Plan amendment, and the Aspire purchase agreement. **The Capnia special committee unanimously recommends that Capnia stockholders vote FOR the merger share issuance proposal, FOR the merger financing share issuance proposal, FOR the Aspire financing share issuance proposal, FOR the Aspire equity line proposal, FOR the 2014 Plan amendment proposal, and FOR the adjournment proposal.**

We encourage you to read carefully this proxy statement before voting, including the section entitled *Risk Factors* beginning on page 20 of this proxy statement.

Your vote is very important. Capnia cannot complete the transactions or amend the 2014 Plan unless Capnia stockholders approve the share issuance proposals and the 2014 Plan amendment proposal. Whether or not you plan to attend the Capnia special meeting, please vote promptly by mailing a completed proxy card in the enclosed return envelope (which is postage prepaid if mailed in the United States) or complete your proxy by following the instructions supplied on the proxy card for voting by telephone or on the Internet (or, if your shares are held in street name through a broker, bank, or other nominee holder, by following the voting instructions provided by such broker, bank, or other nominee holder).

Sincerely,

Anish Bhatnagar, M.D.

President and Chief Executive Officer

Capnia, Inc.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this proxy statement. Any representation to the contrary is a criminal offense.

This proxy statement is dated , 2017, and is first being mailed to stockholders of Capnia on or about , 2017.

Capnia, Inc.

1235 Radio Road, Suite 110

Redwood City, California 94065

(650) 213-8444

NOTICE OF SPECIAL MEETING OF CAPNIA STOCKHOLDERS

To the Stockholders of Capnia, Inc.:

Capnia, Inc. will hold a special meeting of stockholders on Monday, March 6, 2017 at Capnia s principal executive offices located at 1235 Radio Road, Suite 110, Redwood City, California 94065, at 8:30 a.m., Pacific Time. Capnia is holding the meeting to consider proposals:

1. to approve the issuance of up to a maximum of 24,397,306 shares of Capnia common stock, par value $0.001 per share, or Capnia common stock, pursuant to the terms of the Agreement and Plan of Merger, dated as of December 22, 2016, or the merger agreement, by and among Capnia, Essentialis, Inc., Company E Merger Sub, Inc., a wholly-owned subsidiary of Capnia, or Merger Sub, and Neil Cowen, solely in his capacity as the Stockholders Representative (referred to as the merger share issuance proposal);

2. to approve the issuance of up to a maximum of 11,805,555 shares of Capnia common stock pursuant to indications of interest received by Capnia between December 9, 2016 and December 14, 2016 and the right to participate in such financing by funds affiliated with Sabby Management, LLC, or Sabby, which is conditioned upon the approval of the merger share issuance proposal (referred to as the merger financing share issuance proposal);

3. to approve the issuance of up to 2,083,333 shares to Aspire Capital Fund, LLC, or Aspire, upon closing of the merger pursuant to the common stock purchase agreement dated January 27, 2017, between Capnia and Aspire, or the Aspire purchase agreement, which is conditioned upon the approval of the Aspire equity line proposal (referred to as the Aspire financing share issuance proposal);

4. to approve the sale and issuance of up to 7,208,334 shares of Capnia common stock in an equity line financing pursuant to the Aspire purchase agreement (referred to as the Aspire equity line proposal, and together with the merger share issuance proposal, the merger financing share issuance proposal and the Aspire financing share issuance proposal, the share issuance proposals);

5. to approve an amendment to the 2014 Plan to increase the number of shares of Capnia common stock reserved under the 2014 Plan by 8,929,188 shares (referred to as the 2014 Plan amendment proposal); and

6. to adjourn the Capnia special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to approve the share issuance proposals or the 2014 Plan amendment proposal (referred to as the adjournment proposal).

Any action on the items of business described above may be considered at the special meeting at the time and on the date specified above or at any time and date to which the special meeting may be properly adjourned or postponed.

A special committee of the board of directors of Capnia, acting with the full authority of the Capnia board, has unanimously (i) determined that each of the proposals outlined above are advisable and in the best interests of Capnia s stockholders, (ii) approved and adopted the merger agreement and the transactions contemplated therein, (iii) resolved to recommend approval of the share issuance proposals, and (iv) resolved to recommend approval of the 2014 Plan amendment proposal by the stockholders of Capnia.

The Capnia special committee unanimously recommends that Capnia stockholders vote FOR the merger share issuance proposal, FOR the merger financing share issuance proposal, FOR the Aspire financing share issuance proposal, FOR the Aspire equity line proposal, FOR the 2014 Plan amendment proposal, and FOR the adjournment proposal.

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You are entitled to vote only if you were a Capnia stockholder of record as of the close of business on the record date, February 1, 2017. A list of stockholders eligible to vote at the Capnia special meeting will be available for inspection at the special meeting and at the offices of Capnia in Redwood City, California, during regular business hours for a period of no less than 10 days prior to the special meeting.

Your vote is important. Capnia cannot complete the merger, the concurrent financing, the Aspire equity line, or the 2014 Plan amendment proposal unless Capnia s stockholders approve the share issuance proposals and the 2014 Plan amendment proposal. Whether or not you plan to attend the special meeting, please vote promptly by mailing a completed proxy card in the enclosed return envelope (which is postage prepaid if mailed in the United States) or complete your proxy by following the instructions supplied on the proxy card for voting by telephone or on the Internet (or, if your shares are held in street name through a broker, bank, or other nominee holder, by following the voting instructions provided by such broker, bank, or other nominee holder).

A special committee of Capnia s board of directors has fixed the close of business on February 1, 2017 as the record date for the determination of stockholders entitled to notice of and to vote at the special meeting and at any adjournment or postponement thereof. Whether you plan to attend the special meeting or not, it is important that you cast your vote either in person or by proxy. Regardless of the number of shares you own, please vote your shares as soon as possible. For your convenience, you may vote by telephone by calling toll-free at 1-800-PROXIES (1-800-776-9437) in the United States or 1-718-921-8500 from foreign countries or via the Internet at www.voteproxy.com and following the instructions on the enclosed proxy card. When you have finished reading the proxy statement, you are urged to vote in accordance with the instructions set forth in this proxy statement. We encourage you to vote by proxy so that your shares will be represented and voted at the meeting, whether or not you can attend.

Thank you for your continued support of Capnia, Inc. We look forward to seeing you at the special meeting.

By Order of the Board of Directors,

Anish Bhatnagar, M.D.

President and Chief Executive Officer

, 2017

Redwood City, California

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE SPECIAL MEETING OF STOCKHOLDERS TO BE HELD ON MARCH 6, 2017: The proxy statement and the accompanying materials are being mailed on or about , 2017 to all stockholders entitled to vote at the special meeting. A copy of the proxy statement is also available at www.capnia.com under the Investors link.

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SUMMARY TERM SHEET

The following is a summary of the information contained in this proxy statement and may not contain all of the information that is important to you.

Information about the Companies

Capnia, Inc. (See page 85)

Capnia, Inc., a Delaware corporation and referred to in this proxy statement as Capnia, we, us or our, is a diversifie healthcare company that develops and commercializes innovative diagnostics, devices and therapeutics addressing unmet medical needs. We have a number of commercial products based on our proprietary technologies, including those which utilize precision metering of gas flow. Our most recent product to launch commercially utilizing our precision metering of gas flow technology is Serenz® Allergy Relief, or Serenz, which has a CE Mark certification for sale in the European Union, or E.U. Serenz is a proprietary handheld device that delivers non-inhaled CO_2 topically to the nasal mucosa. Serenz is used only when needed, and does not need to be used on a scheduled basis. Pilot commercial sales of Serenz began in the United Kingdom, or U.K., and Ireland in the second quarter of 2016. Capnia s common stock is traded on The Nasdaq Capital Market (sometimes referred to as Nasdaq in this proxy statement) under the symbol CAPN . The principal executive offices of Capnia are located at 1235 Radio Road, Suite 110, Redwood City, California 94065, and its telephone number is (650) 213-8444.

Essentialis, Inc. (See page 75)

Essentialis, Inc., a Delaware corporation, and referred to in this proxy statement as Essentialis, is a privately held, clinical stage biotechnology company focused on the development of breakthrough medicines for the treatment of rare metabolic diseases where there is increased mortality and risk of cardiovascular and endocrine complications. To date, Essentialis s efforts have focused primarily on developing and testing product candidates that target the ATP-sensitive potassium channel, a metabolically regulated membrane protein whose modulation has the potential to impact a wide range of rare metabolic, cardiovascular, and CNS diseases. Essentialis has tested Diazoxide Choline Controlled Release Tablet, or DCCR, as a treatment for Prader-Willi syndrome, a complex metabolic/neurobehavioral disorder. Essentialis s principal executive office is located at 7915 Corte Cardo, Carlsbad, California, and its telephone number is (760) 444-0446.

Merger Sub

Company E Merger Sub, Inc., referred to in this proxy statement as Merger Sub, is a newly-formed Delaware corporation and wholly-owned subsidiary of Capnia, formed for the sole purpose of effecting the merger. Merger Sub has not conducted any activities other than those incidental to its formation and the matters contemplated by the merger agreement, including the preparation of regulatory filings, if any, in connection with the merger.

The Transactions (See page 35)

The Merger (See page 35)

On December 22, 2016, Essentialis, Capnia, Merger Sub, and Neil Cowen, in his capacity as stockholders representative, entered into an Agreement and Plan of Merger (referred to in this proxy statement as the merger agreement) whereby at the effective time of the merger (referred to in this proxy statement as the effective time), Merger Sub will merge with and into Essentialis with Essentialis surviving the merger as a wholly-owned subsidiary of Capnia (referred to in this proxy statement as the merger). Consummation of the merger is subject to various closing conditions, including Capnia consummating a financing of at least $8 million at, or substantially contemporaneous with, the closing of the merger (referred to in this proxy statement as the merger financing), and the receipt of Capnia stockholder approval at the Capnia special meeting, all as further described in the section captioned *The Merger Agreement Conditions to Obligations to Complete the Merger* beginning

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on page 59. We refer to the merger financing and the Sabby participation right and the Aspire financing (as further described below) as the concurrent financing. We refer to the concurrent financing and the merger in this proxy statement as the transactions. Capnia expects to complete the merger after all of the conditions to completion of the merger contained in the merger agreement are satisfied or waived, including after receiving stockholder approval at the Capnia special meeting and consummation of the concurrent financing. Capnia currently expects to complete the merger promptly after the Capnia special meeting. However, it is possible that factors outside of our control could require us to complete the merger at a later time or not complete at all.

Under the terms of the merger agreement, at the effective time of the merger, Capnia will issue an aggregate of 18,916,953 shares of Capnia common stock in accordance with the terms of the merger agreement. In addition, Capnia will hold-back an additional 913,392 shares of Capnia common stock as partial recourse to satisfy indemnification claims made by Capnia under the merger agreement, and such shares of Capnia common stock will be issuable under the merger agreement on the one year anniversary of the closing (subject to the limitations set forth in the merger agreement). Furthermore, upon the achievement of a development milestone associated with Essentialis s product in accordance with the terms of the merger agreement, Capnia will be obligated to issue an additional 4,566,961 shares of Capnia common stock. Additionally, upon the achievement of certain commercial milestones associated with the sale of Essentialis s product in accordance with the terms of the merger agreement, Capnia will be obligated to make cash earnout payments of a maximum of $30 million. The merger consideration described above that is issuable or payable to Essentialis stockholders will be reduced by any such shares of Capnia common stock issuable, or cash earnout payments payable, to Essentialis s management carve-out plan participants and other service providers of Essentialis, in each case, in accordance with the terms of the merger agreement.

Assuming that Capnia issues all of the shares of Capnia common stock held back by Capnia and the development milestone is achieved, Capnia would issue a total of 24,397,306 shares of Capnia common stock pursuant to the merger agreement, representing approximately 44.58% of Capnia s outstanding common stock, based on the number of outstanding shares as of February 1, 2017 (inclusive of shares of Capnia Series B convertible preferred stock on an as converted basis), and prior to giving effect to the concurrent financing. See the section of this proxy statement entitled *The Transactions* beginning on page 35.

The Concurrent Financing (See page 36)

As noted above, the consummation of the merger is subject to Capnia consummating a financing of at least $8 million at or substantially contemporaneous with the closing of the merger, or the merger financing. Between December 9 and December 14, 2016, Capnia received non-binding indications of interest from current stockholders of Essentialis and certain new investors in Capnia indicating that they will purchase 8,333,333 shares of Capnia common stock at a price of $0.96 per share in the merger financing, for an aggregate purchase price of $8 million. In addition, on January 27, 2017, Capnia entered into a common stock purchase agreement, or the Aspire purchase agreement, with Aspire Capital Fund, LLC, or Aspire, pursuant to which Aspire will purchase up to 2,083,333 shares of Capnia common stock at a price of $0.96 per share at the effective time of the merger, for an aggregate purchase price of $2 million, or the Aspire financing. In addition, funds affiliated with Sabby Management, LLC, referred to as Sabby, have a right to participate in any financings by Capnia (including the merger financing and Aspire financing) pursuant to the securities purchase agreement between Sabby and Capnia dated as of June 29, 2016, and purchase up to an additional 3,472,222 shares of Capnia common stock. We refer to Sabby s right to participate in the merger and Aspire financings as the Sabby participation right, and the Sabby participation right together with the merger and Aspire financing, as the concurrent financing. If Sabby exercises the Sabby participation right in full, Capnia would issue up to an aggregate of 13,888,888 shares of Capnia common stock to investors in the concurrent financing, representing approximately 20.24% of Capnia s outstanding common stock (inclusive of shares of Capnia Series B convertible preferred stock on an as converted basis) as of February 1, 2017, after giving effect to the merger, the issuance of the holdback shares and shares issuable upon achievement of the development milestone. Additionally, Sabby may, in its sole discretion, elect not to exercise the Sabby participation right, or elect to exercise only a portion of the right. In the event Sabby elects not to exercise the Sabby participation right, or to exercise the Sabby participation right in part, the number of shares issuable in the concurrent financing would be equal to the 8,333,333 shares issuable in the merger financing, plus the 2,083,333 shares issuable in the Aspire financing, plus the number of shares represented by the portion of the Sabby participation right actually exercised, if any. Additionally, in the event Sabby elects to purchase none, or only a portion of the shares subject to the Sabby participation right, Capnia, in its sole discretion, may choose sell whatever portion of the 3,472,222 shares subject to the Sabby participation right that is not purchased by Sabby, to another investor on the same terms and conditions.

The consummation of the merger financing is subject to certain conditions, including the completion of the merger on or before April 30, 2017, and the approval of the issuance of the shares in the merger and the concurrent financing by Capnia stockholders at the Capnia special meeting. The consummation of the Aspire financing and the Aspire equity line are subject to certain conditions, including the filing and effectiveness of a registration statement covering the sale of the shares issued to Aspire under the Aspire purchase agreement.

Effect of the Transactions on Capnia Stockholders (See page 36)

Capnia stockholders will continue to hold their existing shares of Capnia common stock following the transactions, however, the issuance of the shares in the transactions will dilute the ownership and voting interests of Capnia s current stockholders.

Immediately after the closing of the transactions, and assuming Sabby exercises the Sabby participation right in full, but before the issuance of the holdback shares or the shares issuable upon achievement of the development milestone, former Essentialis stockholders, management carve-out plan participants and service providers will hold approximately 29.96% of the outstanding shares of Capnia common stock, participants in the concurrent financing will hold approximately 22.0% of the outstanding shares of Capnia common stock (exclusive of any shares held by such participants prior to the concurrent financing) and the current holders of Capnia common stock will hold approximately 48.04% of the outstanding shares of Capnia common stock, based on 30,325,272 shares of Capnia common stock outstanding as of February 1, 2017 (inclusive of 18,146,272 shares of Capnia common stock outstanding and, 12,179,000 shares issuable upon conversion of Capnia Series B convertible preferred stock). If all of the shares subject to the holdback are released, the development milestone is achieved, and the maximum number of shares of Capnia common stock is issued in connection with the transactions, former Essentialis stockholders, management carve-out plan participants and service providers will hold approximately 35.56% of the outstanding shares of Capnia common stock, participants in the concurrent financing will hold approximately 20.24% of the outstanding shares of Capnia common stock (exclusive of any shares held by such participants prior to the concurrent financing) and the current holders of Capnia common stock will hold approximately 44.20% of the outstanding shares of Capnia common stock, based on 30,325,272 shares of Capnia common stock outstanding as of February 1, 2017 (inclusive of 18,146,272 shares of Capnia common stock outstanding and, 12,179,000 shares issuable upon conversion of Capnia Series B convertible preferred stock). For further description of the effect on the ownership of Capnia common stock by Capnia s directors and officers following the transactions, see the section captioned *Security Ownership of Certain Beneficial Owners and Management of the Combined Company* beginning on page 108.

Recommendation of the Capnia Special Committee and Reasons for the Transactions (See page 41)

In evaluating the merger and the merger financing transactions, the special committee of the Capnia board of directors, or the special committee, acting with the authority of the full Capnia board of directors, considered a number of factors, including the benefits described in this proxy statement and the positive and negative factors described in the section captioned *The Transactions Recommendation of the Special Committee and Capnia s Reasons for the Transactions* beginning on page 41. In light of such factors, at a meeting of the special committee held on December 21, 2016, the special committee unanimously determined that the merger agreement, the merger, and the other transactions contemplated thereby, including the merger financing, are advisable and in the best interests of the Capnia stockholders, and unanimously approved and adopted the merger agreement. The special committee believes that the transactions will be beneficial because they are expected to, among other things, (a) provide us with a clinical-stage product candidate with the potential to address diseases with unmet medical need, and (b) provide us with the capital needed to pursue clinical and regulatory approval of such product candidates.

On January 4, 2017, the special committee approved an amendment to the 2014 Plan to increase the total number of shares of its common stock reserved for issuance under the 2014 Plan by 8,929,188 shares of common stock, to a new total of 13,467,951 shares. The 2014 Plan amendment is subject to the receipt of Capnia stockholder approval at the Capnia special meeting.

On January 21, 2017, the special committee approved the issuance of up to an aggregate of 10,000,000 shares of Capnia common stock to Aspire, under the terms of the Aspire purchase agreement. Of the 10,000,000 shares approved by the special committee, up to 2,083,333 shares of Capnia common stock will be issued in the Aspire financing at or substantially contemporaneously with the closing of the merger and the merger financing.

The Capnia special committee unanimously recommends that Capnia stockholders vote FOR the merger share issuance proposal, FOR the merger financing share issuance proposal, FOR the Aspire financing share issuance proposal, FOR the Aspire equity line proposal, FOR the 2014 Plan amendment proposal, and FOR the adjournment proposal.

Capnia s Board of Directors Following the Transactions (See page 59)

At or prior to the effective time of the merger, the size of the Capnia board of directors will be increased to ten members, and, effective as of the effective time of the merger Mahendra Shah, Jim Glasheen and Stuart Collinson, each current Essentialis board members, will be appointed to Capnia s board of directors to fill the vacancies.

Interests of the Directors and Executive Officers of Capnia (See page 44)

In considering the recommendation of the Capnia special committee to adopt the merger agreement, Capnia stockholders should be aware that Edgar Engleman, a member of our board of directors and representative of funds affiliated with Vivo Ventures V LLC, or Vivo, which as of February 1, 2017 holds approximately 40.78% of our common stock, have interests in the merger and have arrangements that are different from, or in addition to, those of Capnia stockholders generally, including, as a stockholder of Essentialis and participant in the concurrent financing. Vivo is expected to receive 7,241,031 shares, or approximately 29.33% of the shares of Capnia common stock to be paid to Essentialis stockholders in the merger, and 1,398,636 shares, or approximately 10.07% of the shares of Capnia common stock issuable in the concurrent financing, assuming Sabby exercises the Sabby participation right in full. These interests and arrangements may create potential conflicts of interest. The Capnia special committee and the Essentialis board were aware of these potential conflicts of interest and considered them, among other matters, in reaching their respective decisions to approve the merger agreement, the merger, and the other transactions contemplated by the merger agreement.

Capnia Stockholders Will Not Have Dissenter s Rights in Connection with the Merger (See page 46)

Under Delaware law, Capnia stockholders are not entitled to appraisal rights in connection with the issuance of shares of Capnia common stock in the merger pursuant to the terms of the merger agreement. It is anticipated that shares of Capnia common stock will continue to be traded on Nasdaq during the pendency of and following the effectiveness of the merger, and Capnia s corporate status will not change because the merger is being consummated between a subsidiary of Capnia and Essentialis.

Registration of Shares of Capnia Common Stock Received in the Merger

The shares of Capnia common stock issued in the merger will not be registered under the Securities Act of 1933, as amended, or the Securities Act, and will be subject to various restrictions and limitations on transfer under U.S. securities laws. Capnia has agreed to grant stockholders of Essentialis receiving shares of Capnia common stock in the merger (and other consideration recipients in accordance with the terms of the merger agreement) certain registration rights that will be substantially similar to the registration rights granted by Capnia to the investors in the merger financing transaction as further described in *The Merger Agreement Ancillary Agreements Indications of Interest* beginning on page 63 of this proxy statement.

Anticipated Accounting Treatment of the Merger (See page 45)

Capnia prepares its financial statements in accordance with accounting principles generally accepted in the United States of America (referred to as GAAP). The merger will be accounted for by Capnia using GAAP. Capnia will allocate the purchase price to the fair value of Essentialis s tangible and intangible assets at the acquisition date, with the excess purchase price, if any, being recorded as goodwill.

Material U.S. Federal Income Tax Consequences of the Transactions (See page 45)

The transactions will not result in any taxable gain or loss for U.S. federal income tax purposes to Capnia or to any Capnia stockholder in his, her or its capacity as a Capnia stockholder. Capnia stockholders who are also stockholders of Essentialis, or are otherwise entitled to receive a portion of the merger consideration under the terms of the merger agreement, or are participating in the concurrent financing, should consult their own tax advisors as to the tax consequences of participating in the transactions with respect to their Essentialis stock, or the additional shares of Capnia common stock they may be entitled to receive in the transactions.

Risk Factors (See page 20)

There are a number of risks relating to the merger and to the existing businesses of Capnia and to the business of Capnia following the merger. See *Risk Factors* beginning on page 20 of this proxy statement for a discussion of these and other risks.

The Merger Agreement (See page 47)

No Solicitation (See page 52)

During the period from the execution of the merger agreement until the earlier of the termination of the merger agreement or the effective time of the merger, each of Capnia and Essentialis will not, and will not permit any of its representatives to, take any actions to engage in any discussions or negotiations with, solicit or knowingly support or endorse any acquisition proposal from, enter into any contract with, or disclose or furnish any information concerning any alternative acquisition transaction (except for specific exceptions concerning communications with each party s respective stockholders as further described herein). The foregoing no-shop covenant does not apply to any financing transaction of Capnia and/or certain sale or licensing transactions involving Capnia.

The merger agreement does not, however, prohibit Capnia from considering a bona fide, unsolicited acquisition proposal from a third party if specified conditions are met. In addition, the merger agreement specifically excludes the concurrent financing transaction and/or any licensing transaction of Capnia or one or more of its subsidiaries from the restrictions described above.

Conditions to Completion of the Merger (See page 59)

Several conditions must be satisfied or waived before Capnia and Essentialis complete the merger, including the following:

required approvals of the stockholders of each of Capnia and Essentialis;

adoption of the merger agreement by Essentialis stockholders;

no law or order that has the effect of making the merger illegal or prohibiting the completion of the merger will be in effect;

accuracy of each party s respective representations and warranties as set forth in the merger agreement;

- material compliance by each party with its agreements and covenants in the merger agreement;
- evidence of Capnia having at least $3,000,000 in net cash at or substantially contemporaneous with the closing of the merger;
- consummation of the merger financing at or substantially contemporaneous with the closing of the merger;
- holders of at least 91% of the outstanding shares of Essentialis capital stock shall have executed and delivered a joinder agreement; and
- holders of no more than 2% of the outstanding shares of Essentialis capital stock shall have exercised statutory rights of dissent under Delaware law in connection with the merger.

Termination; Fees and Expenses (See page 61)

Under circumstances specified in the merger agreement, either Capnia or Essentialis may terminate the merger agreement, including if:

- both parties consent to termination;
- by Capnia or Essentialis if the merger is not completed by April 30, 2017;
- approval of Capnia stockholders of the issuance of shares of Capnia common stock in the merger has not been obtained at Capnia s duly held special meeting;
- the other party breaches its representations, warranties or covenants in the merger agreement such that one or more of its conditions to completion of the merger regarding representations, warranties or covenants would not be satisfied; or
- Capnia s board of directors has effected a board recommendation change in accordance with the terms of the merger agreement in order to accept a superior proposal and either Capnia or Essentialis terminates the merger agreement in accordance with the terms of the merger agreement.

Ancillary Agreements

Voting Agreement (See page 63)

Simultaneously with the execution and delivery of the merger agreement entities affiliated with Vivo, and Ernest Mario, the chairman of Capnia s board of directors, in their respective capacities as stockholders of Capnia, have entered into voting agreements with Essentialis, or the voting agreements, pursuant to which such stockholders agreed, among other things, to vote their respective shares of common stock of Capnia in favor of the approval of the issuance of shares of Capnia common stock in the merger pursuant to the terms of the merger agreement, and against any inquiry, proposal, offer, indication of interest or transaction that constitutes, an alternative acquisition proposal relating to Capnia. As of February 1, 2017, the record date for the special meeting, the stockholders signing the Capnia voting agreements owned an aggregate of approximately 50.68% of the outstanding shares of Capnia common stock. The obligations under the voting agreements with Capnia terminate in certain circumstances, including in the event that Capnia has effected a board recommendation change in accordance with the terms of the merger agreement.

Agreements with Aspire

On January 27, 2017, Capnia entered into a common stock purchase agreement with Aspire, or the Aspire purchase agreement, pursuant to which Capnia will issue up to an aggregate of 10,000,000 shares of Capnia common stock to Aspire. Of the 10,000,000 shares issuable under the Aspire purchase agreement, 708,333 shares were issued to Aspire as commitment shares upon the execution of the Aspire purchase agreement, 2,083,333 shares will be issued to Aspire in the Aspire financing at a price of $0.96 per share at or substantially contemporaneously with the closing of the merger and the merger financing. The remaining 7,208,334 shares

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will be issued from time to time to Aspire in connection with the Aspire equity line. The shares issued to Aspire in connection with the equity line will be issued at prevailing market prices at the time of issuance.

In connection with the Aspire purchase agreement, on January 27, 2017, Capnia entered into a registration rights agreement with Aspire, or the Aspire registration rights agreement. Under the terms of the Aspire registration rights agreement, Capnia has agreed to file a registration statement covering the shares issuable to Aspire in the Aspire financing and the Aspire equity line within ten business days of the date of the Aspire purchase agreement. See *The Merger Agreement Ancillary Agreements Agreements with Aspire* beginning on page 63 of this proxy statement for further description of the registration rights granted to Aspire.

Indications of Interest (See page 63)

Between December 9, 2016 and December 14, 2016, prior to the execution of the merger agreement, Capnia received non-binding indications of interest from certain Essentialis stockholders and certain new investors in Capnia, to acquire up to 8,