SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MICHAEL ECKER and CONSTANCE KLEIN, derivatively on behalf of SYNERGY PHARMACEUTICALS, INC., Plaintiffs, v. GARY S. JACOB, GARY G. GEMIGNANI, MARINO GARCIA, TROY HAMILTON, PATRICK H. GRIFFIN, MELVIN K. SPIGELMAN, JOHN P. BRANCACCIO, THOMAS H. ADAMS, ALAN F. JOSLYN, RICHARD J. DALY, and TIMOTHY S. CALLAHAN, Defendants, and SYNERGY PHARMACEUTICALS, INC., a Delaware Corporation, Nominal Defendant	Index No. **SUMMONS**

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiffs' attorneys an answer to the Complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demand in the Complaint.

The basis of the venue designated is New York County because Synergy Pharmaceuticals, Inc. maintains executive offices in this County, a substantial portion of the transactions and wrongs complained of herein, including defendants' primary participation in the wrongful acts detailed

herein and aiding and abetting and conspiracy in violation of fiduciary duties owed to Synergy Pharmaceuticals, Inc. occurred in this County, and defendants have received substantial compensation in this County by doing business here and engaging in numerous activities that had an effect in this County.

Dated: April 27, 2018

BRAGAR EAGEL & SQUIRE, P.C.

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SUPREME COURT OF THE STATE OF NEW YORK
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MICHAEL ECKER and CONSTANCE KLEIN, derivatively on behalf of SYNERGY PHARMACEUTICALS, INC., Plaintiffs, v. GARY S. JACOB, GARY G. GEMIGNANI, MARINO GARCIA, TROY HAMILTON, PATRICK H. GRIFFIN, MELVIN K. SPIGELMAN, JOHN P. BRANCACCIO, THOMAS H. ADAMS, ALAN F. JOSLYN, RICHARD J. DALY, and TIMOTHY S. CALLAHAN, Defendants, and SYNERGY PHARMACEUTICALS, INC., a Delaware Corporation, Nominal Defendant	Index No. **JURY TRIAL DEMANDED**

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiffs Michael Ecker and Constance Klein ("Plaintiffs"), by and through their counsel, derivatively on behalf of nominal defendant Synergy Pharmaceuticals, Inc. ("Synergy" or the "Company"), submit this Verified Stockholder Derivative Complaint against the Individual Defendants (as defined below) and allege the following upon information and belief, except as to those allegations concerning Plaintiffs, which are alleged upon personal knowledge. Plaintiffs' information and belief is based upon, among other things, their counsel's investigation, which included, *inter alia*, review and analysis of: (i) regulatory filings made by Synergy with the U.S. Securities and Exchange Commission ("SEC"); (ii) press releases issued and disseminated by

Synergy; and (iii) other publicly-available information, including media and analyst reports, concerning Synergy.

NATURE OF THE ACTION

1. This is a stockholder derivative action asserting claims for breaches of fiduciary duties brought on behalf of nominal defendant Synergy against certain officers and members of the Company's Board of Directors (the "Board").

2. Synergy is a pharmaceutical company with only one commercial product, plecanatide, a prescription medication approved under the trademark name TRULANCE™ ("Trulance") for the treatment of adults with chronic idiopathic constipation ("CIC") – constipation without a known cause.

3. The Individual Defendants knowingly and/or recklessly made two related categories of false and/or misleading statements. First, the Individual Defendants misrepresented that Trulance has a superior side-effect profile to its competitors. Second, the Individual Defendants misrepresented that a loan the Company had secured would fund the launch of Trulance without diluting the Company's current stockholders.

4. The true facts, which were known and/or recklessly disregarded by the Individual Defendants, but concealed from the investing public, were as follows:

a. Trulance does not have a side-effect profile superior to its competitors, specifically with regard to the side effect of diarrhea; and

b. Synergy would not be able to meet the undisclosed loan agreement conditions to obtain the second tranche of $100 million in financing, which required the Company to have at least $128 million in cash or cash equivalents by January 31, 2018, and as a result, Synergy would need to issue shares and dilute its current stockholders.

5. The Individual Defendants breached their fiduciary duties of loyalty and good faith by willfully engaging in the deceptions alleged herein.

6. As a direct and proximate result of the Individual Defendants' breaches of fiduciary duties, Synergy has sustained substantial damages.

JURISDICTION AND VENUE

7. This Court has jurisdiction over defendants and the subject matter of this action because defendants transact business within this State and the derivative claims pleaded herein on behalf of the Company against the Individual Defendants for breach of their fiduciary obligations owed to Synergy are governed exclusively by state law. In addition, Synergy maintains its principal place of business in the State of New York.

8. Venue is proper in this Court because one or more of the defendants either resides in or maintains executive offices in this County; a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, in violation of fiduciary duties owed to Synergy occurred in this County; and defendants have received substantial compensation in this County by doing business here and engaging in numerous activities that had an effect in this County.

THE PARTIES

9. Plaintiff Michael Ecker is a stockholder of Synergy, was a stockholder of Synergy at the time of the wrongdoing alleged herein, and has been a stockholder of Synergy continuously since that time.

10. Plaintiff Constance Klein is a stockholder of Synergy, was a stockholder of Synergy at the time of the wrongdoing alleged herein, and has been a stockholder of Synergy continuously since that time.

11. Defendant Synergy is a Delaware corporation with its principal executive offices located at 420 Lexington Avenue, Suite 2012, New York, New York 10170.

12. Defendant Gary S. Jacob ("Jacob") was Synergy's Chief Executive Officer ("CEO") and President from September 2013 to December 31, 2017. Jacob has also been a director of the Company since 2008. Since May 2013, Jacob has also been the Chairman of Synergy's previously wholly-owned subsidiary, ContraVir Pharmaceuticals, Inc. ("Contravir"), a biopharmaceutical drug development company, and was CEO of ContraVir from May 2013 until March 2014. Jacob currently serves as a director of Trovagene, Inc. ("Trovagene"), a precision cancer monitoring company.

13. Defendant Gary G. Gemignani ("Gemignani") has been Synergy's Executive Vice President and Chief Financial Officer since April 17, 2017.

14. Defendant Marino Garcia ("Garcia") has been Synergy's Executive Vice President and Chief Strategy Officer since March 10, 2016.

15. Defendant Troy Hamilton ("Hamilton") was Synergy's Chief Commercial Officer and Executive Vice President from February 2016 to December 31, 2017, and has been the Company's CEO since December 31, 2017. Hamilton has also been a director of the Company since January 2018.

16. Defendant Patrick H. Griffin ("Griffin") has been Synergy's Executive Vice President since January 19, 2015 and Chief Medical Officer since May 29, 2013.

17. Defendant Melvin K. Spigelman ("Spigelman") has been a director of Synergy since August 21, 2008. At all relevant times, he was a member of the Board's Audit Committee.

18. John P. Brancaccio ("Brancaccio") has been a director of the Company since July 2008. Since May 2013, Brancaccio has also been a director of Synergy's previously wholly-owned

subsidiary, ContraVir, alongside defendant Jacob. Brancaccio is also currently a director of Trovagene alongside defendant Jacob. At all relevant times, Brancaccio was a member of the Board's Audit and Compliance Committees.

19. Thomas H. Adams ("Adams") has served as a director of the Company since July 2008. Adams also currently serves as board chairman of Trovagene and a member of the board of ContraVir, alongside both defendants Jacob and Brancaccio.

20. Alan F. Joslyn ("Joslyn") has been a director of the Company since October 2009. At all relevant times, Joslyn was a member of the Board's Compliance Committee.

21. Richard J. Daly ("Daly") has been a director of the Company since July 1, 2015.

22. Timothy S. Callahan ("Callahan") has been a director of the Company since July 1, 2015. At all relevant times, he was a member of the Board's Audit and Compliance Committees.

23. Defendants Jacob, Gemignani, Garcia, Hamilton, Griffin, Spigelman, Brancaccio, Adams, Joslyn, Daly, and Callahan are collectively referred to herein as the "Individual Defendants."

DUTIES OF THE INDIVIDUAL DEFENDANTS

24. By reason of their positions as officers and/or directors of the Company and because of their ability to control the business and corporate affairs of the Company, the Individual Defendants owed the Company and its stockholders the fiduciary obligations of good faith, loyalty, candor, and due care and were and are required to use their utmost ability to control and manage the Company in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of the Company and its stockholders so as to benefit all stockholders equally and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to the Company and its stockholders the fiduciary duty

to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

25. The Individual Defendants, because of their positions of control and authority as directors and/or officers of the Company, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

26. To discharge their duties, the officers and directors of the Company were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the Company. By virtue of such duties, the officers and directors of Synergy were required to, among other things:

a. ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the SEC and the investing public;

b. conduct the affairs of the Company in a lawful, efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

c. properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time, including making accurate statements about the Company's financial results and prospects, and ensuring that the Company maintained an adequate system of financial controls such that the Company's financial reporting would be true and accurate at all times;

d. remain informed as to how the Company conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make

reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with federal and state securities laws; and

e. ensure that the Company was operated in a diligent, honest, and prudent manner in compliance with all applicable federal, state, and local laws, rules, and regulations.

27. Each of the Individual Defendants, as a director and/or officer, owed to the Company and its stockholders the fiduciary duties of loyalty, good faith, candor, and due care in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of the Company, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its stockholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company.

28. In addition, the Board has adopted an Amended and Restated Code of Business Conduct and Ethics (the "Code"). The Code's preamble states:

> Synergy Pharmaceuticals, Inc. (the "Company") has adopted the following Amended and Restated Code of Business Conduct and Ethics (this "Code") for directors, executive officers and employees of the Company. This Code is intended to focus the Board executive officers and employees on areas of ethical risk, provide guidance to directors, executive officers and employees to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help foster a culture of honesty and accountability. Each director, executive officer and employee must comply with the letter and spirit of this Code.

22. The Code also maintains specific requirements for Synergy's directors and officers as follows:

> 1. Maintain Fiduciary Duties.
>
> Directors and executive officers must be loyal to the Company and must act at all times in the best interest of the Company and its shareholders and subordinate self-interest to the corporate and shareholder good. Directors and executive officers should never use their position to make a personal profit. Directors and executive

officers must perform their duties in good faith, with sound business judgment and with the care of a prudent person.

* * *

9. Quality of Public Disclosures.

The Company is committed to providing its shareholders with information about its financial condition and results of operations as required by the securities laws of the United States. It is the Company's policy that the reports and documents it files with or submits to the Securities and Exchange Commission, and its earnings releases and similar public communications made by the Company, include fair, timely and understandable disclosure. Executive officers and employees who are responsible for these filings and disclosures, including the Company's principal executive, financial and accounting officers, must use reasonable judgment and perform their responsibilities honestly, ethically and objectively in order to ensure that this disclosure policy is fulfilled. The Company's senior management are primarily responsible for monitoring the Company's public disclosure.

29. The Company's Audit Committee is specifically tasked with the Board's oversight responsibilities. The conduct of the Audit Committee is governed by the Audit Committee Charter (the "Audit Charter"). The Audit Charter states, in pertinent part:

Purpose

The Audit Committee of the Board of Directors (the "Board") of Synergy Pharmaceuticals Inc. (the "Company") oversees Synergy's accounting and financial reporting processes and audits of its financial statements on behalf of the Board of Directors and provides advice with respect to the Company's risk evaluation and mitigation processes. The purpose of the Audit Committee established by this Charter will be to monitor and advise the Board on:

1. the integrity of the Company's financial statements and disclosures;

2. the independent auditor's qualifications and independence;

3. the performance of the Company's internal audit function and independent registered public accounting firm;

4. the adequacy and effectiveness of the Company's internal controls;

5. the Company's compliance with legal and regulatory requirements; and

6. the processes utilized by management for identifying, evaluating, and mitigating strategic, financial, operational, regulatory, and external risks inherent in the Company's business (the "Risks").

* * *

Internal Controls:

1. Oversee the adequacy of the Company's system of internal controls and review with management, the internal audit department, and the Company's independent auditors the adequacy and effectiveness of the Company's internal controls, including any significant deficiencies or material weaknesses in the design or operation of, and any material changes in, the Company's internal controls and any special audit steps adopted in light of any material control deficiencies, and any fraud involving management or other employees with a significant role in such internal controls, and review and discuss with management and the Company's independent auditors disclosure relating to the Company's internal controls, the independent auditors' report on the effectiveness of the Company's internal control over financial reporting and the required management certifications to be included in or attached as exhibits to the Company's annual report on Form 10-K or quarterly report on Form 10-Q, as applicable.

2. Review with the Company's Chief Financial Officer the results of quarterly Disclosure Committee meetings, including, any significant deficiencies in the design and operation of the internal controls or material weaknesses therein and any fraud involving management or other employees who have a significant role in the Company's internal controls.

Compliance with Legal and Regulatory Requirements:

1. Establish procedures for the receipt, retention, and treatment of complaints received by the Company regarding accounting, internal controls, or auditing matters.

2. Establish procedures for the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters.

3. Oversee the Company's compliance with the Foreign Corrupt Practices Act and other applicable anti-corruption regulations.

4. Oversee the Company's compliance with SEC requirements for disclosure of accountant's services and Audit Committee members and activities.

5. Review with management and the independent auditor any correspondence with financial and accounting related regulators or governmental agencies and any published reports which raise material issues regarding the Company's financial statements or accounting policies.

6. Oversee and approve material amendments to the Company's Insider Trading Compliance Program and Insider Trading Policy.

Risks:

1. Periodically review and evaluate the processes utilized by management to identify and assign relative weights to Risks.

2. Assess the adequacy of management's Risk assessment and mitigation processes.

30. In failing to properly oversee Synergy's public statements and internal control function, the members of the Audit Committee – defendants Spigelman, Brancaccio, and Callahan – have breached their fiduciary duties to the Company.

31. The Board's Compliance Committee is specifically tasked with creating a Company-wide culture of compliance and assisting the Board in its oversight responsibilities regarding all matters of compliance. The conduct of the Compliance Committee is governed by the Compliance Committee Charter (the "Compliance Charter"). The Compliance Charter states in pertinent part:

PURPOSE

The Board Compliance Committee (the "Committee") shall:

1. Promote a Company-wide culture of Compliance, through oversight of and coordination with all levels of Company management on the development and implementation of a robust and effective compliance program (the "Compliance Program"); and

2. Assist the Board in its review and oversight of all matters related to Compliance. For purposes of this Charter, the term "Compliance" shall encompass compliance with: (i) all applicable federal and state laws, regulations and requirements, including but not limited to, federal health care program requirements; (ii) industry best practices; and (iv) [sic] applicable local laws where the Company does business, including both domestic and foreign laws addressing bribery and corruption.

The Committee has a broad mandate to accomplish its Purpose and may take any action permitted by law and the Company's Certificate of Incorporation and Bylaws consistent with this mandate, including but not limited to, the actions set forth in this Charter.

The Committee may retain outside advisors at the Company's expense. The Committee also may require Company management to conduct Compliance audits

or investigations and direct whether the Committee should be the direct recipient of the findings of any such audits or investigations. The Committee shall determine the distribution of such results and the remediation, if any, that is to be effected in response to those results.

* * *

COMMITTEE RESPONSIBILITIES

1. In promoting a Company-wide culture of Compliance, the Committee shall, through oversight and coordination with Company management, ensure that the Company's Compliance Program includes and effectively implements the following components of an effective, robust Compliance Program:

    - Designation of a Compliance Officer who reports directly to the Chief Executive Officer and this Committee and is subject to Board oversight;

    - Creation of a Compliance Committee, consisting of the Compliance Officer and other members of senior management, to support the Compliance Officer in the implementation and operation of the Company's Compliance Program;

    - Regular screening all employees, and all relevant third parties engaged by the Company, to ensure that no employee is hired, or relevant third party retained, who has been excluded, debarred, suspended or otherwise rendered ineligible to participate in federal health care programs;

    - A written Code of Conduct, policies and procedures that effectively address the Company's Compliance obligations. Such code, policies and procedures shall make compliance with those documents an element in the performance evaluations of all employees;

    - Regular Compliance education, training and communications to ensure that all officers, directors, employees and relevant agents of the Company are aware of and understand their Compliance obligations, as established in the Company's Code of Conduct, policies and procedures and otherwise;

    - A Compliance hotline, and other lines of communication to the Compliance Officer, that enables all officers, directors, employees, relevant agents of the Company and the public to submit Compliance questions and report Compliance concerns or suspected Compliance issues or violations;

- Periodic Compliance risk assessments of relevant functional areas of the Company, and regular auditing and monitoring of those functional areas and activities of the Company that are relevant to the Compliance Program;

- Development and publication within the Company of disciplinary guidelines for the enforcement of the Company's Compliance standards; and

2. In reviewing and overseeing Company matters related to Compliance, the Committee shall ascertain, monitor, evaluate and apply to the Company, as appropriate, the following Compliance developments:

   a. Internal Compliance Developments

   - Significant potential compliance risks, issues or developments, or patterns of non-Compliance, identified at or within the Company;

   - The results of any compliance audits, reviews or investigations conducted by or of the Company, or by the Committee;

   - The Company's responses to any instances of significant non-compliance; and

   - Any other issues or concerns that could expose the Company to significant compliance risk.

   b. External Compliance Developments

   - Third-party allegations, claims or litigation against the Company;

   - Government requests for information from, subpoenas to, or other communications with, the Company; and

   - Government investigations of, or agreements with, the Company

   c. Industry Developments

   - OIG Corporate Integrity Agreements ("CIAs"), Compliance Guidance or Advisory Opinions;

   - FDA Warning Letters and Notice of Violation Letters;

   - New laws or regulations applicable to Compliance; and

   - New PhRMA, or other industry, guidance.

32. In failing to properly oversee Synergy's public statements, the members of the Compliance Committee – defendants Callahan, Brancaccio, and Joslyn – have breached their fiduciary duties to the Company.

33. Moreover, as noted in the Company's Proxy Statement filed on Form DEF 14A with the SEC on April 28, 2017 (the "2017 Proxy"): "[t]he Board oversees, counsels and directs management in the long-term interest of Synergy and its stockholders. The Board's responsibilities include establishing broad corporate policies and reviewing the overall performance of Synergy."

34. The Individual Defendants failed to maintain the standards laid out by both the law and themselves, resulting in the breaches of fiduciary duty described herein.

FACTUAL BACKGROUND

35. Synergy is a pharmaceutical company focused on gastrointestinal therapies. Synergy's first and only commercial product, plecanatide, is a prescription medication approved under the trademark name TRULANCE™. On January 19, 2017, the U.S. Food and Drug Administration ("FDA") approved Trulance for the treatment of CIC in adult patients.

36. People with CIC have persistent symptoms of difficult-to-pass and infrequent bowel movements. In addition to physical symptoms including abdominal bloating and discomfort, CIC can adversely affect an individual's quality of life, including increasing stress levels and anxiety. Trulance is intended to provide more regular, well-formed bowel movements for adults with CIC. The FDA stated in its press release announcing Trulance's approval that the most common and serious side effect of Trulance was diarrhea and that it could be severe.

37. According to David Liang at *The Motley Fool*, the value of the CIC prescription market is just over $1 billion and growing. Trulance competes in this marketspace with Amitiza and Linzess, two other prescription medications for the treatment of CIC. The Individual

Defendants caused Synergy to misrepresent that Trulance has a superior side-effect profile to its competitors. In fact, Trulance's side-effect profile, especially with respect to diarrhea, is not superior to its competitors. For example, during the Oppenheimer Healthcare Conference Call held on March 21, 2017, defendant Garcia spoke glowingly of Trulance's supposed edge over the competition: "what [CIC sufferers] don't want is to be cycling constantly between the constipated hard stools, the painful hard stools or the diarrhea, the side effects they might suffer from some of the treatments they've been on in the past[.]" Garcia caused the public to believe that Trulance stood out above its peers in preventing patients from having to endure either diarrhea or uncomfortably hard stools, when in truth it did not.

38. Synergy began distributing Trulance in March 2017. Trulance's revenues were insufficient to fully fund Synergy and, on August 9, 2017, the Individual Defendants caused the Company to issue a press release stating that Synergy was "evaluating financing options that will provide flexibility and allow us to continue to execute on our business objectives."

39. Subsequently, on September 5, 2017, the Individual Defendants caused Synergy to close on a $300 million debt financing structured as senior secured loans from CRG LP, a healthcare focused investment firm (the "CRG Loan"), which granted Synergy upfront funding of $100 million. In a Company press release issued that day, defendant Gemignani stated: "This ***non-dilutive financing*** enhances our cash position and provides us with financial flexibility to continue to execute on the launch of TRULANCE . . . The structure of this financing provides us with access to capital for support of our commercialization of TRULANCE and ***funds our current plans for the Company through 2019*** when, based on our current assumptions, we expect to be cash flow breakeven." (Emphasis added). However, the Individual Defendants failed to disclose that, according to the CRG Loan's terms, to secure the second tranche of $100 million financing,

the Company would need to have cash or cash equivalents "equal to or greater than $128 million" by January 31, 2018.

40. On November 9, 2017, the Individual Defendants caused the Company to file a Form 10-Q with the SEC for the third quarter of 2017 attaching the Term Loan Agreement as Exhibit 10.2. On the same day, the Individual Defendants caused Synergy to issue a press release announcing its earnings for the third quarter of 2017, and to publicly release a slide-show presentation detailing the Company's "Key Performance Metrics" (the "Presentation"). The Presentation revealed a precipitous slowdown in Trulance prescriptions. From April 2017 through August 2017, the average month-over-month growth rate in Trulance prescriptions was over 116% per month. But in September 2017, Trulance prescriptions grew only 4.4%. The Presentation also revealed that September 2017 was the fourth consecutive month in which the number of Trulance prescriptions written by each individual Trulance prescriber had decreased.

41. On this news, Synergy's share price fell approximately 8.4% on November 10, 2017, representing a loss of approximately $56.2 million in market capitalization.

42. On November 13, 2017, before the market opened, the Individual Defendants caused Synergy to file a Registration Statement on Form S-3 with the SEC for the issuance of new shares in the Company. The Individual Defendants also caused Synergy to issue a press release that day explaining that the proceeds would help "fund its commercialization activities related to TRULANCE and for working capital and other general corporate purposes."

43. The investing public was shocked by news of the share offering because approximately two-months earlier the Company had announced that the non-dilutive CRG Loan would fund commercialization of Trulance. According to Bret Jensen at *SeekingAlpha*, "This was

shocking news to shareholders, myself included, who thought a recently arranged $300 million debt facility removed any short or near term funding needs for the company."

44. On this news, Synergy's share price fell approximately 10.3% on November 13, 2017, representing a loss of approximately $63 million in market capitalization. The next trading day, Synergy's share price fell another approximately 16.8%, representing an additional loss of approximately $103.3 million in market capitalization.

FALSE AND MISLEADING STATEMENTS

45. On November 9, 2016, the Individual Defendants caused Synergy to issue a press release titled "Synergy Pharmaceuticals Reports Third Quarter 2016 Financial Results and Business Update." The press release, quoting defendant Hamilton, stated in relevant part:

> "We are laser-focused on our key strategic imperatives of product readiness, market and brand readiness and organizational readiness," said Troy Hamilton, Executive Vice President and Chief Commercial Officer of Synergy Pharmaceuticals Inc. ***"Based on our extensive market research, advisory board meetings and interactions with payers, healthcare providers and patients to- date, we are very encouraged about the positive impact that plecanatide will have in the market place as a differentiated therapeutic option for patients with CIC.*** We are also pleased with the progress our technical operations team has made this year to ensure plecanatide product supply will be ready and available to physicians and patients by our anticipated launch early next year. We strongly believe that we have the right strategy and right team to successfully launch plecanatide and address the unmet needs of a growing GI market."

(Emphasis added).

46. On March 1, 2017, the Individual Defendants caused the Company to issue a press release titled "Synergy Pharmaceuticals Reports Fourth Quarter and Full Year 2016 Financial Results and Business Update." The press release quoted defendant Jacob, in relevant part:

> The approval of TRULANCE™ (plecanatide) in the United States for the treatment of adults with chronic idiopathic constipation was a tremendous event not just for Synergy, but also ***for the millions of patients with CIC who have been in need of a new therapeutic option[.]***

(Emphasis added).

47. On March 21, 2017, executives from Synergy participated in a conference call at the Oppenheimer Healthcare Conference and defendant Garcia stated, in relevant part:

> And just to emphasize a little bit on the efficacy, as you can see in this slide, whether you look at the first CIC trial or the second CIC trial, whether you look at the graphs above with complete spontaneous bowel movements or the graphs on the bottom, spontaneous bowel movements, the efficacy was rapid within the first week immediately, and sustained throughout the trial. And the moment the drug is stopped, you can see how the patients came right backdown to our placebo is.
>
> So very strong efficacy, clearly this is what patients are looking for. But it's not just about increasing bowel movements. Having unlimited bowel movements is not what patients are really looking for in terms of normal. ***What they are looking for is, of course, increased bowel movements, but also normal stool consistency, what they don't want is to be cycling constantly between the constipated hard stools, the painful hard stools or the diarrhea, the side effects they might suffer from some of the treatments they've been on in the past.***
>
> * * *
>
> So, we've talked a little bit about the market. We've talked a little bit about the product, now let's talk about the strategy. I am very excited to share this – and you can go to our website and see more of it, but it is incredibly powerful creative campaign based on a lot of marketing insights from a lot of marketing research, and we are really pleased. This is the kind of campaign marketers dream of because you usually have trouble finding a campaign that works both for healthcare providers as well as patients, that really scores very well and we're off the charts.
>
> This campaign scored off the charts for both groups. So it's been a consistent in terms of the messaging, images and creative campaign aimed at both groups, at the patients and the healthcare providers, pharmacists, physicians, etc. And the whole point is that with chronic constipation, the trade-offs that patients have had to make, ***the extremes they've had to go from constipation or to diarrhea because of some of the medications they may have been on in the past, that they no longer have to make that trade-off. That TRULANCE provides the promise of being able to make patients feel like they are normal, right smack in the middle between the extremes.***
>
> * * *
>
> So to that point, once a physician gives a sample and the patient gets a sample with the prescription, our goal is to ensure that patients are able to get TRULANCE. Obviously, in the first few months, we are working very hard with meetings with payers to ensure access to TRULANCE. In the meantime, we have a co-pay card program. We have prior authorization help for physicians. So it's a light hub system that physicians can tap into if there are prior auths [sic] in place. We have

> a patient assistance program for those patients that might be underinsured, and we have a full program to ensure that if a patient is able to get a prescription that they do not turn that prescription away at the pharmacy, that they do not abandon it, that they do get it.
>
> Our goal is to ensure patients and physicians try TRULANCE, get experience with it. ***We are confident that once they get that experience and they are able to contrast it not just to our clinical trial data, but to the experience they've had with other therapies, that that will encourage further trial and further usage with their patients.***

(Emphasis added).

48. On May 3, 2017, executives from Synergy participated in a conference call as part of the Deutsche Bank Health Care Conference, in which defendant Jacob stated, in relevant part:

> [Unidentified Analyst]: ***What arguments do your representatives use to convince leading health care providers to switch from linaclotide [Linzess] to plecanatide [TRULANCE]***? And conversely, what arguments do Ironwood reps use to keep those leading HCPs prescribing linaclotide? And I have a couple more.
>
> [Jacob]: Thanks for the question. We're not going to obviously, dive into our message platform for competitive reasons, but as we both discussed and as I talked about when – with the one slide that looked at our profile and ingrained in kind of what we get from the label. Our discussions are based on pharmacology, the efficacy, the safety/tolerability and the dosing, the balance of that approach. And you probably see that in some of the other materials that we have in our campaign right now. So that's kind of what we're talking to. ***I can't really talk to the competition. I do know obviously they've been out there for long period of time and have had kind of a standard approach. But for us, we're focused on that balance between the pharmacology, the reason I believe, the efficacy, safety/tolerability and the dosing.***
>
> [Unidentified Analyst]: Okay. On the adverse events, did you define – I know the competitor much better than I know your company. Did you define adverse events in your Phase III studies the same way that they did?
>
> [Jacob]: ***So look, I think it's important to recognize that we – in the summary basis of approval, FDA indicated that they saw no issues with how we recorded, how we coded and how we categorized adverse events***. And of course, the label speaks for itself.

(Emphasis added).

49. On August 9, 2017, the Individual Defendants caused the Company to issue a press release titled "Synergy Pharmaceuticals Reports Second Quarter 2017 Financial Results and Business Update." The press release, quoting defendant Jacob, stated in relevant part:

> "The first half of 2017 was a truly transformative period for Synergy, as we transitioned into a commercial organization and launched our first product, TRULANCE, in the U.S. for the treatment of adults with chronic idiopathic constipation (CIC)," said Gary S. Jacob, Ph.D., Chairman and CEO of Synergy Pharmaceuticals Inc. "***We are pleased with the execution of our commercial strategy, and the strong initial demand for TRULANCE, reinforcing the need for new treatment options for patients suffering from CIC.*** And we are making significant progress in ensuring broad access to TRULANCE, highlighted by a number of favorable early decisions from key national players."

50. The statements in ¶¶ 45-49 above were false and/or misleading when made because the Individual Defendants knowingly and/or recklessly disregarded the material fact and failed to disclose that Trulance does not have a side-effect profile superior to its competitors, specifically with regard to the side effect of diarrhea.

51. On September 5, 2017, the Individual Defendants caused the Company to issue a press release titled "Synergy Pharmaceuticals Secures $300 Million Debt Financing." The press release quoted defendant Gemignani and stated in relevant part:

> NEW YORK — (BUSINESS WIRE) — Synergy Pharmaceuticals Inc. (NASDAQ: SGYP), announced today that the Company has closed on a $300 million debt financing structured as senior secured loans from CRG LP, a healthcare focused investment firm, and its lender syndicate.
>
> ***"This non-dilutive financing enhances our cash position and provides us with financial flexibility to continue to execute on the launch of TRULANCE and achieve our business objectives, which we are confident will ultimately maximize long-term shareholder value,"*** said Gary Gemignani, EVP and Chief Financial Officer of Synergy Pharmaceuticals Inc. ***"The structure of this financing provides us with access to capital for support of our commercialization of TRULANCE and funds our current plans for the Company through 2019 when, based on our current assumptions, we expect to be cash flow breakeven."***

(Emphasis added).

52. On September 7, 2017, the Company hosted a conference call to discuss its results for the second quarter of 2017. On the conference call, defendants Jacob and Gemignani stated, in relevant part:

> [Jacob]: . . . ***And on Tuesday this week, we announced that we secured a debt financing that provides us with access of up to $300 million in additional capital. This financing strengthens our cash position and provides us with financial flexibility to continue to execute on the launch of TRULANCE and achieve our key business priorities, which we are confident will ultimately maximize shareholder value.***
>
> * * *
>
> ***The debt financing that we just announced on Tuesday provides access to additional capital if and when we need it, and gives us the greatest flexibility to execute on our corporate strategy***. In conjunction with this financing, we are continuing to evaluate opportunities to improve expense management with the goal of transitioning the company to cash flow positive.
>
> * * *
>
> [Gemignani]: Turning to slide 9. As Gary [Jacob] just mentioned, we achieved an important milestone this week when we announced that the company secured up to $300 million in the debt financing structured as a senior secured loan from CRG, a health care-focused investment firm. ***This non-dilutive financing enhances our cash position and provides us with financial flexibility to continue to execute on the launch of TRULANCE and achieve our business objectives, which Gary [Jacob] just outlined for you. The structure of the deal provides us with access to additional capital if and when we need it***, to support the product launch and to take the company through 2019 when based on our current assumptions we expect Synergy to be cash flow breakeven.
>
> The first tranche of $100 million was funded upon the execution of the loan documents. ***Under the terms of the agreement, we have access to an additional $100 million on or before February 28, 2018 and up to two additional tranches of up to $50 million each on or before March 29, 2019, subject to the satisfaction of certain financial and revenue milestones and other borrowing conditions.***
>
> * * *
>
> While we are not providing revenue or cash burn guidance at this stage, ***we are confident in our ability to meet all of the performance milestones stated under the terms of this agreement, and we will have access to additional capital if and when we need it***.

> Going into the second half of 2017, we expect our operating cash burn to be in line with the first half of this year. As we move into 2018, we expect R&D expenses to decrease primarily due to the wind-down of our IBS-C development program. Additionally, we have no plans to initiate any new clinical development or early discovery research programs in 2018.
>
> * * *
>
> Looking at SG&A. We're evaluating opportunities to improve cost efficiency measures, and we'll continue to focus investments in key commercial activities that continue to drive TRULANCE demand and ensure long-term success of the franchise and ultimately drive profitability. We are currently evaluating the 2018 business plans, and we'll provide expense guidance in future periods. In TRULANCE, we have a high-value asset and a large and growing market, supported by a strong and highly experienced commercial team. ***With the capital from this financing and continued success of the launch, we are confident we are well positioned to effectively maximize the value of TRULANCE and add significant value to the company and its shareholders.***
>
> * * *
>
> [Timothy Chiang, analyst at BTIG]: And just maybe one follow-up for Gary [Gemignani]. In terms of the CRG deal, I noticed that it is somewhat of a tiered deal in terms of the timing of the debt or the cash that you received. And I just wanted to circle back and ask you how confident are you that you'll hit the milestones or the financial targets that CRG has set for you.
>
> [Gemignani]: Tim. Thanks. Look, we're very confident. In fact, the way we structured this deal, we looked at numerous types of structures and with the goal of getting the right size, the lowest cost to capital and structure in a way where our debt service would be as low as possible in the earlier years so that we could put the cash to work on funding our commercial launch. ***So we're — again, we got — the CRG obviously did extreme amounts of diligence. And we are — as we constructed the tiers, we're very comfortable we'll be able to meet all of the commitments.***

(Emphasis added).

53. The statements in ¶¶ 51 and 52 were false and/or misleading when made because the Individual Defendants knowingly and/or recklessly disregarded and failed to disclose the material fact that Synergy would be unable to meet the undisclosed loan agreement conditions to obtain the second tranche of $100 million in financing, which required the Company to have $128

million in cash or cash equivalents by January 31, 2018, and as a result, Synergy would need to issue shares and dilute stockholders.

DAMAGES TO SYNERGY

54. As a result of the Individual Defendants' wrongful conduct, Synergy disseminated false and misleading statements and omitted material information to make such statements not false and misleading when made. The improper statements have devastated Synergy's credibility. Synergy has been, and will continue to be, severely damaged and injured by the Individual Defendants' misconduct.

55. Indeed, the Individual Defendants' false and misleading statements as alleged herein have subjected Synergy to three complaints for violations of the federal securities laws in the United States District Court for the Eastern District of New York captioned *Lee v. Synergy Pharmaceuticals, Inc. et al.*, 1:18-cv-873, *Countryman v. Synergy Pharmaceuticals, Inc. et al.*, 2:18-cv-990, and *Rose vs. Synergy Pharmaceuticals, Inc., et al.*, 2:18-cv-01344 (the "Securities Class Actions"). Defendants Jacob, Gemignani, Garcia, and Hamilton are also defendants in the Securities Class Actions.

56. As a direct and proximate result of the Individual Defendants' actions as alleged herein, Synergy's market capitalization has been substantially damaged, losing hundreds of millions of dollars in value.

57. Moreover, these actions have irreparably damaged Synergy's corporate image and goodwill. For at least the foreseeable future, Synergy will suffer from what is known as the "liar's discount," a term applied to the stocks of companies who have been implicated in illegal behavior and have misled the investing public, such that Synergy's ability to raise equity capital or debt on favorable terms in the future is now impaired.

DERIVATIVE AND DEMAND ALLEGATIONS

58. Plaintiffs incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

59. Plaintiffs bring this action derivatively in the right and for the benefit of the Company to redress the Individual Defendants' breaches of fiduciary duties.

60. Plaintiffs are the owners of Synergy common stock and were the owners of Synergy common stock at all times relevant hereto.

61. Plaintiffs will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting its rights.

62. As a result of the facts set forth herein, Plaintiffs have not made any demand on the Synergy Board to institute this action against the Individual Defendants. Such a demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

63. At the time this action was commenced, the Board consisted of eight directors: defendants Jacob, Hamilton, Spigelman, Brancaccio, Adams, Joslyn, Daly, and Callahan (the "Director Defendants"). All eight members of the Board are incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

DEMAND IS FUTILE AS TO ALL DIRECTOR DEFENDANTS BECAUSE THE DIRECTOR DEFENDANTS FACE A SUBSTANTIAL LIKELIHOOD OF LIABILITY

64. The Director Defendants face a substantial likelihood of liability for their individual misconduct. The Director Defendants were directors throughout the time of the false and misleading statements, and as such had a fiduciary duty to ensure that the Company's SEC filings, press releases, and other public statements and presentations concerning its business, operations, prospects, internal controls, and financial statements were accurate.

65. Moreover, as directors, the Director Defendants owed a duty to, in good faith and with due diligence, exercise reasonable inquiry, oversight, and supervision to ensure that the Company's internal controls were sufficiently robust and effective (and/or were being implemented effectively), and to ensure that the Board's duties were being discharged in good faith and with the required diligence and due care. Instead, they knowingly and/or with reckless disregard reviewed, authorized, and/or caused the publication of the materially false and misleading statements discussed above that caused the Company's stock to trade at artificially inflated prices.

66. The Director Defendants' making or authorization of false and misleading statements, failure to timely correct such statements, failure to take necessary and appropriate steps to ensure that the Company's internal controls were sufficiently robust and effective (and/or were being implemented effectively), failure to take necessary and appropriate steps to ensure that the Board's duties were being discharged in good faith and with the required diligence constitute breaches of fiduciary duties, for which the Director Defendants face a substantial likelihood of liability. If the Director Defendants were to bring a suit on behalf of Synergy to recover damages sustained as a result of this misconduct, they would expose themselves to significant liability. This is something they will not do. For this reason demand is futile.

DEFENDANT JACOB LACKS INDEPENDENCE

67. As an initial matter, Synergy has conceded in its SEC filings that Jacob is not an independent director of the Company. For example, in its 2017 Proxy, defendant Jacob is not listed as one of Synergy's allegedly "independent" directors.

68. In addition to this lack of independence, Jacob is not disinterested for purposes of demand futility because, until December 31, 2017, his principal occupation was President, CEO, and Chairman of the Board of Synergy. According to the Company's SEC filings, in 2014, 2015,

and 2016, Jacob received total compensation of $3,082,879, $4,211,678, and $2,550,180, respectively. This compensation was material to him.

69. Defendant Jacob is incapable of considering a demand to commence and vigorously prosecute this action because he faces additional substantial likelihood of liability as he is a named defendant in the Securities Class Actions.

DEFENDANT HAMILTON LACKS INDEPENDENCE

70. Defendant Hamilton is not independent because his primary occupation has long been as a high-level employee of Synergy. He was the Company's Chief Commercial Officer from February 2016 to December 31, 2017, and on December 31, 2017 became CEO. He is also not disinterested for the purposes of demand futility because he received substantial compensation and played a major role in the wrongdoing described herein.

71. Further, he is incapable of considering a demand to commence and vigorously prosecute this action because he faces additional substantial likelihood of liability as he is a named defendant in the Securities Class Actions.

DEFENDANTS JACOB, BRANCACCIO, AND ADAMS ARE UNABLE TO INDEPENDENTLY CONSIDER A DEMAND DUE TO THEIR OVERLAPPING BUSINESS AFFILIATIONS

72. Defendants Jacob, Brancaccio, and Adams lack the independence required to impartially consider a demand by Plaintiffs due to their longstanding overlapping business relationships. In addition to their serving on the Synergy Board together, Jacob was CEO of ContraVir from May 2013 until March 2014, at which time he became, and continues to be, Chairman of ContraVir's Board. Brancaccio has similarly been a director of ContraVir since May 2013, while Adams has been a director of ContraVir since 2016. This, however, is not the only overlapping company where these three defendants serve as directors. All three are also members of the Trovagene board of directors, with Adams serving as Trovagene's Chairman. Jacob has

been a director of Trovagene since February 2009, Adams has been Trovagene's Chairman since April 2009, and Brancaccio has been a director of Trovagene since December 2005.

73. These longstanding and extensive professional entanglements between defendants Jacob, Brancaccio, and Adams render them incapable of independently considering a demand to sue one another, rendering demand on these directors futile.

DEMAND IS FUTILE AS TO ALL DIRECTOR DEFENDANTS FOR THE FOLLOWING ADDITIONAL REASONS

74. Upon information and belief, Synergy's current officers and directors are protected against personal liability for their breaches of fiduciary duties alleged in this complaint by Directors & Officers Liability Insurance ("D&O Insurance"), which they caused the Company to purchase for their protection with corporate funds, *i.e.*, monies belonging to the stockholders. However, Plaintiffs are informed and believe that the D&O Insurance policies covering the Individual Defendants in this case contain provisions that eliminate coverage for any action brought directly by Synergy against the Individual Defendants, known as the "insured versus insured exclusion."

75. As a result, if the Director Defendants were to sue themselves or certain of the officers of Synergy, there would be no D&O Insurance protection, and thus, this is a further reason why they will not bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage exists and will provide a basis for the Company to effectuate recovery. Therefore, the Director Defendants cannot be expected to file the claims asserted in this derivative lawsuit because such claims would not be covered under the Company's D&O Insurance policy.

76. Under the factual circumstances described herein, the Individual Defendants are more interested in protecting themselves than they are in protecting Synergy by prosecuting this

action. Therefore, demand on each of the Director Defendants is futile and is excused. Synergy has been and will continue to be exposed to significant losses due to the Individual Defendants' wrongdoing. Yet, the Director Defendants have not filed any lawsuits against themselves or others who were responsible for the wrongful conduct. Thus, the Director Defendants are breaching their fiduciary duties to the Company and face a sufficiently substantial likelihood of liability for their breaches, rendering any demand upon them futile.

COUNT I

AGAINST THE INDIVIDUAL DEFENDANTS FOR BREACH OF FIDUCIARY DUTY

77. Plaintiffs incorporate by reference all preceding and subsequent paragraphs as if fully set forth herein.

78. The Individual Defendants each owed Synergy and its stockholders the fiduciary duties of loyalty, good faith, candor, and due care in managing and administering the Company's affairs.

79. The Individual Defendants were required to exercise reasonable and prudent supervision over the management, practices, controls, and financial affairs of Synergy.

80. The Individual Defendants breached their fiduciary duties owed to Synergy and its stockholders by willfully, recklessly, and/or intentionally failing to perform their fiduciary duties. They caused the Company to waste valuable assets and unnecessarily expend corporate funds. They also failed to properly oversee Synergy's business, rendering them personally liable to the Company.

81. Each of the Individual Defendants had actual or constructive knowledge that the Company falsely stated that Trulance has a side-effect profile superior to its competitors, specifically with regard to the side effect of diarrhea; and that Synergy would be able to meet the

undisclosed loan agreement conditions to obtain the second tranche of $100 million in financing, which required it to have a least $128 million in cash or cash equivalents by January 31, 2018.

82. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary duties of loyalty, good faith, candor, and due care, as alleged herein, Synergy has sustained, and continues to sustain, significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

WHEREFORE, Plaintiffs demand judgment as follows:

A. Declaring that Plaintiffs may maintain this derivative action on behalf of Synergy and that Plaintiffs are proper and adequate representatives of the Company;

B. Determining that the Individual Defendants have breached their fiduciary duties to Synergy;

C. Declaring that the Individual Defendants are obligated to contribute to, indemnify, and hold Synergy harmless from any fines, penalties, judgments, settlements, or awards pursuant to any class action pending or to be filed against Synergy or its employees or agents arising out of the breaches of duty and wrongdoing alleged herein;

D. Awarding the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties;

E. Granting appropriate equitable relief to remedy Individual Defendants' breaches of fiduciary duties and other violations of law, including, but not limited to the institution of appropriate corporate governance measures;

F. Awarding to Plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, and costs and expenses; and

G. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: April 27, 2018

Respectfully submitted,

BRAGAR EAGEL & SQUIRE, P.C.

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Attorneys for Plaintiffs

VERIFICATION

I, MICHAEL ECKER, hereby verify that I have authorized the filing of the attached Verified Stockholder Derivative Complaint, that I have reviewed the Verified Stockholder Derivative Complaint and that the facts therein are true and correct to the best of my knowledge, information and belief. I declare under penalty of perjury that the foregoing is true and correct.

April 24, 2018

michael ecker (Apr 24, 2018)

Michael Ecker

VERIFICATION

I, CONSTANCE KLEIN, hereby verify that I have authorized the filing of the attached Verified Stockholder Derivative Complaint, that I have reviewed the Verified Stockholder Derivative Complaint and that the facts therein are true and correct to the best of my knowledge, information and belief. I declare under penalty of perjury that the foregoing is true and correct.

April 25, 2018

Constance Klein
Constance Klein (Apr 25, 2018)

Constance Klein