

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

_____, Individually
and on Behalf of All Others Similarly
Situated,

Plaintiff,

v.

NANTHEALTH, INC., PATRICK
SOON-SHIONG, PAUL A. HOLT,
MICHAEL S. SITRICK, KIRK K.
CALHOUN, MARK BURNETT,
EDWARD MILLER, MICHAEL
BLASZYK, JEFFERIES LLC,
COWEN AND COMPANY, LLC,
FIRST ANALYSIS SECURITIES
CORPORATION, CANACCORD
GENUITY INC., and FBR CAPITAL
MARKETS & CO.,

Defendants.

Case No.:

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS**

JURY TRIAL DEMANDED

1 Plaintiff _____ (“Plaintiff”), by and through his attorneys, alleges
2 the following upon information and belief, except as to those allegations concerning
3 Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and
4 belief is based upon, among other things, his counsel’s investigation, which includes
5 without limitation: (a) review and analysis of regulatory filings made by
6 NantHealth, Inc. (“NantHealth” or the “Company”), with the United States
7 Securities and Exchange Commission (“SEC”); (b) review and analysis of press
8 releases and media reports issued by and disseminated by NantHealth; and (c)
9 review of other publicly available information concerning NantHealth.
10
11
12

13 **NATURE OF THE ACTION AND OVERVIEW**

14 1. This is a class action on behalf of persons or entities who purchased or
15 otherwise acquired NantHealth securities: (1) pursuant and/or traceable to the
16 Company’s registration statement and prospectus (collectively, the “Registration
17 Statement”) issued in connection with the Company’s initial public offering on or
18 about June 1, 2016 (the “IPO” or the “Offering”); and/or (2) between June 1, 2016,
19 and March 6, 2017, inclusive (the “Class Period”). Plaintiff seeks to pursue
20 remedies under the Securities Act of 1933 (the “Securities Act”) and under the
21 Securities Exchange Act of 1934 (the “Exchange Act”).
22
23
24

25 2. NantHealth healthcare company. The Company purportedly provides
26 diagnostics tailored to specific molecular profiles of patient tissues, integrating the
27 molecular data with real-time biometric signal and phenotypic data to track patient
28

1 outcomes and deliver precision medicine. The Company claims that it possesses a
2 comprehensive set of advanced molecular diagnostics and decision support solutions
3 that enable evidence-based clinical practice, including Genomic Proteomic
4 Spectrometry Cancer (“GPS Cancer”). GPS Cancer purportedly enables diagnosis
5 at the molecular level by measuring the whole genome and proteome of a patient—
6 thereby potentially predicting the patient’s response and resistance to particular
7 therapeutics.
8

9
10 3. On June 1, 2016, NantHealth priced its IPO of 6,500,000 shares of
11 common stock, at a price of \$14.00 per share. The Company received
12 approximately \$83.5 million in the Offering, net of underwriting discounts,
13 commissions, and offering costs.
14

15
16 4. On March 6, 2017, *STAT*, a news organization focused on medical
17 industry reporting, published an article alleging that NantHealth founder, Patrick
18 Soon-Shiong (“Soon-Shiong”), had donated \$12 million to the University of Utah
19 from three different tax-exempt entities controlled by him under a contract that
20 required the University to funnel much of that money into NantHealth. *STAT*
21 further alleged that two tax experts it had spoken to indicated that the deal “appeared
22 to violate federal tax rules governing certain charitable donations, amounting to
23 indirect self-dealing by Soon-Shiong and his foundations” and that a former head of
24 the IRS’s tax-exempt division stated “[t]hey’re laundering the funds through the
25 University of Utah.” *STAT* also alleged that NantHealth misled investors in
26
27
28

1 reporting its third-quarter earnings in November of 2016. The Company claimed
2 that it had received 524 orders for the GPS Cancer test, and that one-third of those
3 orders came from the University of Utah deal, but that the geneticist leading the
4 research told *STAT* that the work they ordered from NantHealth had nothing to do
5 with GPS Cancer.
6

7
8 5. On this news, NantHealth's share price fell \$1.67 per share, or 23.3%,
9 to close at \$5.50 per share on March 6, 2017—which amounted to a 60% decline
10 from the IPO price of \$14.00 per share.
11

12 6. Throughout the Class Period, Defendants made false and/or misleading
13 statements, and failed to disclose material adverse facts about the Company's
14 business, operations, and prospects. Specifically, Defendants made false and/or
15 misleading statements regarding, and/or failed to disclose: (1) that Soon-Shiong had
16 donated funds through nonprofit organizations to the University of Utah for the
17 purpose of funneling those funds back into NantHealth; (2) that, as such, the
18 Company and Soon-Shiong participated in the violation of federal tax laws—
19 exposing the Company to possible civil and criminal liability; (3) that the Company
20 improperly recorded orders received from the University of Utah as GPS Cancer test
21 orders; (4) that, as a result, the Company reported false and inflated GPS Cancer
22 order figures for the third quarter of 2016; and (5) that, as a result of the foregoing,
23 the Company's financial statements and Defendants' statements about NantHealth's
24 business, operations, and prospects, were materially false and misleading.
25
26
27
28

1 **PARTIES**

2 12. Plaintiff Atul Singh Deora, as set forth in the accompanying
3 certification, incorporated by reference herein, purchased NantHealth shares during
4 the Class Period, pursuant to the Registration Statement issued in connection with
5 the Company's IPO, and suffered damages as a result of the federal securities law
6 violations and false and/or misleading statements and/or material omissions alleged
7 herein.
8

9
10 13. Defendant NantHealth, Inc. is a Delaware corporation with its principal
11 executive offices located in Culver City, California.
12

13 14. Defendant Patrick Soon-Shiong was the Chief Executive Officer
14 ("CEO") and Chairman of the Board of Directors of NantHealth at all relevant
15 times. Soon-Shiong signed or authorized the signing of the Company's Registration
16 Statement filed with the SEC.
17

18 15. Defendant Paul A. Holt ("Holt") was the Chief Financial Officer
19 ("CFO") of NantHealth at all relevant times. Holt signed or authorized the signing
20 of the Company's Registration Statement filed with the SEC.
21

22 16. Defendant Michael S. Sitrick ("Sitrick") was a director of NantHealth,
23 and signed or authorized the signing of the Company's Registration Statement filed
24 with the SEC.
25
26
27
28

1 17. Defendant Kirk K. Calhoun (“Calhoun”) was a director of NantHealth,
2 and signed or authorized the signing of the Company’s Registration Statement filed
3 with the SEC.
4

5 18. Defendant Mark Burnett (“Burnett”) was a director of NantHealth and
6 signed or authorized the signing of the Company’s Registration Statement filed with
7 the SEC.
8

9 19. Defendant Edward Miller (“Miller”) was a director of NantHealth, and
10 signed or authorized the signing of the Company’s Registration Statement filed with
11 the SEC.
12

13 20. Defendant Michael Blaszyk (“Blaszyk”) was a director of NantHealth,
14 and signed or authorized the signing of the Company’s Registration Statement filed
15 with the SEC.
16

17 21. Defendants Soon-Shiong and Holt are collectively referred to
18 hereinafter as the “Individual Defendants.” The Individual Defendants, because of
19 their positions with the Company, possessed the power and authority to control the
20 contents of NantHealth’s reports to the SEC, press releases and presentations to
21 securities analysts, money and portfolio managers and institutional investors, *i.e.*,
22 the market. Each defendant was provided with copies of the Company’s reports and
23 press releases alleged herein to be misleading prior to, or shortly after, their issuance
24 and had the ability and opportunity to prevent their issuance or cause them to be
25 corrected. Because of their positions and access to material non-public information
26
27
28

1 available to them, each of these defendants knew that the adverse facts specified
2 herein had not been disclosed to, and were being concealed from, the public, and
3 that the positive representations which were being made were then materially false
4 and/or misleading. The Individual Defendants are liable for the false statements
5 pleaded herein, as those statements were each “group-published” information, the
6 result of the collective actions of the Individual Defendants.
7

8
9 22. Defendants Soon-Shiong, Holt, Sitrick, Calhoun, Burnett, Miller, and
10 Blaszyk are collectively referred to hereinafter as the “Section 11 Individual
11 Defendants.”
12

13 23. Defendant Jefferies LLC (“Jefferies”) served as an underwriter of the
14 Company’s IPO. Jefferies agreed to purchase 2,600,000 shares in the IPO,
15 exclusive of the option to purchase additional shares.
16

17 24. Defendant Cowen and Company, LLC (“Cowen”) served as an
18 underwriter of the Company’s IPO. Cowen agreed to purchase 1,950,000 shares in
19 the IPO, exclusive of the option to purchase additional shares.
20

21 25. Defendant First Analysis Securities Corporation (“First Analysis”)
22 served as an underwriter of the Company’s IPO. First Analysis agreed to purchase
23 910,000 shares in the IPO, exclusive of the option to purchase additional shares.
24

25 26. Defendant Canaccord Genuity Inc. (“Canaccord”) served as an
26 underwriter of the Company’s IPO. Canaccord agreed to purchase 520,000 shares
27 in the IPO, exclusive of the option to purchase additional shares.
28

1 27. Defendant FBR Capital Markets & Co. (“FBR”) served as an
2 underwriter of the Company’s IPO. FBR agreed to purchase 520,000 shares in the
3 IPO, exclusive of the option to purchase additional shares.
4

5 28. Defendants Jefferies, Cowen, First Analysis, Canaccord, and FBR are
6 collectively referred to hereinafter as the “Underwriter Defendants.”
7

8 29. The Company, the Section 11 Individual Defendants, and the
9 Underwriter Defendants, are collectively referred to hereinafter as the “Section 11
10 Defendants.”
11

12 **SUBSTANTIVE ALLEGATIONS**

13 **Background**

14 30. The Company purportedly provides diagnostics tailored to specific
15 molecular profiles of patient tissues, integrating the molecular data with real-time
16 biometric signal and phenotypic data to track patient outcomes and deliver precision
17 medicine. The Company claims that it possesses a comprehensive set of advanced
18 molecular diagnostics and decision support solutions that enable evidence-based
19 clinical practice, including GPS Cancer. GPS Cancer purportedly enables diagnosis
20 at the molecular level by measuring the whole genome and proteome of a patient—
21 thereby potentially predicting the patient’s response and resistance to particular
22 therapeutics.
23
24

25 31. On June 1, 2016, the SEC declared effective the Form S-1 that
26 NantHealth filed on May 6, 2016 and repeatedly amended, until on or about June 1,
27
28

1 2016, when the Company filed with the SEC the final Form S-1 amendment. The
2 Form S-1, and all amendments thereto form part of the Registration Statement for
3 the IPO.
4

5 32. On June 1, 2016, NantHealth priced its IPO of 6,500,000 shares of
6 common stock, at a price of \$14.00 per share, exclusive of the underwriters' option
7 to purchase 975,000 additional shares. The Company received approximately \$83.5
8 million in the Offering, net of underwriting discounts, commissions, and offering
9 costs.
10

11
12 **Materially False and Misleading**
13 **Statements Issued During the Class Period**

14 33. The Class Period begins on June 1, 2016. On that day, the SEC
15 declared the Company's Registration Statement effective. Under applicable SEC
16 rules and regulations, the Registration Statement was required to disclose known
17 trends, events or uncertainties that were having, and were reasonably likely to have,
18 an impact on the Company's continuing operations.
19

20 34. With respect to the Company's GPS Cancer test, the Registration
21 Statement, in relevant part, stated:
22

23 **Key Factors Affecting Our Performance**

24 We believe that our performance and future success are dependent upon
25 a number of factors, including our ability to (i) commercialize and grow
26 acceptance and adoption of our GPS Cancer solutions, (ii) continue to
27 expand sales of CLINICS, NantOS and NantOS apps to both new and
28 existing clients, (iii) acquire and integrate technologies and businesses
that would enhance our offering, (iv) innovate and enhance our Systems
Infrastructure and platforms, including in particular, integrating our
capabilities in support of growth of GPS Cancer, and (v) successfully
invest in our infrastructure. While each of these areas presents

1 significant opportunities for us, they also pose significant risks and
2 challenges that we must address. See the section titled “Risk Factors”
for more information.

3 ***Commercialize and Expand the Adoption of Our GPS Cancer***
4 ***Solution***

5 Our performance depends on our ability to drive adoption of GPS
6 Cancer and reimbursement at levels that are profitable. We also receive
7 revenue from our sale of NantOmics’ whole genome sequencing and
8 proteomic analysis based on certain amounts billed for the NantOmics
9 services, as specified in our Reseller Agreement. GPS Cancer is the
10 only comprehensive and commercially available clinical cancer
11 platform incorporating and integrating whole genome (comparing both
12 a patient’s normal and tumor tissue), RNA, proteomic and molecular
13 pathways information into a clinical report that analyzes this data and
14 identifies actionable targets and potential clinical treatment decisions.
15 We believe the potential market for GPS Cancer is significant. We are
16 increasing recognition of GPS Cancer by engaging and educating
17 oncologists, cancer patients, patient advocacy groups and other key
18 oncology stakeholders and pursuing reimbursement. In January 2016, a
19 large health plan announced that it would provide insurance coverage
20 for GPS Cancer, representing the nation’s first such insurance coverage
21 for a comprehensive whole genome and proteome molecular diagnostic
22 program in the United States.

23 * * *

24 **Our Market Opportunity**

25 We have a unique opportunity to become the leading next-generation,
26 evidence-based, personalized healthcare company by applying novel
27 diagnostics tailored to the specific molecular profiles of patient tissues,
28 integrated clinically to track patient outcomes. We believe the
increasing focus on value-based reimbursement models and evidence-
based, personalized medicine will drive validation and adoption of
CLINICS, positioning us at the forefront of multiple significant
growing market opportunities. Recent statistics show that 41% of
Americans will be diagnosed with cancer at some point in their lives,
resulting in a potential \$173 billion of medical costs by 2020. Further,
cancer patients receiving chemotherapy average \$111,000 in annual
medical and pharmacy costs. We estimate the potential global market
opportunity for CLINICS, including GPS Cancer, to be in excess of \$50
billion annually, as our platforms and solutions enable more effective
treatment decisions for critical illnesses.

We believe the potential addressable market for CLINICS will continue
to grow in relation to the market-share gains of value-based models.
Additionally, we see the precision medicine market growing
substantially as comprehensive diagnostics and evidence-based
medicine become increasingly important across multiple disease areas
and likely assuming greater share of the combined biopharmaceutical
and diagnostics markets. We expect several factors to drive adoption of
our universal diagnostics solution GPS Cancer, which enables an

1 increased understanding of molecular pathways and their targets, such
2 as

- 3 • improved pharmacoeconomics, including the use of more cost-
4 effective drugs approved for other indications (such as asthma
5 and diabetes) in cancer treatment regimens;
- 6 • a clearer understanding of critical drug resistance information;
- 7 • increased adoption of bundled payments as providers and payors
8 recognize the efficiency of optimized therapies; and
- 9 • increased awareness and published clinical results demonstrating
10 the benefits of evidence-based molecular medicine.

11 **Our Competitive Strengths**

12 We have invested significant capital and healthcare and biotechnology
13 expertise over nearly a decade to develop, acquire and integrate the
14 necessary components to establish a comprehensive, adaptive learning
15 system designed to address many of the challenges faced by
16 stakeholders across the continuum of care.

17 We believe our unique capabilities will facilitate the shift from a siloed
18 domain approach to a more patient-centered and patient-empowered
19 approach, and from retrospective claims data mining to real-time,
20 proactive biometric and phenotypic analysis. We believe molecular
21 profile data will significantly enhance outcomes and allow a shift from
22 cohort statistics driven pathways to individualized treatment pathways
23 and accelerate the benefit of value-based models. We also believe the
24 unique multidimensional approach of combining biometric and
25 phenotypic data with targeted molecular pathway information will lead
26 to network effects unavailable to parties looking at each segment
27 individually.

28 We believe we are differentiated by CLINICS, which creates a novel,
comprehensive ecosystem with powerful network effects. In our view,
clients who adopt our platforms receive more coordinated, targeted
patient therapy and care, which leads to improved outcomes at lower
cost. Each data point contributes to the broader dataset, enhancing the
continuous learning system and driving value to the user and overall
adoption of the system. We believe our success will be based on the
following key strengths and advantages:

...

- ***A clinical comprehensive molecular analysis solution.*** We have
exclusive rights to NantOmics' proprietary clinical
comprehensive molecular analysis solution, GPS Cancer, for the
clinical market that examines the entire genome, both in tumor
and normal tissue samples, in addition to RNA and protein
expression in the tumor sample, including quantitative
proteomics measured by mass spectrometry. The test provides
quantitative analysis of targeted proteins at the attomolar level,
while also comparing 6 billion DNA base pairs (tumor and

1 normal) and sequencing 200,000 RNA transcripts and provides
2 analysis for over 15,000 nodes within approximately 1,500
3 protein pathways. Using this solution, we create a full genomic
4 and quantitative proteomic profile designed to identify alterations
5 in cellular signaling behavior that are driving disease
6 progression. Unique adaptive machine learning algorithms match
7 the alterations to a library of known signaling pathways and drug
8 and drug targets, irrespective of indication, to predict the
9 effectiveness of personalized therapies and points of resistance.
10 We are able to deliver to providers and payors integrated and
11 comprehensive test results aimed to arrive at improved care
12 decisions for patients. We deliver a concise, actionable GPS
13 Cancer report that matches these alterations with approved on-
14 label and investigative targeted therapies and clinical trials, and
15 GPS Cancer is the only comprehensive and commercially
16 available clinical cancer platform incorporating and integrating
17 whole genome (comparing both a patient's normal and tumor
18 tissue), RNA, proteomic and molecular pathways information
19 into such a report. We have signed agreements or agreements in
20 principle with several customers for GPS Cancer.

21 35. With respect to the Company's agreement with the University of Utah,
22 the Registration Statement, in relevant part, stated:

23 We expect to launch our commercial sequencing and molecular
24 analysis solution, or GPS Cancer, in the second quarter of 2016. In
25 January 2015, we entered into an agreement to provide certain research
26 related sequencing services to a university which is engaged in
27 researching the genetic causes of certain hereditary diseases. The
28 agreement provides for the university to pay us \$10.0 million in
exchange for our providing sequencing services through our reseller
agreement with NantOmics. At the university's request, certain non-
profit organizations provided partial funding for the sequencing and
related bioinformatics costs associated with the project. Our Chairman
and Chief Executive Officer serves as a member of the board of
directors and may have significant influence or control over these
organizations. The university was not contractually or otherwise
required to use our molecular profiling solution or any other products or
services as part of the charitable gift. In 2015, we provided \$6.2 million
of services to the university, which has been recorded as a deemed
capital contribution instead of revenue due to the reasons described
above. In 2016, we expect to complete another \$3.8 million in services
which will also be recorded as deemed capital contributions.

36. On August 9, 2016, NantHealth issued a press release entitled,
"NantHealth Reports Strong 2016 Second-Quarter Revenues and Continued
Progress On GPS Cancer and Nantos Platform." Therein, the Company, in relevant
part, stated:

1 **Culver City, Calif. – August 09, 2016** — NantHealth, Inc.
2 (NASDAQ-GS: NH), a next-generation, evidence-based, personalized
3 healthcare company, today reported financial results for its 2016 second
4 quarter ended June 30, 2016. The company completed its initial public
5 offering (IPO) in early June 2016, raising net proceeds of
6 approximately \$83.2 million.

7 For the 2016 second quarter, total net revenues increased 167% to
8 \$31.5 million from \$11.8 million in last year's second quarter. Gross
9 profit grew 69% to \$9.3 million, from \$5.5 million, for the 2015 second
10 quarter. Selling, general and administrative (SG&A) expenses were
11 \$47.2 million, including stock compensation expense related to the
12 company's IPO, compared with \$17.8 million for the prior year second
13 quarter. Research and development (R&D) expenses, including stock
14 compensation expense related to the company's IPO, increased to \$24.3
15 million from \$5.0 million in the comparable quarter of last year.

16 With the inclusion of stock based compensation expense related to the
17 IPO, equal to \$0.42 per share, net loss was \$54.1 million, or \$0.52 per
18 share, compared with \$17.2 million, or \$0.21 per share, for the 2015
19 second quarter. Financial results for the 2016 second quarter included
20 approximately \$43.7 million in stock based compensation, equal to
21 \$0.42 per share, related to the vesting of equity tied to the company's
22 Initial public offering. On a non-GAAP basis, for the 2016 second
23 quarter, adjusted net loss was \$16.5 million, or \$0.15 per share,
24 compared with adjusted net loss of \$14.3 million, or \$0.15 per share, in
25 the prior year second quarter.

26 "We achieved stellar topline results across all of our revenue lines,
27 reflecting how strongly customers have responded to NantHealth's
28 innovative offerings," said Patrick Soon-Shiong, M.D., chief executive
officer and chairman of NantHealth. "Our strong second-quarter
financial performance included revenues recognized from several large
implementations and service contracts for our technology offerings,
which were completed and delivered earlier than anticipated. As a
result, we recognized certain revenues in our second quarter that we
previously projected to be recorded in the second half of 2016.

"Looking ahead, we are focused on adding customers and executing on
our opportunities across the spectrum of our offerings. In addition, the
acquisitions we completed in the last year are paying dividends and our
GPS Cancer product continues to gain traction and acceptance among
insurers. Combined, these efforts and initiatives will drive our growth
in the near term and beyond."

GPS Cancer – Highlights

- **Number of covered cancer lives:** at June 30, the number of patients with cancer covered by a payer for GPS testing was approximately 180,000. Subsequent to the quarter through August 9, the company added approximately 20,000 covered cancer lives, bringing the total number of cancer patients covered by GPS Cancer to approximately 200,000.

- 1 • **Number of GPS Cancer payers:** at June 30, the number of
2 payers covering GPS Cancer was three. Subsequent to the end of
3 the quarter through August 9, the company added three new
4 payers, bringing the total number of payers covering GPS Cancer
5 to six, resulting in 200,000 covered cancer lives.
- 6 • **Number of international GPS Cancer payers:** During the
7 second quarter, the company added an international reseller.

8 37. On August 15, 2016, NantHealth filed its Quarterly Report with the
9 SEC on Form 10-Q for the quarterly period ended June 30, 2016. The Company's
10 10-Q was signed by Defendant Holt and reaffirmed the Company's financial results
11 previously announced on August 9, 2016.

12 38. On November 7, 2016, NantHealth issued a press release entitled,
13 "Nanthealth Reports 76% Increase in Total Q3 Net Revenue 2016 vs 2015, Gross
14 Profit Triples." Therein, the Company, in relevant part, stated:

15 **Culver City, Calif. - November 7, 2016 -** NantHealth, Inc.
16 (NASDAQ-GS: NH), a next-generation, evidence-based, personalized
17 healthcare company, today reported financial results for its third quarter
18 ended September 30, 2016.

19 For the 2016 third quarter, total net revenue increased 76% to \$25.4
20 million from \$14.4 million in last year's third quarter. Gross profit
21 more than tripled to \$8.1 million, from \$2.3 million, for the 2015 third
22 quarter. Selling, general and administrative (SG&A) expenses were
23 \$24.7 million compared with \$18.1 million for the prior year third
24 quarter. Research and development (R&D) expenses increased to \$13.9
25 million from \$7.0 million in the comparable quarter of last year.

26 Net loss for the 2016 third quarter was \$36.9 million, or \$0.30 per
27 share, compared with \$23.0 million, or \$0.24 per share, for the 2015
28 third quarter. Financial results for the 2016 third quarter included
29 approximately \$5.5 million of intangible amortization and \$5.2 million
30 in non-cash, stock-based compensation expense, equal to \$0.10 per
31 share. On a non-GAAP basis, for the 2016 third quarter, adjusted net
32 loss was \$22.4 million, or \$0.18 per share, compared with \$18.2
33 million, or \$0.17 per share, in the prior year third quarter.

34 "The significant increase of total net revenue was primarily driven by a
35 252% increase in SaaS revenue," said Patrick Soon-Shiong, M.D., chief
36 executive officer and chairman of NantHealth. "We continue to make
37 great strides in healthcare interoperability and connectivity. With
38 regard to our GPS Cancer Test, education in the oncology community
39 is progressing rapidly. As the oncologists begin to understand that this

1 test better informs them and their patients as to the biology of the
2 cancer and which drugs may or may not be effective based on the
3 genomics and proteomics signature, adoption is progressing as
4 evidenced by the over 100% increase in number of oncologists ordering
5 the test. We are gratified to experience this response since we believe
6 the test is as important to guide the physician as to which drugs not to
7 administer as well as which agents may show sensitivity. The
8 opportunity to have this information on hand before treatment begins is
9 having an impact on physicians' acceptance of the value that this test
10 can bring to cancer care. The challenge and opportunity remains, our
11 need to continue this educational process both with provider and payer.
12 We have ramped up our efforts to educate oncologists in target
13 markets, secured new payer coverage and streamlined IT
14 implementations.”

8 **GPS Cancer – Highlights**

- 9 • **Number of covered cancer lives:** at September 30, 2016 the
10 number of patients with cancer covered by a payer for GPS
11 testing was approximately 200,000. Subsequent to the end of the
12 quarter, the company reported a coverage agreement with
13 Horizon BCBS for a pilot study.
- 13 • **Number of GPS Cancer payers:** at September 30, 2016 the
14 number of payers covering GPS Cancer was seven, representing
15 200,000 covered cancer lives. Discussions are in progress with
16 17 payers, increasing from 13 in Q2. GPS Cancer Coverage
- 15 • **Number of international GPS Cancer payers:** Subsequent to
16 the end of the third quarter, the company added an additional
17 international reseller bringing the total of international resellers
18 to two.
- 18 • **Number of GPS Cancer Tests:** 524 ordered in Q3.

19 39. On November 10, 2016, NantHealth filed its Quarterly Report with the
20 SEC on Form 10-Q for the quarterly period ended September 30, 2016. The
21 Company's Form 10-Q was signed by Defendants Soon-Shiong and Holt, and
22 reaffirmed the Company's financial results previously announced on November 7,
23 2016.

24 40. The above statements contained in ¶¶34-39 were materially false and/or
25 misleading when made because Defendants failed to disclose: (1) that Soon-Shiong
26 had donated funds through nonprofit organizations to the University of Utah for the
27
28

1 purpose of funneling those funds back into NantHealth; (2) that, as such, the
2 Company and Soon-Shiong participated in the violation of federal tax laws—
3 exposing the Company to possible civil and criminal liability; (3) that the Company
4 improperly recorded orders received from the University of Utah as GPS Cancer test
5 orders; (4) that, as a result, the Company reported false and inflated GPS Cancer
6 order figures for the third quarter of 2016; and (5) that, as a result of the foregoing,
7 the Company’s financial statements and Defendants’ statements about NantHealth’s
8 business, operations, and prospects, were materially false and misleading.
9
10

11
12 **Disclosures at the End of the Class Period**

13 41. On March 6, 2017, *STAT*, a news organization focused on medical
14 industry reporting, published an article alleging that NantHealth founder, Patrick
15 Soon-Shiong (“Soon-Shiong”), had donated \$12 million to the University of Utah
16 from three different tax-exempt entities controlled by him under a contract that
17 required the University to funnel much of that money into NantHealth. *STAT*
18 further alleged that two tax experts it had spoken to indicated that the deal “appeared
19 to violate federal tax rules governing certain charitable donations, amounting to
20 indirect self-dealing by Soon-Shiong and his foundations” and that a former head of
21 the IRS’s tax-exempt division stated “[t]hey’re laundering the funds through the
22 University of Utah.” *STAT* also alleged that NantHealth misled investors in
23 reporting its third-quarter earnings in November of 2016. The Company claimed
24 that it had received 524 orders for the GPS Cancer test, and that one-third of those
25
26
27
28

1 orders came from the University of Utah deal, but that the geneticist leading the
2 research told *STAT* that the work they ordered from NantHealth had nothing to do
3 with GPS Cancer. In greater part, *STAT* stated:

5 He was greeted like a star philanthropist.
6 The world's richest doctor had just made a \$12 million gift to the
7 University of Utah. Members of the university community were urged
8 to come thank him. And so, a crowd gathered.

9 For months, Dr. Patrick Soon-Shiong would continue to reap praise for
10 his generosity in publicity put out by the university. Not mentioned in
11 any of the tributes: \$10 million of his donation would be sent right back
12 to one of his companies. And the contract for his gift was worded in a
13 way that left the University of Utah with no other choice.

14 The university health system did get free and valuable information for
15 genetics research through the deal. But a *STAT* investigation has found
16 that Soon-Shiong benefited even more from his charitable donation.

17 He got reams of patient data to help him build a new commercial
18 product meant to assess patients' risk of rare and inherited diseases. He
19 got a stream of cash for one of his struggling companies.

20 And the deal made it possible for his company to inflate, by more than
21 50 percent, the number of test orders it reported to investors late last
22 year while updating them on interest in a flagship product, a diagnostic
23 tool known as GPS Cancer. Soon-Shiong's team counted genetic
24 sequencing ordered by the University of Utah in those order numbers
25 — even though the work for the university did not have anything to do
26 with diagnosing or recommending treatments for cancer patients.

27 Even in the world of academic donations, which the wealthy often use
28 to burnish their image or advance pet causes, the arrangement stands
out as highly unusual.

STAT has previously detailed how Soon-Shiong's high-profile cancer
moonshot initiative achieved little scientific progress in its first year,
instead functioning primarily as a marketing tool for GPS Cancer.

The University of Utah deal — laid out in contracts obtained by *STAT*
through a public records request — illustrates how Soon-Shiong
boosted his business through his philanthropy. He has been accused of
doing just that in at least two legal filings, but the Utah contracts offer
the first concrete example, spelled out in black and white.

Four tax experts who reviewed the contracts at *STAT*'s request all
agreed that the Utah deal was suspicious. Two said it appeared to
violate federal tax rules governing certain charitable donations,
amounting to indirect self-dealing by Soon-Shiong and his foundations.

1 “They’re laundering the funds through the University of Utah,” said
2 Marc Owens, a tax lawyer with Loeb & Loeb. Owens, who said the
3 contracts appeared to violate federal rules, previously spent a decade as
4 head of the Internal Revenue Service’s tax-exempt division.

5 The other two legal experts said the contracts were cleverly worded in a
6 way that would likely steer clear of self-dealing — but agreed that, at
7 the very least, they raised serious questions about Soon-Shiong’s intent.

8 “We pretty clearly have an optics problem,” said Morey Ward, a tax
9 lawyer with Ropes & Gray who represents tax-exempt organizations.

10 Soon-Shiong’s spokeswoman, Jen Hodson, did not answer a list of
11 emailed questions or return calls from STAT. Soon-Shiong has denied
12 STAT’s repeated requests for an interview dating back to last fall.

13 The University of Utah put STAT on the phone with a geneticist whose
14 team is using data generated by the deal for research, and answered
15 additional questions by email. The university confirmed that it
16 concluded it had to use the vast bulk of Soon-Shiong’s donation to buy
17 sequencing from his company but said the resulting research was
18 fruitful.

19 “My first reaction was surprise that the University of Utah lawyers
20 agreed to sign this,” said Brian Galle, a Georgetown University law
21 professor who specializes in tax law and the law of nonprofit
22 organizations, and who suspected the arrangement constitutes indirect
23 self-dealing. (University of Utah spokeswoman Julie Kiefer said the
24 university’s counsel reviewed both contracts.)

25 **Questions about a crucial product**

26 STAT’s reporting also raised questions about whether Soon-Shiong’s
27 signature GPS Cancer diagnostic, which is crucial to his core business,
28 is making headway in the market.

NantHealth, the Soon-Shiong company that markets GPS Cancer,
appears to have misled investors in reporting its third-quarter earnings
last November. The company said that during the quarter it had
received 524 orders for the GPS Cancer test, which analyzes tumor
genetics and recommends treatments for patients. One-third of those
orders came from the University of Utah deal, a company representative
told investors on the earnings call.

But both Kiefer and the geneticist leading the research told STAT that
the work they ordered from NantHealth had nothing to do with GPS
Cancer. They paid for straightforward genetic sequencing, meant
strictly for preclinical research. The geneticist, Deborah Wood
Neklason, said she could not understand why NantHealth would count
the work as orders for GPS Cancer.

(In the same earnings call, NantHealth did make a point of telling
investors that it wasn’t counting money from the University of Utah as
revenue, which tax law experts said was appropriate since the university

1 was using money from Soon-Shiong’s big donation to pay for the
2 sequencing.)

3 42. On this news, NantHealth’s share price fell \$1.67 per share, or 23.3%,
4 to close at \$5.50 per share on March 6, 2017—which amounted to a 60% decline
5 from the IPO price of \$14.00 per share.

6 **CLASS ACTION ALLEGATIONS**

7
8 43. Plaintiff brings this action as a class action pursuant to Federal Rule of
9 Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all those who
10 purchased or otherwise acquired NantHealth securities: (1) pursuant and/or traceable
11 to the Company’s Registration Statement issued in connection with the Company’s
12 IPO on or about June 1, 2016, seeking to pursue remedies under the Securities Act;
13 and/or (2) between June 1, 2016, and March 6, 2017, inclusive, seeking to pursue
14 remedies under the Exchange Act; and were damaged thereby (collectively, the
15 “Class”). Excluded from the Class are Defendants, the officers and directors of the
16 Company, at all relevant times, members of their immediate families and their legal
17 representatives, heirs, successors or assigns and any entity in which Defendants
18 have or had a controlling interest.
19

20
21
22 44. The members of the Class are so numerous that joinder of all members
23 is impracticable. Throughout the Class Period, NantHealth’s securities were
24 actively traded on the Nasdaq Stock Market (the “NASDAQ”). While the exact
25 number of Class members is unknown to Plaintiff at this time and can only be
26
27
28 ascertained through appropriate discovery, Plaintiff believes that there are hundreds

1 or thousands of members in the proposed Class. Millions of NantHealth shares were
2 traded publicly during the Class Period on the NASDAQ. Record owners and
3 other members of the Class may be identified from records maintained by
4 NantHealth or its transfer agent and may be notified of the pendency of this action
5 by mail, using the form of notice similar to that customarily used in securities class
6 actions.
7

8
9 45. Plaintiff's claims are typical of the claims of the members of the Class
10 as all members of the Class are similarly affected by Defendants' wrongful conduct
11 in violation of federal law that is complained of herein.
12

13 46. Plaintiff will fairly and adequately protect the interests of the members
14 of the Class and has retained counsel competent and experienced in class and
15 securities litigation.
16

17 47. Common questions of law and fact exist as to all members of the Class
18 and predominate over any questions solely affecting individual members of the
19 Class. Among the questions of law and fact common to the Class are:
20

21 (a) whether the federal securities laws were violated by Defendants'
22 acts as alleged herein;
23

24 (b) whether statements made by Defendants to the investing public
25 during the Class Period omitted and/or misrepresented material facts about the
26 business, operations, and prospects of NantHealth ; and
27
28

1 (c) whether the members of the Class have sustained damages and,
2 if so, what is the proper measure of damages.

3
4 48. A class action is superior to all other available methods for the fair and
5 efficient adjudication of this controversy since joinder of all members is
6 impracticable. Furthermore, as the damages suffered by individual Class members
7 may be relatively small, the expense and burden of individual litigation makes it
8 impossible for members of the Class to individually redress the wrongs done to
9 them. There will be no difficulty in the management of this action as a class action.
10

11
12 **UNDISCLOSED ADVERSE FACTS**

13 49. The market for NantHealth's securities was open, well-developed and
14 efficient at all relevant times. As a result of these materially false and/or misleading
15 statements, and/or failures to disclose, NantHealth's securities traded at artificially
16 inflated prices during the Class Period. Plaintiff and other members of the Class
17 purchased or otherwise acquired NantHealth's securities relying upon the integrity
18 of the market price of the Company's securities and market information relating to
19 NantHealth, and have been damaged thereby.
20

21
22 50. During the Class Period, Defendants materially misled the investing
23 public, thereby inflating the price of NantHealth's securities, by publicly issuing
24 false and/or misleading statements and/or omitting to disclose material facts
25 necessary to make Defendants' statements, as set forth herein, not false and/or
26 misleading. Said statements and omissions were materially false and/or misleading
27
28

1 in that they failed to disclose material adverse information and/or misrepresented the
2 truth about NantHealth's business, operations, and prospects as alleged herein.

3
4 51. At all relevant times, the material misrepresentations and omissions
5 particularized in this Complaint directly or proximately caused or were a substantial
6 contributing cause of the damages sustained by Plaintiff and other members of the
7 Class. As described herein, during the Class Period, Defendants made or caused to
8 be made a series of materially false and/or misleading statements about
9 NantHealth's financial well-being and prospects. These material misstatements
10 and/or omissions had the cause and effect of creating in the market an unrealistically
11 positive assessment of the Company and its financial well-being and prospects, thus
12 causing the Company's securities to be overvalued and artificially inflated at all
13 relevant times. Defendants' materially false and/or misleading statements during
14 the Class Period resulted in Plaintiff and other members of the Class purchasing the
15 Company's securities at artificially inflated prices, thus causing the damages
16 complained of herein.

17
18
19
20
21 **LOSS CAUSATION**

22 52. Defendants' wrongful conduct, as alleged herein, directly and
23 proximately caused the economic loss suffered by Plaintiff and the Class.

24
25 53. During the Class Period, Plaintiff and the Class purchased
26 NantHealth's securities at artificially inflated prices and were damaged thereby.
27 The price of the Company's securities significantly declined when the
28

1 misrepresentations made to the market, and/or the information alleged herein to
2 have been concealed from the market, and/or the effects thereof, were revealed,
3
4 causing investors' losses.

5 **SCIENTER ALLEGATIONS**

6 54. As alleged herein, Defendants acted with scienter in that Defendants
7
8 knew that the public documents and statements issued or disseminated in the name
9 of the Company were materially false and/or misleading; knew that such statements
10 or documents would be issued or disseminated to the investing public; and
11 knowingly and substantially participated or acquiesced in the issuance or
12 dissemination of such statements or documents as primary violations of the federal
13 securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of
14 their receipt of information reflecting the true facts regarding NantHealth, his/her
15 control over, and/or receipt and/or modification of NantHealth's allegedly materially
16 misleading misstatements and/or their associations with the Company which made
17 them privy to confidential proprietary information concerning NantHealth,
18 participated in the fraudulent scheme alleged herein.
19
20
21

22 **APPLICABILITY OF PRESUMPTION OF RELIANCE** 23 **(FRAUD-ON-THE-MARKET DOCTRINE)**

24 55. The market for NantHealth's securities was open, well-developed and
25 efficient at all relevant times. As a result of the materially false and/or misleading
26 statements and/or failures to disclose, NantHealth's securities traded at artificially
27
28

1 inflated prices during the Class Period. On June 8, 2016, the Company's stock
2 closed at a Class Period high of \$15.80 per share. Plaintiff and other members of
3 the Class purchased or otherwise acquired the Company's securities relying upon
4 the integrity of the market price of NantHealth's securities and market information
5 relating to NantHealth, and have been damaged thereby.
6

7
8 56. During the Class Period, the artificial inflation of NantHealth's stock
9 was caused by the material misrepresentations and/or omissions particularized in
10 this Complaint causing the damages sustained by Plaintiff and other members of the
11 Class. As described herein, during the Class Period, Defendants made or caused to
12 be made a series of materially false and/or misleading statements about
13 NantHealth's business, prospects, and operations. These material misstatements
14 and/or omissions created an unrealistically positive assessment of NantHealth and
15 its business, operations, and prospects, thus causing the price of the Company's
16 securities to be artificially inflated at all relevant times, and when disclosed,
17 negatively affected the value of the Company stock. Defendants' materially false
18 and/or misleading statements during the Class Period resulted in Plaintiff and other
19 members of the Class purchasing the Company's securities at such artificially
20 inflated prices, and each of them has been damaged as a result.
21

22
23
24
25 57. At all relevant times, the market for NantHealth's securities was an
26 efficient market for the following reasons, among others:
27
28

1 (a) NantHealth stock met the requirements for listing, and was listed
2 and actively traded on the NASDAQ, a highly efficient and automated market;

3 (b) As a regulated issuer, NantHealth filed periodic public reports
4 with the SEC and/or the NASDAQ;

5 (c) NantHealth regularly communicated with public investors *via*
6 established market communication mechanisms, including through regular
7 dissemination of press releases on the national circuits of major newswire services
8 and through other wide-ranging public disclosures, such as communications with the
9 financial press and other similar reporting services; and/or
10
11

12 (d) NantHealth was followed by securities analysts employed by
13 brokerage firms who wrote reports about the Company, and these reports were
14 distributed to the sales force and certain customers of their respective brokerage
15 firms. Each of these reports was publicly available and entered the public
16 marketplace.
17
18

19 58. As a result of the foregoing, the market for NantHealth's securities
20 promptly digested current information regarding NantHealth from all publicly
21 available sources and reflected such information in NantHealth's stock price. Under
22 these circumstances, all purchasers of NantHealth's securities during the Class
23 Period suffered similar injury through their purchase of NantHealth's securities at
24 artificially inflated prices and a presumption of reliance applies.
25
26
27
28

1 determined to apply to any forward-looking statements pleaded herein, Defendants
2 are liable for those false forward-looking statements because at the time each of
3 those forward-looking statements was made, the speaker had actual knowledge that
4 the forward-looking statement was materially false or misleading, and/or the
5 forward-looking statement was authorized or approved by an executive officer of
6 NantHealth who knew that the statement was false when made.
7

8
9 **FIRST CLAIM**
10 **Violation of Section 11 of The Securities Act**
11 **(Against the Section 11 Defendants)**

12 61. Plaintiff repeats and realleges each and every allegation contained
13 above as if fully set forth herein, except any allegation of fraud, recklessness or
14 intentional misconduct.

15 62. This Count is brought pursuant to Section 11 of the Securities Act, 15
16 U.S.C. § 77k, on behalf of the Class, against the Section 11 Defendants.

17 63. The Registration Statement for the IPO was inaccurate and misleading,
18 contained untrue statements of material facts, omitted to state other facts necessary
19 to make the statements made not misleading, and omitted to state material facts
20 required to be stated therein.

21 64. NantHealth is the registrant for the IPO. The Section 11 Defendants
22 named herein were responsible for the contents and dissemination of the
23 Registration Statement.
24
25
26
27
28

1 NantHealth's securities at artificially inflated prices. In furtherance of this unlawful
2 scheme, plan and course of conduct, defendants, and each of them, took the actions
3 set forth herein.
4

5 77. Defendants (i) employed devices, schemes, and artifices to defraud; (ii)
6 made untrue statements of material fact and/or omitted to state material facts
7 necessary to make the statements not misleading; and (iii) engaged in acts, practices,
8 and a course of business which operated as a fraud and deceit upon the purchasers of
9 the Company's securities in an effort to maintain artificially high market prices for
10 NantHealth's securities in violation of Section 10(b) of the Exchange Act and Rule
11 10b-5. All Defendants are sued either as primary participants in the wrongful and
12 illegal conduct charged herein or as controlling persons as alleged below.
13
14
15

16 78. Defendants, individually and in concert, directly and indirectly, by the
17 use, means or instrumentalities of interstate commerce and/or of the mails, engaged
18 and participated in a continuous course of conduct to conceal adverse material
19 information about NantHealth's financial well-being and prospects, as specified
20 herein.
21

22 79. These defendants employed devices, schemes and artifices to defraud,
23 while in possession of material adverse non-public information and engaged in acts,
24 practices, and a course of conduct as alleged herein in an effort to assure investors of
25 NantHealth's value and performance and continued substantial growth, which
26 included the making of, or the participation in the making of, untrue statements of
27
28

1 material facts and/or omitting to state material facts necessary in order to make the
2 statements made about NantHealth and its business operations and future prospects
3 in light of the circumstances under which they were made, not misleading, as set
4 forth more particularly herein, and engaged in transactions, practices and a course of
5 business which operated as a fraud and deceit upon the purchasers of the Company's
6 securities during the Class Period.
7
8

9 80. Each of the Individual Defendants' primary liability, and controlling
10 person liability, arises from the following facts: (i) the Individual Defendants were
11 high-level executives and/or directors at the Company during the Class Period and
12 members of the Company's management team or had control thereof; (ii) each of
13 these defendants, by virtue of their responsibilities and activities as a senior officer
14 and/or director of the Company, was privy to and participated in the creation,
15 development and reporting of the Company's internal budgets, plans, projections
16 and/or reports; (iii) each of these defendants enjoyed significant personal contact
17 and familiarity with the other defendants and was advised of, and had access to,
18 other members of the Company's management team, internal reports and other data
19 and information about the Company's finances, operations, and sales at all relevant
20 times; and (iv) each of these defendants was aware of the Company's dissemination
21 of information to the investing public which they knew and/or recklessly
22 disregarded was materially false and misleading.
23
24
25
26
27
28

1 81. The defendants had actual knowledge of the misrepresentations and/or
2 omissions of material facts set forth herein, or acted with reckless disregard for the
3 truth in that they failed to ascertain and to disclose such facts, even though such
4 facts were available to them. Such defendants' material misrepresentations and/or
5 omissions were done knowingly or recklessly and for the purpose and effect of
6 concealing NantHealth's financial well-being and prospects from the investing
7 public and supporting the artificially inflated price of its securities. As
8 demonstrated by Defendants' overstatements and/or misstatements of the
9 Company's business, operations, financial well-being, and prospects throughout the
10 Class Period, Defendants, if they did not have actual knowledge of the
11 misrepresentations and/or omissions alleged, were reckless in failing to obtain such
12 knowledge by deliberately refraining from taking those steps necessary to discover
13 whether those statements were false or misleading.

14 82. As a result of the dissemination of the materially false and/or
15 misleading information and/or failure to disclose material facts, as set forth above,
16 the market price of NantHealth's securities was artificially inflated during the Class
17 Period. In ignorance of the fact that market prices of the Company's securities were
18 artificially inflated, and relying directly or indirectly on the false and misleading
19 statements made by Defendants, or upon the integrity of the market in which the
20 securities trades, and/or in the absence of material adverse information that was
21 known to or recklessly disregarded by Defendants, but not disclosed in public

1 statements by Defendants during the Class Period, Plaintiff and the other members
2 of the Class acquired NantHealth's securities during the Class Period at artificially
3 high prices and were damaged thereby.
4

5 83. At the time of said misrepresentations and/or omissions, Plaintiff and
6 other members of the Class were ignorant of their falsity, and believed them to be
7 true. Had Plaintiff and the other members of the Class and the marketplace known
8 the truth regarding the problems that NantHealth was experiencing, which were not
9 disclosed by Defendants, Plaintiff and other members of the Class would not have
10 purchased or otherwise acquired their NantHealth securities, or, if they had
11 acquired such securities during the Class Period, they would not have done so at the
12 artificially inflated prices which they paid.
13
14

15
16 84. By virtue of the foregoing, Defendants have violated Section 10(b) of
17 the Exchange Act and Rule 10b-5 promulgated thereunder.
18

19 85. As a direct and proximate result of Defendants' wrongful conduct,
20 Plaintiff and the other members of the Class suffered damages in connection with
21 their respective purchases and sales of the Company's securities during the Class
22 Period.
23

24 **FOURTH CLAIM**
25 **Violation of Section 20(a) of The Exchange Act**
26 **(Against the Individual Defendants)**

27 86. Plaintiff repeats and realleges each and every allegation contained
28 above as if fully set forth herein.

1 87. The Individual Defendants acted as controlling persons of NantHealth
2 within the meaning of Section 20(a) of the Exchange Act as alleged herein. By
3 virtue of their high-level positions, and their ownership and contractual rights,
4 participation in and/or awareness of the Company's operations and/or intimate
5 knowledge of the false financial statements filed by the Company with the SEC and
6 disseminated to the investing public, the Individual Defendants had the power to
7 influence and control and did influence and control, directly or indirectly, the
8 decision-making of the Company, including the content and dissemination of the
9 various statements which Plaintiff contends are false and misleading. The
10 Individual Defendants were provided with or had unlimited access to copies of the
11 Company's reports, press releases, public filings and other statements alleged by
12 Plaintiff to be misleading prior to and/or shortly after these statements were issued
13 and had the ability to prevent the issuance of the statements or cause the statements
14 to be corrected.

15
16
17
18
19
20 88. In particular, each of these Defendants had direct and supervisory
21 involvement in the day-to-day operations of the Company and, therefore, is
22 presumed to have had the power to control or influence the particular transactions
23 giving rise to the securities violations as alleged herein, and exercised the same.

24
25 89. As set forth above, NantHealth and the Individual Defendants each
26 violated Section 10(b) and Rule 10b-5 by their acts and/or omissions as alleged in
27 this Complaint. By virtue of their positions as controlling persons, the Individual
28

1 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct
2 and proximate result of Defendants' wrongful conduct, Plaintiff and other members
3 of the Class suffered damages in connection with their purchases of the Company's
4 securities during the Class Period.
5

6 **PRAYER FOR RELIEF**
7

8 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

9 (a) Determining that this action is a proper class action under Rule 23 of
10 the Federal Rules of Civil Procedure;
11

12 (b) Awarding compensatory damages in favor of Plaintiff and the other
13 Class members against all defendants, jointly and severally, for all damages
14 sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial,
15 including interest thereon;
16

17 (c) Awarding Plaintiff and the Class their reasonable costs and expenses
18 incurred in this action, including counsel fees and expert fees; and
19

20 (d) Such other and further relief as the Court may deem just and proper.
21

22 **JURY TRIAL DEMANDED**

23 Plaintiff hereby demands a trial by jury.
24
25
26
27
28