



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE OPKO HEALTH, INC.
DERIVATIVE ACTION

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Consol. C.A. No. 2018-0740-SG

Public Version Filed:

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VERIFIED CONSOLIDATED DERIVATIVE COMPLAINT

Court-appointed Co-Lead Plaintiffs Jamie Gewirtz, Emily Gewirtz Stiebel, Richard Tunick, Esther Susan Lutzker, and Vivian Davis, and additional plaintiffs Ivan Pawlenko and Martin Breuninger (collectively, “Plaintiffs”), by their attorneys, allege upon personal knowledge as to their own acts and upon information and belief as to all other matters, based upon the investigation conducted by counsel, which included, *inter alia*, review and analysis of: (a) internal, non-public documents provided by OPKO Health, Inc. (“OPKO or “Company”) in response to demands under 8 *Del. C.* §220; (b) the public filings of OPKO and related non-parties with the U.S. Securities and Exchange Commission (“SEC”); (c) press releases and other public statements disseminated or caused to be made or issued by defendants and related non-parties; (d) media reports concerning the Company; (e) the Complaint and related filings in the action filed by the SEC on September 7, 2018 in the United States District Court for the Southern District of New York, captioned *SEC v. Honig, et al.*, 18-cv-8175, charging a number of entities and persons, including OPKO and its Chief

Executive Officer (“CEO”) and Chairman of the Board, Phillip Frost (“Frost”), with violations of the federal securities laws (the “SEC Action”); and (f) other publicly available information, as follows:

NATURE AND SUMMARY OF THE ACTION

1. OPKO is one of a series of publicly held companies controlled by Phillip Frost (“Frost”) and his affiliates and populated with directors willing to let Frost use such companies to further his personal investments (and frequently join him in those investments). The entanglements between Frost and the members of the OPKO Board of Directors (the “Board”) became so extended through joint investments that OPKO’s SEC filings repeatedly failed to keep up with the complicated web of relationships and often failed to accurately disclose the totality of the conflicts [REDACTED]

2. With a supine Board providing no real check on Frost, he was able to use his control of OPKO to further his personal investments in other companies, including investments in BioZone Pharmaceuticals, Inc. (“BioZone”) (now known as Cocrystal Pharma, Inc. (“Cocrystal”)) and MabVax Therapeutics Holdings, Inc. (“MabVax”).

3. On September 7, 2018, OPKO, Frost, and one of Frost’s investment vehicles, Frost Gamma Investments Trust (“Frost Gamma”) were charged by the

SEC with participating in pump-and-dump schemes at BioZone and MabVax (referred to by the SEC as “Company A” and “Company C”). *See* SEC Action.

4. OPKO, Frost, and Frost Gamma were charged with violating the Securities Act and/or Securities Exchange Act in coordinating and/or aiding and abetting securities transactions with Michael Brauser (“Brauser”) and Barry Honig (“Honig”) for the purpose of manipulating markets for thinly traded stocks of companies in which Frost and his group had control. Honig and Brauser have a longstanding relationship with Frost and listed their address in various SEC filings as 4400 Biscayne Boulevard in Miami, which is a building owned by Frost and the same location as the offices of OPKO and Frost Gamma. Honig and Brauser are and/or were co-investors with Frost in BioZone, MabVax and other businesses that OPKO also invested in.

5. The SEC alleged that Frost, Honig, and Brauser acquired shares in BioZone through PIPE (private investment in public equity) financings, lying to BioZone management to take control, installing an associate as a compliant Chief Financial Officer (“CFO”), selling assets to Frost, secretly paying for positive media coverage, and then dumping the shares, all without complying with SEC reporting requirements and trading volume limits. Frost’s share of the sale of BioZone shares was just under \$1.1 million. Frost is also alleged to have participated in a similar pump-and-dump at MabVax, where he acquired shares

with Honig and Brauser, who then secretly paid for positive coverage and dumped shares, again without complying with SEC reporting requirements and, specifically, group reporting requirements.

6. Frost and OPKO quickly settled with the SEC. Specifically, on December 27, 2018, Frost and OPKO announced a settlement whereby they each agreed to consent judgments prohibiting violations of the Securities Act and/or Securities Exchange Act along with the Company's agreement pay to a \$100,000 penalty and Frost's agreement to pay \$5.5 million in penalties, disgorgement, and prejudgment interest.

7. Settlement of the SEC claims has not ended the liability of OPKO and its continued exposure to financial harm caused by Frost and permitted by the other defendants. OPKO continues to face massive potential liabilities and associated litigation costs and reputational damage and distraction of management forced to deal with the mess Frost caused. OPKO stock dropped 18% – from \$5.55 per share to \$4.58 per share – before the NASDAQ halted trading on September 7, 2018. The shares fell another 15% – to \$3.90 per share – after trading was resumed on September 14, 2018. To date, the price of OPKO stock has not recovered. The shares currently trade at \$2.74 per share, representing more than \$1 billion in lost market capitalization. OPKO is now forced to defend itself in multiple securities fraud class actions brought by OPKO investors. *See Steinberg*

v. Opko Health, Inc., No. 18-cv-23786 (S.D. Fla.); *In re OPKO Health, Inc. Securities Litig.*, No. 19-cv-20502 (S.D. Fla.). There have also been published reports that criminal charges remain a possibility.

8. OPKO has not taken any action against Frost despite years of red flags about allegations of Frost's misconduct and his association with Honig and Brauser, who were identified by *Barron's* in 2014 as having been involved in multiple stock manipulation schemes. As early as 2012, BioZone's founder sued Frost, alleging that Frost, Honig, and Brauser engaged in a pump-and-dump scheme and looted valuable assets sold to OPKO.. See *Fisher v. Honig, et al.*, No. 12-cv-03716 (N.D. Cal.). Frost was then sued by a former lawyer for BioZone in 2017, who similarly alleged a pump-and-dump scheme. See *Pederson v. Frost, et al.*, No. 17-cv-5580 (D. Minn.).

9. Yet based on the documents produced in response to the demands for books and records under 8 *Del. C.* § 220,

JURISDICTION AND VENUE

10. Nominal defendant OPKO is a Delaware corporation governed by the laws of the State of Delaware and the decisional law of this Court. This Court has jurisdiction over OPKO under 10 *Del. C.* §3111.

11. The individual defendants are current and/or former officers and/or directors of OPKO. This Court has jurisdiction over the Individual Defendants under 10 *Del. C.* §3104 and/or 10 *Del. C.* §3114.

12. Since OPKO is incorporated in Delaware, Delaware law directly controls and affects the claims brought against defendants. A determination regarding the claims herein will not only affect the parties to this action, but parties in other civil proceedings where Delaware law controls or applies. As such, Delaware courts have an interest in stating the fiduciary principles applicable in this action.

13. This Court has jurisdiction under 10 *Del. C.* §341.

THE PARTIES

14. Plaintiffs are current stockholders of OPKO and have continuously held shares at all times relevant herein.

15. Nominal Defendant OPKO is a Delaware corporation headquartered at 4400 Biscayne Boulevard, Miami, Florida 33137. OPKO is a healthcare

company founded by Frost in 2007. OPKO trades on the NASDAQ under the ticker symbol “OPK.”

16. Defendant Frost is the founder of OPKO and has been the Company’s CEO and Chairman of the Board since 2007. Frost is OPKO’s controlling stockholder.

17. Defendant Jane H. Hsiao (“Hsiao”) has been the Company’s Vice-Chairman and Chief Technical Officer (“CTO”) of the Company since May 2007 and a director since 2007. Hsiao owned roughly 5.94% of OPKO’s outstanding stock as of April 18, 2018. Hsiao is a member of The Frost Group, LLC (the “Frost Group”), a private investment group controlled by Frost. Hsiao participated in the matters alleged herein both directly and through her personal investment trust, Hsu Gamma Investment Trust (“Hsu Gamma”).

18. Defendant Steven D. Rubin (“Rubin”) has been the Company’s Executive Vice President – Administration since May 2007 and a director since 2007. Rubin is OPKO’s fifth largest stockholder, owning 1.32% of the outstanding equity as of April 18, 2018. Rubin is a member of the Frost Group.

19. Defendant Richard A. Lerner (“Lerner”) has been a director of the Company since 2007. Lerner has invested alongside Frost in several biotech startups and has been the beneficiary of several conflicted related party transactions where OPKO funds were used to further the personal investments of

Frost and Lerner. Although not a direct employee of OPKO, OPKO owns 29% of Zebra Biologics, Inc. (“Zebra”), which is a privately held business founded by Frost and Lerner [REDACTED]

20. Defendant Richard M. Krasno (“Krasno”) has been a director of the Company and a member of the Audit Committee since February 2017. Krasno has invested alongside Frost (and other OPKO directors) in at least one other biotech business and was the beneficiary of a conflicted related party transaction where OPKO funds were used to further the personal investments of Frost and Krasno in that business. Krasno and Frost have been friends for over 30 years and colleagues in businesses run by and/or controlled by Frost, which have paid [millions] to Krasno in fees and other benefits. Currently, Krasno is a director of four publicly held companies that are more than 30% owned by Frost.

21. Defendant Richard C. Pfenniger, Jr. (“Pfenniger”) has been a director of the Company and Chairman of the Audit Committee since January 2008. Pfenniger has been employed by Frost-controlled entities for nearly 30 years. He also has invested alongside Frost (and other OPKO directors) in at least two other biotech businesses and was the beneficiary of conflicted related party transactions where OPKO funds were used to further the personal investments of Frost and Pfenniger in those businesses. Pfenniger is currently Vice Chair of the Board of Trustees and on the Executive Committee of The Phillip and Patricia Frost

Museum of Science (“Frost Science Museum”), a museum created and funded in large part by Frost (and OPKO). Frost and his wife also serve on the Frost Science Museum’s board. [REDACTED]

[REDACTED] Pfenniger’s work for Frost over the years has made him a rich man, as he has received more than \$30 million in cash and stock from Frost-affiliated entities. Currently, Pfenniger is a director of two publicly held companies that are more than 30% owned by Frost and his affiliated businesses.

22. Defendant John A. Paganelli (“Paganelli”) has been a director of the Company and its predecessor since December 2003 and served as Interim CEO and secretary of OPKO’s predecessor from June 29, 2005 through March 27, 2007, and Chairman of the predecessor entity’s Board from December 2003 through March 27, 2007. At the time of OPKO’s formation, Paganelli was voted onto the Board by the Frost Group and several members of senior management, pursuant to a voting agreement between the Frost Group and the Company. Paganelli has been a member of the Audit Committee since May 2010. Paganelli’s company, RFG Associates (“RFG”), has been the beneficiary of related-party transactions involving OPKO, including OPKO’s lease of office space from RFG.

23. Defendant Alice Lin-Tsing Yu (“Yu”) has been a director of the Company since April 2009. OPKO has paid to support a research lab where Yu worked, and where Yu and other Frost affiliates have licensing agreements for technology invented by Yu.

24. Defendant Robert S. Fishel (“Fishel”) has been a director of the Company since April 2018.

25. Defendant Robert A. Baron (“Baron”) served as a director of the Company and member of the Audit Committee from 2007 to January 2017. He previously served on the Board of OPKO’s processor entity from 2003 until the time of OPKO’s formation. Baron was voted onto the Board by the Frost Group and several members of senior management, pursuant to a voting agreement between the Frost Group and the Company.

26. Defendants Frost, Fishel, Hsiao, Krasno, Rubin, Lerner, Paganelli, Pfenniger, Yu, and Krasno constitute OPKO’s Board of Directors.

27. Defendants Frost, Fishel, Hsiao, Krasno, Rubin, Lerner, Paganelli, Pfenniger, Yu, Krasno, and Baron are referred to collectively herein as “Defendants.”

**FROST CONTROLS OPKO AND USED THE COMPANY TO
SUPPORT THE PERSONAL INVESTMENTS AND
SELFISH INTERESTS OF FROST AND HIS AFFILIATES**

Background of the Company

28. Frost, after attending medical school and becoming a dermatologist, began to develop technologies and invest in pharmaceutical companies. As a result of his investments and developed products, Frost became a billionaire who has been described as the “Buffett of Biotech.”

29. Frost invented a disposable tool for taking skin biopsies that he sold to Miles Laboratories in 1969. He then started a dental ultrasound device company. In 1972, he ran into a former classmate who was an executive at Key Pharmaceuticals (“Key”) and reached a deal for his company to merge with Key. Frost eventually sold Key to Schering-Plough in 1986 for \$836 million.

30. Frost, along with Charles Hsiao (Hsiao’s late husband) and Jack Fishman, each of whom had served as top executives at Key, then created a generic-drug business called IVAX Corporation (“IVAX”). Frost sold IVAX in 2005 to Teva Pharmaceuticals (“Teva”) for \$7.4 billion, and subsequently served on Teva’s board of directors. Pfenniger worked for Frost at IVAX, serving as Senior Vice President-Legal Affairs and General Counsel and ultimately being promoted to Chief Operating Officer (“COO”).

31. OPKO was created by Frost in 2007 through the merger of three entities: Acuity Pharmaceuticals (“Acuity”), Froptix Corporation (“Froptix”), and eXegenics, Inc. (“eXegenics”). Paganelli was CEO and Chairman of eXegenics at the time and Baron was a director.

32. Frost is OPKO’s Chairman of the Board and CEO. He exercises absolute control over OPKO as its founder, controlling stockholder, and visionary. Frost owns or controls nearly 35% of the Company’s common shares, both directly and through Frost Gamma and the Frost Group. This stake dominates all other holdings in OPKO, as the next largest non-Frost stockholder is the Company’s CTO, Defendant Hsiao, who holds 5.94% of the voting power. After that, the next largest non-Frost stockholder is the Company’s Executive Vice President of Administration Rubin, who holds 1.32% of the voting power.

33. Frost is the Trustee of Frost Gamma and the sole, indirect owner of the beneficiary of Frost Gamma. The Frost Group includes Frost Gamma (the principal member of the Frost Group), Hsiao, Rubin, and Subbarao Uppaluri (“Uppaluri”), who served as OPKO’s CFO from May 2007 to July 2012. Because Defendant Frost holds the top executive position at the Company, all other executives, including Defendants Hsiao and Rubin, report to him and, thus, are controlled by him. According to the Company’s most recent Form 10-K Annual Report filed with the SEC, “Frost acting with other members of management,

would have the ability to significantly impact the election of our Board of Directors, the adoption or amendment of provisions in the Company's Certificate of Incorporation, the approval of mergers and other significant corporate transactions, and the outcome of issues requiring approval by our stockholders." Although Uppaluri's current holdings are not known, Frost/Frost Gamma/Frost Group and Hsiao and Rubin collectively own or control 42% of OPKO's equity and voting power. Each of Hsiao, Rubin, and Uppaluri had previously worked for Frost prior to OPKO's formation.

34. Moreover, both Lerner and Paganelli were appointed to OPKO's Nominating Committee, which is charged with nominating members of the Board. Through his longstanding relationships with both members of the Nominating Committee and his control of OPKO generally, Frost has chosen each member of OPKO's Board.

35. Aside from having overwhelming strength as a voting block through his and his lieutenants' shares in the Company, Frost is the Company's visionary. In its proxy solicitations, OPKO has repeatedly stated that it "is led by Dr. Frost." OPKO is widely viewed as Frost's company, with some industry insiders comparing Frost's control of OPKO to Warren Buffet's control of Berkshire Hathaway—that is, OPKO serves as a holding company that makes investments on

Frost's behalf. And Frost himself has made that comparison in interviews, calling OPKO a "mini-Berkshire Hathaway."

36. The Company itself recognizes Frost's key role, stating in its annual reports that so much of the Company's business success depends on Frost's continued involvement – despite that he is 82 years old – that his departure would have a "material adverse effect" on the business. Frost is designated as Chief Operating Decision Maker ("CODM"), and determines how OPKO's resources are allocated.

37. Indeed, the market is widely seen as giving OPKO a "Frost premium," in that before Frost was charged with federal securities fraud, the fact that he helmed OPKO gave investors confidence in the Company, despite the fact that OPKO has yet to achieve a profit or a successful product.

38. As described in detail below, Frost uses OPKO to engage in numerous related-party transactions [REDACTED] [REDACTED] – that have enriched Frost, his affiliated businesses, and certain of the other directors of the Company.

39. OPKO spends over \$1.1 million a year to lease its corporate headquarters from Frost's real estate venture, Frost Real Estate Holdings, LLC ("Frost Real Estate"). Frost and Frost Gamma and other of his related entities maintain offices at the same location.

40. OPKO also pays for use of a corporate jet owned by another Frost entity. OPKO has paid over \$1.23 million over the past three years for the use of the jet by Frost and other OPKO executives.

41. In November 2016, OPKO entered into a Pledge Agreement to contribute \$1 million over four years to fund the operations of the Frost Science Museum.

42. Frost and OPKO are tightly interlinked. The Company's most recent 10-K states that Frost is "essential to our business." In OPKO's quarterly report for the third quarter of 2018, the Company claims that if it loses Frost's "services or if his reputation was damaged for whatever reason, including, but not limited to, as a result of the allegations underlying various SEC and stockholder lawsuits against the Company and Dr. Frost, [the Company's] relationships with acquisition and investment targets, joint ventures, customers and investors, as well as [OPKO's] ability to obtain additional funding on acceptable terms, or at all, may suffer and could cause a material adverse impact on [OPKO's] operations, financial condition, and the value of [OPKO] Common Stock."

The SEC Charges Frost and OPKO with Violating Securities Laws in Pump-and-Dump Schemes

43. The SEC on September 7, 2018 went public with its claims that OPKO and Frost participated in two pump-and-dump market manipulation

schemes involving Honig and Brauser and seven other individuals and nine additional entities. In connection with filing the SEC Action, the SEC issued SEC Litigation Release No. 24262, titled “SEC charges Microcap Fraudsters for Roles in Lucrative Market Manipulation Scheme,” which stated that Frost and the others “engaged in brazen market manipulation that advanced their financial interests while fleecing innocent investors and undermining the integrity of our securities markets.” The Litigation Release stated that “from 2013 to 2018, a group of prolific South Florida based microcap fraudsters lead by Honig manipulated the share price of the stock of three companies in classic pump-and-dump schemes.”

44. According to the SEC Action, Frost participated in two of the three schemes alleged, whereby Frost and his associated entities acquired large quantities of the issuer’s stock at steep discounts, and after securing a substantial ownership interest in the companies, engaged in illegal promotional activity and manipulative trading to artificially boost each issuer’s stock price and give the stocks the appearance of active trading volume. Frost and the other defendants would then dump their shares into the inflated market, reaping millions of dollars at the expense of unsuspecting investors.

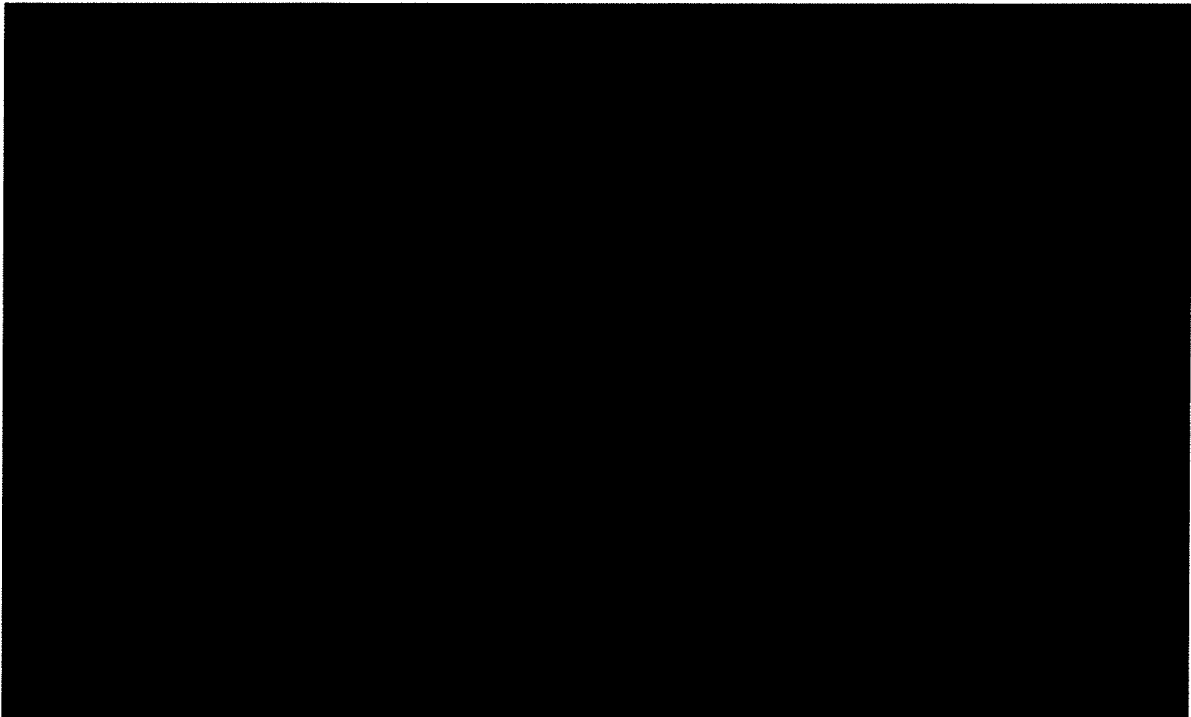
45. The SEC Action charged Frost and the other defendants with violating antifraud, beneficial ownership disclosure, and registration provisions of the federal securities laws and seeks monetary and equitable relief.

46. The SEC Action charged OPKO with aiding and abetting violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c), as well as aiding and abetting violations of Sections 17(a)(1) and (3) of the Securities Act of 1933 (“Securities Act”) by providing knowing and substantial assistance to Honig, Brauser, and others in their fraudulent course of business. The SEC Action also alleged OPKO violated Section 13(d) of the Exchange Act and Rule 13d-1(a) by failing to identify itself as part of a group with the other named defendants, who were each under an obligation to file true and accurate reports with respect to their ownership of the microcap securities and failed to do so.

47. Following the announcement of the SEC’s charges alleging fraud by both the Company and its Chairman and CEO on September 7, 2018, shares of OPKO fell 18%, from \$5.55 per share to \$4.58 per share before the NASDAQ halted trading in OPKO shares at 2:34 p.m. EDT. Trading was resumed one week later, on September 14th, and the shares fell another 15%, to \$3.90 per share. OPKO stock has not recovered. The shares currently trade at \$2.74 per share, representing more than \$1 billion in lost market capitalization.

Frost Used OPKO in the Biozone/Cocrystal Pump-and-Dump Scheme

48. Following the commencement of the SEC Action, beginning on September 27, 2018, Plaintiffs Gewirtz, Gewirtz Steibel, Davis, Pawlenko, and Breuninger demanded and subsequently obtained Company documents [REDACTED]



49. According to the SEC Action, the first pump-and-dump scheme began in late 2010, when Honig and two of his associates named in the SEC Action together purchased a 33% interest in a shell company that they intended to use to effectuate a transaction with a biotech firm that they could pump-and-dump. The SEC also alleged that in December 2010, Brauser and Frost also each purchased one-half of the remaining two-thirds of the shell company. Each of the purchases, according to the SEC, was effectuated through an entity to obscure Honig, Brauser, Frost, and their confederates' roles as purchasers.

50. A review of public records reveals that this shell company was International Surf Resorts, Inc. ("ISRI"), a publicly traded Nevada corporation.

51. On February 24, 2011, Frost and his associates caused Roberto Prego-Novo (“Prego-Novo”), who served as the Vice President, Latin America, of Teva Pharmaceutical Industries Limited from 2006 to 2010 and as the Vice President, Latin America, of IVAX from 2006 to 2008, to be appointed as ISRI’s sole director.

52. According to the complaint in the SEC Action, in late 2010 Honig, Brauser, and Frost approached BioZone’s management, including Brian Keller (“Keller”), BioZone’s Chief Scientific Officer (“CSO”), and BioZone’s then-CEO, proposing a reverse-merger through which then-private company BioZone, which was then in the business of manufacturing over-the-counter pharmaceuticals, would be merged into ISRI. Importantly, at the time BioZone and Keller were developing a formulation using patented “QuSomes” technology to be used in large-scale drug markets. Honig, Brauser, and Frost told Keller that they would raise \$8 to \$15 million dollars to pour into research and development (“R&D”) of QuSomes, and further promised Keller 6.65 million shares of the combined company.

53. Frost, Honig, and Brauser have a history of investing together. *Barron’s* would later report in November 2014 that Honig and Brauser were investors in OPKO and BioZone, and that:

Over the past few years, these two South Florida gents have invested alongside Frost in a couple of dozen micro-cap companies. . . Frost first invested with Brauser and Honig when they were running the Internet marketing company InterClick, which Yahoo (YHOO) acquired in 2011 for \$270 million. Their other ventures have ranged from mineral plays to biotech. As noted, they're all small."

54. Honig achieved a great deal of notoriety for his role at Venaxis, where he and John R. O'Rourke III ("O'Rourke"), with whom Honig shares an office, pumped up the price of Venaxis stock by rechristening the company "Riot Blockchain" near the height of the late-2017 cryptocurrency bubble before selling insider shares. As CNBC reported, this was not "the first time Honig has faced questions over his actions. In 2000, he was alleged to have committed stock manipulation. Honig was fined \$25,000 and suspended for 10 days, according to the Financial Industry Regulatory Authority. In 2003, he let his broker's license lapse." Indeed, *The Wall Street Journal* reported¹ that Honig "has scooped up shares in dozens of firms that sometimes morph into hot areas—vaping, solar energy, stem cells—and see a stock-price pop. Some have fizzled, raising the ire of other investors."

55. The mechanics of Honig's pump-and-dump schemes are a matter of public record. For example, in *United States v. Joseph Noel*, 14-cr-264 (N.D.

¹ Dave Michaels, "Ex-Teva Chairman, Blockchain Investor Accused of Pump-and-Dump Scheme", THE WALL STREET J. (Sep. 7, 2018), available online at: <https://www.wsj.com/articles/ex-teva-chairman-blockchain-investor-accused-of-pump-and-dump-scheme-1536351719>.

Cal.), the criminal defendant explained in his plea agreement that “Honig suggested that [they] do a reverse-merger to create a publicly traded company to take control of Allay Online’s assets and that [Noel] be CEO of the new company”:

Honig had the experience and resources to implement the reverse-merger. He proposed that [they] utilize PR Complete Holdings, Inc., a publicly held shell company that Honig controlled, and that is what [they] did. Honig’s attorneys drew up all of the relevant documents. In December 2009, the reverse-merger was implemented, creating a new public company called YesDTC Holdings, Inc. (“YesDTC”)

During 2010, I worked hard as CEO to make YesDTC a successful enterprise. However, I soon realized that it was not Honig’s priority to make YesDTC successful. Instead, I realized that Honig wanted to use promotions to drive up the price of YesDTC shares and then sell his shares. Honig introduced me to a David Zazoff who Honig said would promote YesDTC stock. Honig said that Zazoff was a “magic maker,” who could make the price of YesDTC stock rise through his services. Honig made it clear that I should not ask questions about how Zazoff achieved his success.

According to Noel’s plea agreement, Zazoff and Noel went on to pump the price of YesDTC stock through promotions before Noel, at Honig’s direction, dumped shares and compensated Zazoff for his promotion of YesDTC stock.

56. Indeed, in a short thesis entitled “Opko Health: the Placebo Effect” published in December 2013, Lakewood Capital Management (“Lakewood”) identified as cause for concern the extensive relationship between Frost and Honig and Brauser, whom they characterized as “two serial stock promoters that have

each been the subject of multiple lawsuits.” Among other reasons it claimed supported its short thesis, Lakewood also pointed to the “web of stock promotion” and the fact that there were only two sell-side entities covering OPKO, one of which was Frost’s investment bank, Ladenburg Thalmann.

57. Moreover, in an article published on sharesleuth.com (“sharesleuth”), Chris Carey (“Carey”) identified a number of authors, real and fictitious, who publish articles on sites such as Seeking Alpha in which Honig- and Frost- related stocks were touted. “All told,” Carey and his team “turned up nearly 600 bullish articles about Honig-related companies that fit the pattern of stealth promotional pieces.” The Sharesleuth piece identified not only Zazoff, who Carey and his team described as “an investor relations consultant and erstwhile stock promoter whose ties to Honig go back more than a decade” with extensive ties to O’Rourke, but also John H. Ford (“Ford”) and Samuel Rae (“Rae”), who were used to pump the value of other stocks related to OPKO, as discussed further herein. Carey’s sharesleuth article, which was published six months before the commencement of the SEC Action, also identified by name not only MabVax, but also other entities related to Honig, Frost, and/or Opko, including ChromaDex Corporation (“ChromaDex”), Senesco Technologies, Inc. (“Senesco”, since rebranded Sevion), and VBI Vaccines, Inc. (“VBI”).

58. Sharesleuth was not the first outlet to cover the dealings of Honig, Brauser, and Frost. Indeed, freelance journalist Teri Buhl (“Buhl”) has dedicated much of the coverage on her website, www.teribuhl.com, to their operations, once noting that Honig’s “crew of alleged bad actors – Team Honig – has been chronicled for years here at TERIBUHL.com and by Chris Carey at Sharesleuth and Bill Albert at *Barron’s*. It consists of biotech billionaire and philanthropist Philip Frost, his fellow co-investing partners Michael Brauser/John O’Rourke/Marc Groussman, John Ford – the promoter who wrote favorable analysis on stocks, priming them for the ‘pump’ of Honig’s ‘pump-and-dump’ – and Harvey Kesner, a deal lawyer from SIRF LLP linked to a number of Honig’s investments.”

59. On September 26, 2016, Honig commenced a suit against Buhl in the Southern District of New York captioned *Honig v. Buhl, et al.*, No. 1:16-cv-07477 (S.D.N.Y.), in which Honig prayed for, inter alia, an order requiring Buhl to make a public retraction of certain purportedly defamatory articles and granting preliminary and permanent injunctive relief to prevent defendants from continuing to publish or disseminate purportedly defamatory articles. Honig voluntarily dismissed his complaint once Buhl filed a letter request for a pre-motion conference to seek leave to move to dismiss based on the truth of the matters reported. By way of example, where Honig complained that the statement

“Investor Barry Honig Target of SEC MGT Capital Subpoena” was false and defamatory, Buhl referenced the subpoena to support her assertion that “Mr. Honig was a subject of a Securities and Exchange Commission (“SEC”) investigation and that 90% of the regulator’s questions pertained to Mr. Honig are fair and accurate reports of a September 14, 2016 SEC Subpoena to MGT Capital Investments. More specifically, the SEC s[ought] documents from MGT Capital concerning Barry Honig, seven companies Mr. Honig has invested with, and six individuals that Mr. Honig routinely invests with.”

60. According to documents publicly filed with the SEC, on February 28, 2011, ISRI entered into a securities purchase agreement to acquire BioZone and five other related companies pursuant to which the reverse-merger would be effectuated. BioZone would later disclose that “Frost acquired a portion of his [BioZone] shares in February and March, 2011 for approximately \$0.027 per share and Mr. Prego-Novio acquired his shares in March 2011 for approximately \$0.03 per share.” Frost, through Frost Gamma, also made loans to BioZone in the principal amount of \$400,000 which were secured by a first priority lien on particular BioZone receivables.

61. On May 16, 2011, BioZone née ISRI acquired the assets and assumed the liabilities of Aero Pharmaceuticals, Inc. (“Aero”) a Florida corporation, pursuant to an asset purchase agreement by and between BioZone, its wholly

owned subsidiary Baker Cummins Corp., and Aero. Pursuant to the asset purchase agreement, BioZone issued 8,331,396 shares of its restricted common stock to Aero. On September 21, 2011, BioZone issued an additional 13,914 shares to Aero due to the late filing of a registration statement. Frost, through Frost Gama, owned 46% of issued and outstanding Aero stock. Prego-Novo, through Olycra Trust, owned approximately 23% of issued and outstanding Aero stock. Frost beneficially owned approximately 9.2% of BioZone following the purchase of Aero by BioZone. Rubin beneficially owned less than 1% of BioZone following the purchase of Aero from BioZone as a result of his prior ownership of Aero shares. Hsiao beneficially owned approximately 12% of Aero's issued and outstanding common stock, and beneficially owned approximately 1.7% of BioZone following the purchase of Aero by BioZone.

62. In the asset purchase agreement filed with the SEC, the notice address for each of Aero, Baker Cummins Corp., and BioZone was listed as 4400 Biscayne Boulevard—*i.e.*, the former IVAX Building, at which OPKO and other Frost entities are presently headquartered and where Brauser maintains offices for numerous entities affiliated with Brauser and/or Honig. By way of example and not limitation, Three Kings of Queens, Inc. (“TKoQ”), of which Honig is the president and CEO and Brauser is executive director, is located at 4400 Biscayne Boulevard, Suite 850. Frost Gamma is also located at this precise suite. The

registered agent for TKoQ was formerly Suzanne Adams, current or former wife of Hunter Adams, who was previously identified by federal prosecutors as an associate of the Gambino crime family in New York and had been convicted for his role in a pump-and-dump scheme involving penny stocks. After the close of the merger, BioZone's address was thereafter located at 4400 Biscayne Boulevard.

63. The merger between ISRI and BioZone closed on June 30, 2011. Upon closing, Honig, Brauser, Frost, and other confederates controlled the significant majority of outstanding BioZone shares. Keller and Daniel Fisher ("Fisher") were named to BioZone's board, together with Prego-Novo. Keller was appointed president and CSO, Elliot Maza ("Maza") was installed as CEO, CFO, and secretary, Christian Oertle was named COO, and Fisher was named executive vice president. Keller and Maza were both named as defendants in the SEC Action. On November 22, 2012, Fisher sued BioZone, Frost, Brauser, Honig, Keller, Maza and others, for fraud, RICO, securities law violations, and numerous other claims based upon what Fisher called a pump-and-dump scheme to steal the company, and claiming that the defendants left Fisher without a promised role at BioZone and without the more than 6,000,000 BioZone shares that he had been promised. *See Fisher v. Honig, et al.*, No. 12-cv-03716 (N.D. Cal.). After a motion to dismiss Fisher's complaint was denied, *Fisher v. BioZone Pharma., Inc.*, 2013 WL 12144120 (N.D. Cal., Feb. 12, 2013), the case quickly settled with a \$2

million payment to Fisher. It is unclear which individual or group of individuals paid the \$2 million, directly or indirectly. BioZone stated that it did not make any payment to Fisher in the settlement.

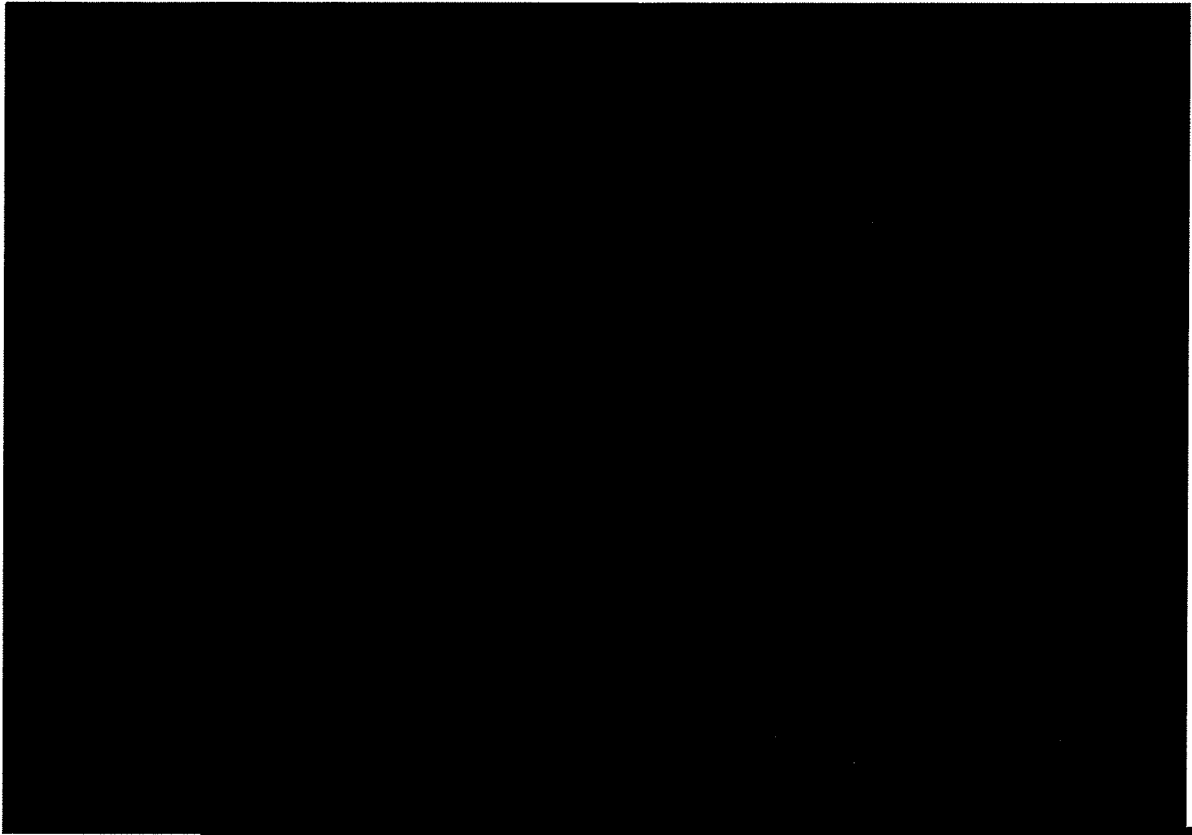
64. As alleged in the SEC Action, upon closing of the merger between ISRI and BioZone, a bank-creditor of BioZone served a notice of default because it had declined to approve the merger. Maza paid off the line of credit extended by the bank, but in so doing had to issue short-term, high-interest convertible BioZone notes. In SEC filings, BioZone described both a convertible promissory note issued to Frost in June 2012, pursuant to which he exercised warrants to obtain a substantial number of BioZone shares, as well as a 10% unsecured convertible promissory note with a principal amount of \$500,000, due on March 22, 2012 and warrant to purchase certain BioZone securities “to an accredited investor in reliance upon [an] exemption from registration”. BioZone later disclosed that it had incurred an increase in interest expenses relating to “derivative liability of the warrants issued in connection with the September 2011 Notes warrants of \$521,547 and the issuance of \$56,250 worth of shares to the September 2011 Notes holders in an exchange for the extension of the notes maturity[.]”

65. This is just one instance of the adverse impact of Maza’s stewardship on BioZone, in which Frost would later cause the Company to invest. Indeed, the SEC alleged that after the merger into ISRI, Maza and Keller acted at the direction

of Honig, Frost, and the other schemers to benefit themselves at the expense of BioZone, with Maza specifically seeking approval from Honig and Brauser for every business decision. For example, the SEC pointed to an instance where Honig and Brauser directed Maza to use BioZone funds to pay rent for an unrelated business owned by Honig and Brauser. By way of further example, as alleged by the SEC, “Maza and Keller signed Company A’s public filings, in which they knowingly or recklessly omitted to disclose the share ownership as a group of Honig, Brauser, Frost, [and others], or the size of each of their holdings.” At the same time, however, they knew that this group controlled BioZone; indeed, in a February 12, 2012 email to a BioZone college, Keller wrote that “[t]he real power is with Barry Honig and Mike Brauser. Elliot [Maza] is just a mouth piece.”

66.





67.



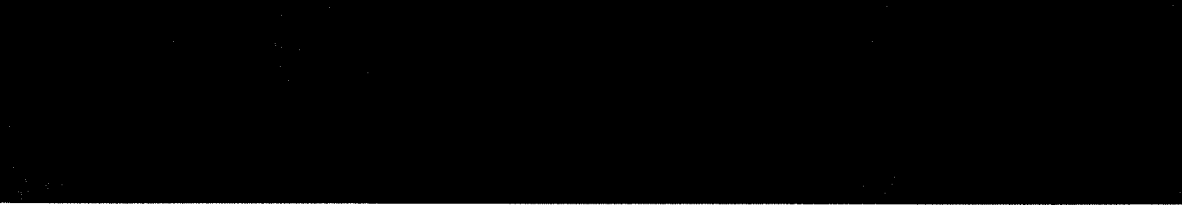
68.



69. The SEC Action alleges that Frost and Honig failed to invest the promised funds for BioZone's research and development, and that by the middle of 2012 BioZone was forced to abandon all of its research and development. Frost and his co-conspirators limited their investment in BioZone to keep the business operating at a minimal level and to fund the generous compensation they were paying to the figurehead officers of BioZone, including Maza.

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71. The BioZone pump-and-dump produced a third litigation as well. Lee Michael Pederson (“Pederson”), a former attorney for BioZone sued OPKO, Frost, Cocrystal, and Brian Keller in 2017, alleging that Frost and his group engaged in a pump-and-dump scheme with Biozone. *See Pederson v. Frost, et al.*, No. 17-cv-5580 (D. Minn.). Pederson is a United States patent attorney, is a member of the Minnesota Bar, and has a master’s degree in cell and molecular biology. Pederson, as BioZone’s attorney, attended the meetings with Frost, Brauser, Honig, and others which were organized by Keller in February 2011. Pederson confirms that Frost and his associates promised at those meetings that they would provide \$8 million to \$15 million in exchange for an ownership stake, but, according to Pederson, Frost and his group never delivered the promised funding.

72. The financings by OPKO and other financings inflated Honig, Brauser, and Frost’s equity stake in BioZone. As detailed in the SEC Complaint, by April 1, 2013, Honig, Frost, Brauser, Maza, Keller, and Prego-Novo held 44,818,312 shares, equal to nearly 71% of outstanding BioZone stock. Maza and Keller, however, continued to omit from BioZone’s public filings the fact that this ownership group controlled BioZone.

73. The SEC Action further alleges that in August and September of 2013, the market for BioZone common stock was effectively non-existent. To drive interest in BioZone's common stock and pump the stock, Honig instructed one of his associates to contact Ford, a seasoned stock promoter, to instruct Ford to write a favorable article about BioZone highlighting Frost's involvement in BioZone and the "rosy prospects of [Biozone's] R&D." Prior to the release of the article, in order to give the appearance that there was an active market for BioZone stock, between September 23 and 26, 2013, Honig and his associates engaged in multiple coordinated trades.

74. On September 26, 2013, Ford published an article on *Seeking Alpha* titled "OPKO and its Billionaire CEO Invested in Biozone" which painted a bullish outlook for Biozone, stating:

I recently established a position in BioZone Pharmaceuticals (BIOZONE.OB) based on the company's undervaluation, its patented QuSomes technology, and the fact that Opko . . . and Dr. Phillip Frost have taken a 25% position in BioZone. (All of my Dr. Frost investments have provided large returns.) BioZone's strong patent portfolio, multibillion-dollar addressable markets, and current revenue stream, make it an ideal asymmetrical trade, with large upside potential, and limited downside risk.

75. The SEC Action alleges that Ford was paid for his favorable article with 180,000 BioZone shares at the below market price of \$0.40 per share.

76. According to the SEC Action, the market immediately reacted to the *Seeking Alpha* article, with BioZone's trading volume sky-rocketing from approximately 1,100 shares on September 25, 2013 to over 6 million shares on October 2, 2013 and the price of BioZone shares increasing from an average of \$0.48 during August 2013 to an intraday price of \$0.97 on October 17, 2013.

77. The SEC Action alleges that between October 1 and 4, 2013, Frost sold 1,987,991 BioZone shares for proceeds of approximately \$1.1 million. As of December 31, 2013, OPKO owned approximately 16% of BioZone's equity.

78. Effective January 2, 2014 BioZone merged with Cocrystal Discovery, Inc. ("Old Cocrystal"), a privately held entity which OPKO invested as early as September 2009. On May 7, 2009, Frost proposed a \$5 million transaction with Old Cocrystal, whereby OPKO would receive 34.47% of Old Cocrystal and exclusive license to the Old Cocrystal technology in the field of ophthalmology. Frost already had personally invested \$5 million in Old Cocrystal through the Frost Group and was in an agreement to invest another \$5 million through the Frost Group as well. Rather than spend more of his own money, Frost decided to transfer the duty to invest the second \$5 million from the Frost Group to OPKO. Frost, Rubin, and Hsiao all served on the board of Old Cocrystal. [REDACTED]

[REDACTED]

Upon the 2014 completion of the merger between BioZone and Old Cocrystal, the merged company was renamed Cocrystal Pharma, Inc., with 16.3% owned by OPKO, 30% by Frost, 1.7% by Hsiao, and 0.2% by Rubin, and with Frost, Hsiao, and Rubin serving as “new” Cocrystal directors.

79. Following the BioZone/Cocrystal merger, on January 16, 2014, OPKO invested an additional \$500,000 in the company as part of a \$2.75 million private placement and received 1 million shares of common stock and 1 million 10-year warrants exercisable at \$0.50 per share. As of March 2015, the Company had an 8% ownership interest in BioZone/Cocrystal.

80. [REDACTED]

[REDACTED]

81. [REDACTED]

[REDACTED]

82.

83. As a result of these purchases, according to OPKO's Form 10-K for the period ending December 31, 2017, OPKO owns 9% of BioZone/Cocrystal's equity. Frost, through Frost Gamma, separately owns 12.2%, Hsiao owns 1%, and Rubin is also a stockholder of BioZone/Cocrystal equity, according to the Company's internal documents.

84. The SEC alleged that Frost, Honig, Brauser, and their confederates realized proceeds of approximately \$9,260,000 through the BioZone pump-and-dump scheme.

Frost Used OPKO in the MabVax Pump-and-Dump Scheme

85. According to the SEC Action, Honig in early 2014 approached MabVax, which was looking for funding for its research and development efforts

and proposed a reverse merger into a publicly traded shell company identified by Honig. After the merger was completed, MabVax conducted two capital raises in March and April of 2015, through which Frost, Frost Gamma, and OPKO acquired an interest in MabVax through Series D and Series E private placements.

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89. According to MabVax's Schedule 14A dated July 27, 2015, as of July 24, 2015, Frost and entities that he controlled owned 1,333,333 shares of MabVax common stock, or 5.15% of the total outstanding shares, and warrants to purchase 666,667 additional shares.

90. Similarly, according to OPKO's Form 10-Q for the quarterly period ended June 30, 2015, OPKO invested \$2.5 million in exchange for 33,333 shares of MabVax's Series E Convertible Preferred Stock and warrants to purchase 1,666,667 shares of MabVax common stock. In connection with OPKO's investment in the MabVax private placement, Rubin was appointed as an advisor to MabVax and OPKO received the right to designate two board members at MabVax. One of the goals of the private placement financing was to generate market interest in MabVax stock in preparation for the planned pump-and-dump.

91. On April 8, 2015, one of the defendants in the SEC Action published an article on *Seeking Alpha* under the pseudonym “Wall Street Advisors” titled “OPKO Spots Another Overlooked Opportunity in MabVax Therapeutics,” which stated in part:

OPKO Health has a strong track record of identifying undervalued companies in which to invest.

OPKO most recently announced a strategic investment in MabVax Therapeutics which appears to present another such investment opportunity.

MabVax has a pipeline consisting of two Phase II cancer vaccines, a novel antibody discovery platform, an existing relationship with Juno Therapeutics, and an enticing value proposition.

OPKO Health (NYSEMKT: OPK) has a history of discerning overlooked assets in which to make strategic investments prior to value creation. OPKO stockholders, in turn, get exposure to not only OPKO’s core assets, but also to a bevy of smaller, high growth healthcare and biotech assets. OPKO has proven quite adept at then being able to monetize these investments later in their growth cycle, translating to meaningful value creation for OPKO stockholders. Its path from \$2 per share when it first went public to its current \$14.30 share price is filled with examples of such investments. In this article, I shall take a look at OPKO’s most recent strategic investment in MabVax Therapeutics (OTCPK:MBVX), a cancer immunotherapy company. MabVax presents a compelling investment opportunity at its current market cap relative to its pipeline.

92. According to the SEC Action, the private placements and *Seeking Alpha* article had the intended effect of generating interest in MabVax’s common stock. MabVax’s share price went from a closing price of \$1.91 on April 1, 2015 to a closing price of \$4.30 on April 9, 2015. Certain of Frost’s co-conspirators

sold MabVax shares into the market from April 6 to June 30, 2015 for total proceeds of over \$5.6 million.

93. The MabVax pump-and-dump continued into June and July of 2015. Ford published an article on his blog titled “MabVax: Near-Term Catalysts Could Push Shares from \$2 to over \$5,” which made material misrepresentations about potential licensing deals and development of certain drugs. As a result of Ford’s article, trading volume in MabVax increased by over 300% and certain defendants in the SEC Action garnered another \$2.7 million in ill-gotten gains.

94. The SEC Action further alleges that on April 10, 2015, February 8, 2016, February 2, 2017, and January 18, 2018, Frost and Frost Gamma improperly filed a Schedule 13G indicating that they were passive investors in MabVax. According to the SEC Action, Frost and Frost Gamma acquired a 6.86% ownership position in MabVax with the intention of controlling MabVax’s management, such that Frost and Frost Gamma were obligated to file a Schedule 13D. Frost also failed to file a 13D for OPKO, in which it should have disclosed its holdings in MabVax and that it was a member of a group with Frost, Frost Gamma, and their co-conspirators.

95. According to OPKO’s filings with the SEC, after the April 2015 private placement, OPKO invested an additional \$375,000 in July 2015 in

exchange for 340,909 shares of MabVax common stock valued at \$1.10 per share and 170,454 warrants to purchase shares of MabVax common stock.


96.



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99. In July 2017, OPKO invested an additional \$100,000 in exchange for 152,143 shares of MabVax common stock.

100. As of December 31, 2017, OPKO held a 4% ownership position in MabVax 

OPKO's Exposure to Further Injury

101. By September 10, 2018, the Monday after the SEC Action was filed, the first press release appeared announcing an investigation of OPKO's behavior by a private law firm seeking to bring a case against OPKO alleging securities fraud violations.

102. On September 10, 2018, *Barron's* published an article titled "SEC Charges Against Phillip Frost Might Just Be the Tip of the Iceberg" that stated, in part, the following:

The U.S. Securities and Exchange Commission filed stock fraud charges late last week against billionaire drug entrepreneur Phillip Frost and a group of associates, accusing them of making \$27 million in pump-and-dump stock schemes. The civil suit filed in Manhattan's federal district court alleges that Frost and nine others manipulated micro-cap stocks over the last five years, aided and abetted by Frost's investment trust and a Miami-based drug development company where he is board chairman and chief executive, OPKO Health. . . .

The stock fell 17% Friday before trading was halted, and trading remained halted Monday afternoon with shares at \$4.58.

The SEC Action alleges that Frost participated in three stock manipulation schemes led by Barry Honig, a 47-year old investor in Boca Raton, Fla., whose penny-stock collaborations with the billionaire Frost were examined by *Barron's* in 2014. Honig was "the primary strategist" of the three schemes, according to the complaint, which gained control of three tiny public companies — not named in the complaint — and then paid promoters to write favorable and misleading articles on the Seeking Alpha website. Honig then allegedly arranged manipulative trades — including some by Honig's charitable foundation and Frost's investment trust — to get the stocks

to a level where the schemers could dump them on the public, according to the SEC Action.

103. On September 13, 2018, *The Motley Fool* published an article titled “The SEC Takes Aim at OPKO Health’s Phillip Frost” that stated, in part, the following:

On Sept. 7, the Nasdaq halted trading in OPKO Health (NASDAQ: OPK) after the Securities and Exchange Commission (SEC) levied market manipulation charges against it and its billionaire CEO, Phillip Frost. The stock has remained halted ever since and that’s increasing concern that OPKO Health investors will suffer significant losses. Is this news as bad as it seems? . . .

A big blow

Frost has been considered one of the savviest healthcare entrepreneurs on the planet. While serving as head of dermatology for Mount Sinai Medical Center in Miami in the early 1970s, he acquired nearly bankrupt Key Pharmaceuticals in 1972. Over the next 14 years, he helped transform Key Pharmaceuticals into a major asthma treatment player that was acquired for nearly \$800 million by Schering-Plough in 1986.

In 1987, Frost followed up that success by combining three small-cap healthcare companies to form Ivax Corporation, a company he turned into a major generic drugmaker. Teva Pharmaceutical (NYSE: TEVA) acquired Ivax for roughly \$7.5 billion in 2006. Frost was appointed Teva’s vice chairman following the deal, and in 2010 he became Teva’s chairman.

Despite his responsibilities at Teva, Frost remained an active dealmaker. He took ownership stakes in various small-cap companies, and after he left Teva in 2015, he became OPKO Health’s CEO. At OPKO, he’s acquired several companies to build up the company’s drug pipeline and expand it into new markets. For instance, OPKO’s acquisition of Cytochroma landed Rayaldee, a vitamin D prohormone that won FDA approval in 2016, and its

acquisition of BioReference Labs in 2015 gave it about \$1 billion in specialty lab services revenue. OPKO Health has also amassed equity stakes in various companies, including Arno Therapeutics, Cocrystal Pharma, and RXi Pharmaceuticals. Overall, OPKO discloses ownership in 12 small-cap companies in its 2017 10-K SEC filing that are collectively valued at \$40.6 million as of Dec. 31.

Unfortunately, based on the SEC's complaint, it appears Frost's wheeling and-dealing style may have landed him and OPKO Health in hot water that significantly tarnishes his and his company's reputation.

What now?

Up until now, the fact that Frost has been involved so heavily in OPKO Health as CEO and is its largest stockholder has helped support the company's share price. Given the black eye associated with the SEC charges against him, investors are unlikely to pay a Frost-premium to own OPKO Health shares from here.

If that's the case, then OPKO Health is going to need some big wins. Unfortunately, OPKO Health's acquisitions haven't panned out so far. It's been slow going for Rayaldee, and BioReference Labs' revenue is declining. Also, a chemotherapy-induced nausea and vomiting drug, Varubi, that it licensed to Tesaro (NASDAQ: TSRO) and that won FDA approval in 2015 has been a commercial dud. Earlier this year, Tesaro walked away from Varubi after it had to pull an IV formulation off the market following reports of anaphylaxis. Overall, OPKO reported a \$6.2 million net loss on \$263.7 million in sales, down 10% year over year, in Q2.

The lackluster financial performance does little to offset the overhang now associated with the SEC's "continuing investigation." The situation is likely to be a major distraction for the company, and the possibility of lawsuits adds even more uncertainty.

Frost First Denies the SEC's Allegations and then Quickly Settles

104. OPKO and Frost responded to the filing of the SEC Action by criticizing the SEC's conduct and denying the allegations.

105. Instead of taking time to consider and investigate the claims alleged in the SEC Action, the same day that the SEC Action was filed, OPKO reflexively issued a press release to criticize the SEC for “fail[ing] to provide notice of its intent to sue prior to filing the complaint,” for the SEC’s purported failure to “follow[] its own standard procedures,” and for “serious factual inaccuracies” in the SEC’s complaint.

106. Frost on September 14, 2018 released a statement saying that “I was stunned by the SEC’s lawsuit and deny the allegations it contains against me. . . . Nothing is more important to me than my integrity I intend to fight the charges that have been brought against me and will fight to clear my name.”

107. Yet just over three months after the SEC Action was filed and after Frost vowed to fight the charges and clear his name, Frost and OPKO reached an expeditious settlement with the SEC.

108. Specifically, on December 27, 2018, the Company announced it had entered into a settlement with the SEC (subject to court approval), wherein the Company would pay a \$100,000 civil penalty, agree to a permanent injunction from violating Section 13D of the Exchange Act, and agree to certain corporate governance reforms relating to compliance with Section 13D’s reporting requirements. Frost, who earned proceeds of \$1.085 million from the pump-and-dump scheme, personally agreed to pay just over \$5.5 million, consisting of

disgorgement of \$433,181.06 in trading profits, \$90,206.46 in interest, and a \$5 million civil penalty. Frost also agreed to a permanent injunction from violating Section 13D of the Exchange Act and a permanent injunction from trading in penny stocks or participating in any penny stock offering, though he is permitted to “mak[e] recommendations for consideration by management or the Board of [OPKO] regarding OPKO’s current or future investments.” The Court in the SEC Action approved the settlement on January 10, 2019.

109. [REDACTED]

[REDACTED] Yet the Company faces significant exposure despite the settlement of the SEC Action.

110. First, OPKO and various insiders for which OPKO is saddled with advancement and indemnification obligations are defendants in multiple stockholder class actions alleging securities fraud under Section 10(b) and 20(a) of the Exchange Act and Rule 10(b)(5). *See, e.g., Steinberg v. OPKO Health, Inc.*, No. 18-cv-23786 (S.D. Fla.); *In re OPKO Health, Inc. Securities Litig.*, No. 19-cv-20502 (S.D. Fla.). All of these cases are based on the allegations of the SEC Action.

111. Second, settlement of the SEC Action did not end the prospect of Frost and/or OPKO being criminally charged for their participation in the pump-

and-dump schemes. On September 11, 2018, Hindenburg Investment Research published an article on *Seeking Alpha* in an article titled “OPKO Health: If These SEC Charges Were Surprising Then You Haven’t Been Paying Attention,” which stated that “[w]e anticipate that criminal charges could follow given the reported FBI investigation that parallels the SEC charges.”

Other Frost Transactions Involving OPKO Have Badges of the Schemes Alleged in the SEC Action

112. Biozone and MabVax were not the only start-up investments in which OPKO and the Defendants invested during the 2013-2018 period. Public filings for some of those other investments reveal strong similarities to the offending schemes. Most notably, OPKO’s investment in VBI.

113. In early 2015, Frost approached leadership at VBI looking to orchestrate a merger with SciVac Ltd. (“SciVac”). According to a Form 10-K filed by OPKO for the fiscal year ending on December 31, 2015, OPKO acquired its 50% ownership in SciVac in June of 2012.

114. By late April 2015, members of VBI’s board and management had met with Frost, Rubin, and Curtis Lockshin (“Lockshin”) concerning the merger. Both Rubin and Lockshin served on the board of SciVac and were involved in various other Frost companies. Frost and others pitched VBI on the idea that merging would provide access to the funds and personnel associated with SciVac.

115. In the run up to the SciVac and VBI merger, Honig and Brauser acquired shares of SciVac. According to SEC form 13Gs filed by SciVac in July 2015, Honig beneficially owned 72,870,480 shares of SciVac stock, a 9.6% ownership stake in the company, and Brauser beneficially owned 61,183,738 shares, an 8.09% ownership stake in the company.

116. On July 9, 2015, SciVac “completed a reverse takeover transaction.” OPKO’s ownership in the new company, which kept the SciVac name, decreased to 24.5%.

117. On October 26, 2015, the SciVac/VBI merger was publicly announced. Following the merger, OPKO owned roughly 6.6 million shares, a 16.6% ownership stake in the new company, which kept the VBI name.

118. Following the initial announcement of the merger, there were several coordinated campaigns to boost the stock price of VBI. Many were written by the same individuals across various platforms. The first example of this was a paid article posted on BiotechStocks.com titled “A Merger Involving Two Pioneering Biotech Titans Just Happened & It Doesn’t End There!” The article pointed to the involvement of Frost and his prior successes. Biotechstocks.com was paid \$30,000 for the “visual sponsorship on BiotechStock.com and for visual placement of VBIV within written materials.”

119. Further articles began appearing in July 2016. All the articles encouraged bullish perspectives for VBI, in part based on Frost and OPKO's involvement. Rae posted twenty-six (26) separate articles across five different websites. Mark Holder published five articles across two different websites. Christopher Malcolm published six articles across four websites. All three of these authors also posted similar articles regarding the prospects of MabVax, one of the companies implicated in the SEC's complaint.

120. OPKO's investment in ChomaDex follows a similar pattern and has the potential to cause further harm to OPKO. In this regard, on February 16, 2012, OPKO announced that it had licensed the use of all of ChomaDex's new product offerings and health care technologies for distribution and business development throughout all of Latin America. Frost has been a major investor in ChromaDex since at least 2010. As of May 20, 2010, Frost was the owner of about 14.3 million shares, roughly 20% of the company's equity. Opko made a \$1,000,000 investment in ChromaDex in February 2012 in exchange for 1,333,333 shares of ChromaDex, as a participant in a private placement worth \$3.7 million covering 4,993,329 ChromaDex shares in which Frost Gamma, Hsiao, and Lerner all participated. Following the investment, the Company owned 1.5% of ChromaDex and Frost Gamma owned approximately 16% of ChromaDex. Hsiao's Hsu Gamma owned approximately 1% of ChromaDex at the time of the investment and

is a current stockholder of ChromaDex. [REDACTED]

[REDACTED] As of December 31, 2017, Opko held an approximate 0.5% beneficial ownership interest in ChromaDex, [REDACTED]

[REDACTED]
121.

122. ChromaDex was, at the time, affiliated with both Honig and Brauser, who were appointed to the ChromaDex board of directors following its approval of a resolution on October 14, 2011 to expand the size of the ChromaDex board from seven to ten directors. Honig and Brauser served as co-chairmen; in proxy filings made with the SEC, ChromaDex disclosed that this was ostensibly because its nominating committee considered the “past experience of Mr. Brauser and Mr. Honig, which include serving as co-chairmen of the board of directors of another

public company and extensive business and management expertise in emerging growth companies.”

123. ChromaDex was also the subject of promotional material touting Frost’s involvement. By way of example, in a December 21, 2011 article published on SmallcapNetwork.com, Frost’s purchase of approximately 20% was touted as a reason to invest in ChromaDex:

While Dr. Phillip Frost is not as prominent as a Warren Buffett (BRK-A) or a David Einhorn (GLRE), this presents a huge opportunity to investors. When an investment is made by a Buffett or an Einhorn, many times the stock will rise sharply. Dr. Phillip Frost, on the other hand, has been called a “hidden star” in investing. “Quiet money” is another phrase that comes to mind, in the most complimentary meaning of it.

SmallCap Network repeatedly disclosed that it had been compensated by ChromaDex for running such promotional articles. Ford also wrote Seeking Alpha articles regarding ChromaDex including “Could ChromaDex’s Niagen Reverse The Aging Process? Possibly” and “Opko’s Billionaire CEO Invested In ChromaDex”.

124. Frost has also caused OPKO to invest in Sevion Therapeutics, Inc. (“Sevion”), in which other entities tied to the Frost, Honig, and Brauser pump-and-dump schemes have invested. As such, it has the potential to cause harm to OPKO too.

125. Specifically, OPKO's investment in Sevion began in November 2010, when the Company and Frost Gamma made an investment in Fabrus, Inc. ("Fabrus"). In exchange for the investment, the Company acquired approximately 13% of Fabrus on a fully diluted basis, [REDACTED]

[REDACTED] OPKO's investment was part of a \$2.1 million financing for Fabrus. Notably, the founder and CEO of Fabrus was an assistant professor at Scripps during the time when Lerner was the President of Scripps. [REDACTED]

126. In October 2013, OPKO made loans totaling \$0.1 million to Fabrus, which were due and payable in January 2014, and accrued interest at a rate of 7% per annum. No payments, however, have been made to date. On May 16, 2014, Senesco acquired Fabrus pursuant to an agreement and plan of merger. On September 29, 2014, Senesco changed its name to Sevion.

127. In July 2015, OPKO made an additional \$500 thousand investment in a private placement transaction with Sevion pursuant to which OPKO acquired 66,667 shares of Series C Convertible Preferred Stock convertible into 666,667 shares of common stock and warrants to purchase 333,333 shares of common stock. In November 2016, OPKO made a \$150,000 loan to Sevion in exchange for a promissory note convertible into 1.5 million shares of common stock and in February 2017, OPKO entered into an agreement with Sevion pursuant to which it

delivered \$250,000 cash to Sevion in exchange for a promissory note convertible into 2.5 million shares of common stock. The loan and promissory note were converted into 4.1 million shares of Sevion common stock in August 2017.

128. In July 2017, OPKO invested an additional \$1.5 million in Sevion for 10,000,000 shares of Sevion common stock. In September 2017, the Company converted 66,667 shares of Sevion Series C Preferred Stock into 1,250,006 shares of common stock.


129. GRQ Consultants, Inc. (“GRQ”) and Grander Holdings, Inc. (“Grander”), both of which were named as defendants in the SEC Action, have transacted in Sevion securities. Honig has reported as the beneficial owner of shares held by GRQ, and Brauser has reported as the beneficial owner of shares held by Grander. Both Honig and Grander have reported as beneficial owners of shares held by Marlin Capital Investments, LLC (“Marlin”), and have filed forms with the SEC indicating that “[t]he business address for Marlin . . . is 4400 Biscayne Boulevard, Suite 850, Miami, FL 33137”: *i.e.*, the exact same address as Frost Gamma, located in the former IVAX Building at which Opko and numerous other Honig, Brauser, and Frost entities have operated. Also located at this precise address is Brauser’s Birchtree, which has also transacted in Sevion shares of which Brauser has claimed beneficial ownership. Both Honig and Brauser registered shares through short-form statements on Schedule 13G pursuant to 17 C.F.R.

240.13d-1(c), indicating thereby that they did not acquire “the securities with any purpose, or with the effect, of changing or influencing the control of [Sevion], or in connection with or as a participant in any transaction having that purpose or effect”.

130. Rubin has also served as a director and audit committee member at Sevion.

131.




132. On May 31, 2017, Sevion entered into an agreement to undergo a reverse-merger with Eloxx Pharmaceuticals, Ltd. in which the Company had previously invested at least \$1.5 million for 99,915 Preferred C Shares. The transaction was consummated on December 19, 2017, after which Sevion renamed itself Eloxx Pharmaceuticals, Inc. (“Eloxx”). Upon the completion of the transaction, Eloxx effected a 1-for-20 reverse stock split, and OPKO converted the Eloxx Preferred C Shares into 495,126 shares of common stock on a post-split basis. As of December 20, 2017, OPKO held a 4.73% beneficial ownership interest in Eloxx,  In connection with the

merger, Sevion abandoned its own business plan and adopted that of Eloxx. In other words, Sevion acted as a shell and Eloxx—per the Honig blueprint—is now primed for a pump-and-dump, and to potentially cause more harm to OPKO.

OPKO's Audit Committee Ignored Red Flags, Was Not Independent, and Violated Its Charter

133. 

From at least 2011 to January 23, 2017, the Audit Committee consisted of Pfenniger, Paganelli, and Baron. From February 9, 2017 to the present, the Audit Committee consists of Pfenniger, Paganelli, and Krasno. Pfenniger was the Chairman at all relevant times.

134. According to OPKO's SEC filings during this period, the OPKO Audit Committee is tasked with reviewing and approving any related party transactions. Specifically, according to OPKO's 2014 Annual Proxy Statement, OPKO has:

... adopted a written statement of policy with respect to related party transactions, which is administered by our Audit Committee. Under our related party transaction policy, a "Related Party Transaction" is any transaction, arrangement, or relationship (or any series of similar transactions, arrangements, or relationships) in which the Company or any of our subsidiaries was, is or will be a participant and the amount exceeds \$100,000 and in which any Related Person had, has or

will have a direct or indirect material interest. A "Related Person" is any of our executive officers, directors or director nominees, any stockholder beneficially owning in excess of 5% of our stock or securities exchangeable for our stock, any immediate family member of any of the foregoing persons, and any firm, corporation, or other entity in which any of the foregoing persons is employed, is a partner or principal or in a similar position, or in which such person has a 5% or greater beneficial ownership interest in such entity.

It is the Company's policy to enter into or ratify Related Party Transactions only when the Audit Committee determines that the Related Party Transaction in question is in, or is not inconsistent with, the best interests of the Company. In making this determination, the Audit Committee may take into account, among other factors it deems appropriate, whether the Related Party Transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the Related Person's interest in the transaction.

135. 

136. OPKO's very formation required help from an individual, Franklin N. Wolf ("Wolf"), who was barred for life from the securities industry. As discussed above, OPKO was formed just after a group of investors bought a majority of shares of outstanding eXegenics stock. This group was led by the Frost Group and New Valley LLC, which is owned by Vector Group Ltd ("Vector"). Frost controls the Frost Group and is the largest stockholder of Vector. The investor group also included, however, Wolf and his wife Marie V. Wolf, as well as Harter Financial,

Inc., formerly known as Wolf Financial Group, which owns all the capital stock of F.N. Wolf & Co., Inc. ("F.N. Wolf"). F.N. Wolf was fined \$500,000 in 1994 for penny stock sales violations. In January, the SEC barred Wolf from the securities industry and ordered him to pay \$550,000 to settle penny stock fraud charges. Two months later, the National Association of Securities Dealers Inc. also banned Wolf, fined him \$250,000, and ordered him to pay \$7.9 million in restitution. As discussed in the December 27, 2006 eXegenics proxy solicitation, Wolf made the introduction between Baron and Paganelli, on the one hand, and Frost, on the other hand, which led to the formation of OPKO.

137. In other words, Frost's investor group included an individual barred for the securities industry for penny stock fraud, as well as that individual's company, which wholly owned a securities firm implicated in numerous penny stock frauds. From the Company's inception, OPKO directors were on notice that Frost transacts business with questionable individuals as two of OPKO directors, Baron and Paganelli, knew or should have known about Wolf's past.

138. The *Fisher* lawsuit in 2012 first alleged in detail that Frost, Honig, and Brauser had engineered a pump-and-dump scheme at BioZone, which allegations would later be repeated in the SEC Action. Fisher's complaint also alleged that Frost, Honig, and Brauser were also co-investors in numerous

investments (including ChromaDex) and lists a 10-year pattern of stock schemes by Honig and Brauser apart from BioZone.

139. Then, on December 1, 2014, *Barron's* published an article titled "Stockpicker's Blues," which should have been another red flag. The article detailed Frost, Brauser, and Honig's investment in BioZone/Cocrystal beginning with the formation of Old Cocrystal in 2008. In conducting his research for the article, the reporter from *Barron's* interviewed both Honig and Brauser, who were characterized as "two South Florida gents [who] have invested alongside Frost in a couple of dozen micro-cap companies." *Barron's* highlighted what was already a tight business relationship between Frost, Honig, and Brauser, noting that Brauser views Frost as a mentor, that Brauser and Frost (and OPKO) shared the same Biscayne Boulevard address in Miami, and Brauser's contention that Frost, Honig, and Brauser invested in a lot of the same deals because they ran "in the same circles." The *Barron's* author observed that "I don't know about you, but I find myself wondering what all these giants of research and industry are doing in the penny stock market." He also drew attention to the involvement of Honig and Brauser at BioZone, noting that "[c]ontroversy has occasionally followed these fellows' deals" and that "[c]ompanies that come public through reverse-mergers tend to work out poorly for everyone except the insiders".

140. The Board and Audit Committee would also have been aware of other Frost entanglements with unsavory promoters. [REDACTED]

Before that acquisition closed, *Barron's* reported that BioReference had been funded by "a remarkable succession of financial bogeymen," including a Genovese crime family-associated broker, a convicted stock swindler, and one of the largest Ponzi schemers of the 1990s. See *Barron's*, "Two Risky Health-Care Companies Become One," June 20, 2015; *Barron's*, "There Will Be Blood," May 21, 2011.

141. Another red flag was a November 8, 2016 blog post on www.teribuhl.com titled "California DOJ Investigating Honig and The Frost Group," wherein she reported that the Federal Bureau of Investigation and the California Department of Justice were investigating Frost and Honig for their roles in the BioZone pump-and-dump scheme. According to the article, the FBI investigation had been ongoing for three years.

142. And yet another red flag was the *Pederson* lawsuit, which provided independent corroboration of the pump-and-dump scheme at BioZone.

143. [REDACTED]

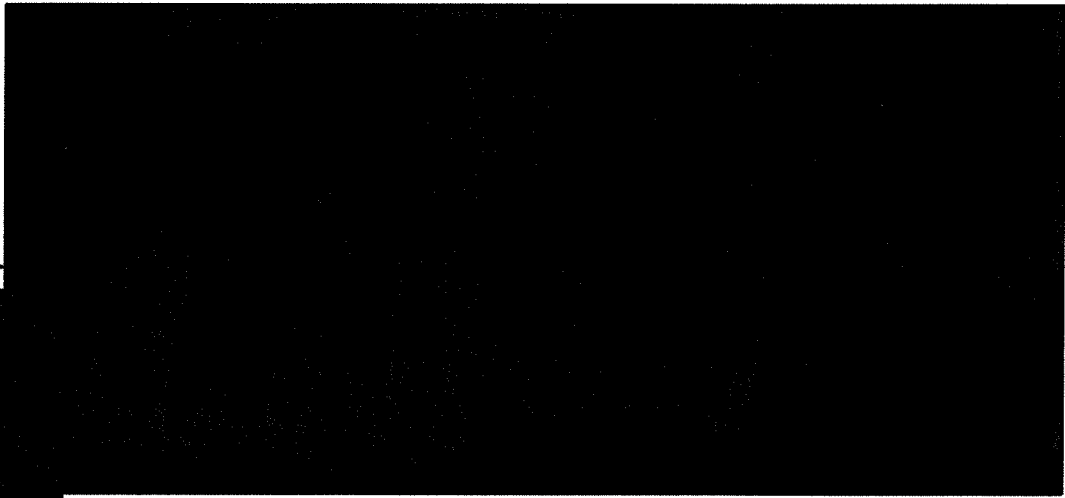


Notably, the Related Party Transaction Policy

(“Policy”) contained the following procedures:

- a. The Committee will review the material facts of all Related Party Transactions that require the Committee’s approval and either approve or disapprove of the entry into the Related Party Transaction, subject to the exceptions described below.
- b. In determining whether to approve or ratify a Related Party Transaction, the Committee will take into account, other factors it deems appropriate, whether the Related Party Transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the Related Person’s interest in the transaction.

144.



145. The Policy also gave sole authority to the Chair of the Audit Committee, Pfenniger, to pre-approve or ratify any Related Party Transaction in which the aggregate amount involved was expected to be less than \$250,000. Moreover, the Policy excluded transactions less than \$100,000 from the definition of "Related Party Transaction." These provisions effectively allow Frost to structure deals in small increments in order to avoid the review of the Audit Committee altogether or seek approval from his long-time associate Pfenniger.

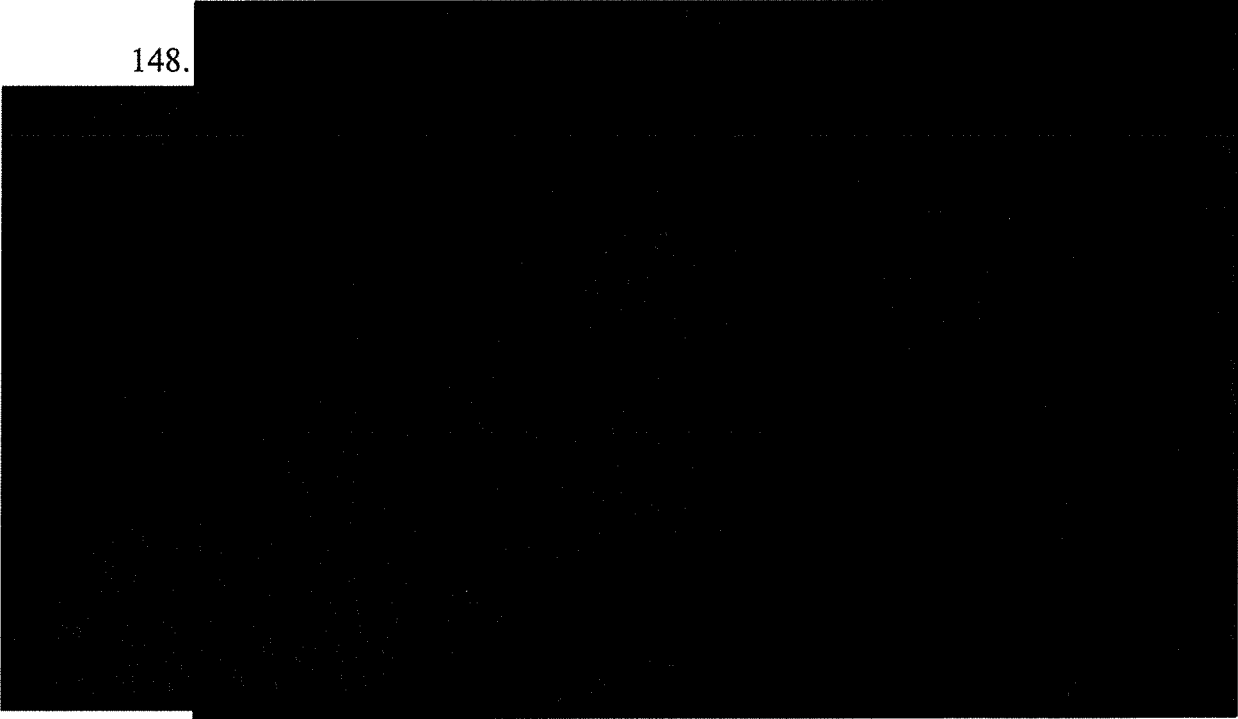
146.





147. The failure of the Board and/or the Audit Committee to exercise independent oversight is evidenced by the Company's response to the filing of the SEC Action. Instead of taking time to consider and investigate the claims in the SEC Action, OPKO instead issued a press release to criticize and challenge the SEC.

148.



149. Despite all the smoke from the articles, lawsuits, and questionable deals, the Board, and specifically the Audit Committee, turned a blind eye to many red flags in order to continue their lucrative relationships with Frost.

DERIVATIVE ALLEGATIONS

150. Plaintiffs bring this action derivatively in the right and for the benefit of the Company to redress the injuries suffered, and to be suffered, by the Company as a direct result of Defendants' breaches of fiduciary duty, abuses of control, gross mismanagement, unjust enrichment, and aiding and abetting of breaches of fiduciary duty, as alleged herein. OPKO is named as a nominal defendant solely in a derivative capacity.


151. Plaintiffs will adequately and fairly represent the interest of the Company in enforcing and prosecuting its rights.

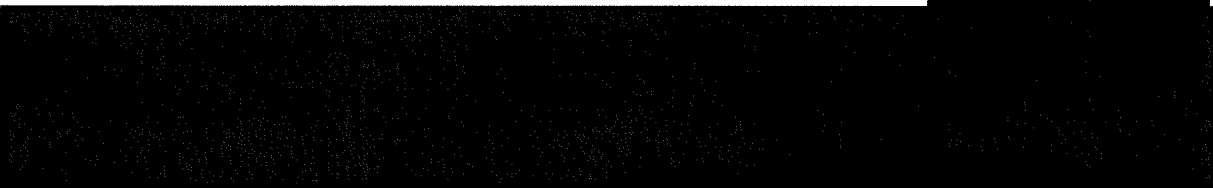
152. Plaintiffs are represented by counsel experienced in derivative and other representative party litigation.

153. Plaintiffs are and have continuously owned OPKO stock at all relevant times.

DEMAND ON THE OPKO BOARD IS EXCUSED AS FUTILE

154. Plaintiff did not issue any demand on the Board to institute this action because such a demand would have been a futile, wasteful, and useless act.

155. The majority of the Board is beholden to Frost. 




Frost Controls OPKO

156. Frost is the founder, Chairman, and CEO of OPKO and owner of approximately 35% of OPKO's outstanding common stock. Because of his ownership of a significant portion of OPKO's stock and his tenure in the two most powerful positions within OPKO, Frost is a controlling stockholder of OPKO.. This fact is directly acknowledged by OPKO in its Form 10-K for the period ending December 31, 2017 wherein it states:

Our success is dependent to a significant degree upon the efforts of our Chairman and Chief Executive Officer, Phillip Frost, M.D., who is essential to our business. The departure of our CEO for whatever reason or the inability of our CEO to continue to serve in his present capacity could have a material adverse effect upon our business, financial condition, and results of operations. Our CEO has a highly regarded reputation in the pharmaceutical and medical industry and attracts business opportunities and assists both in negotiations with acquisition targets, investment targets, and potential joint venture partners. Our CEO has also provided financing to the Company, both in terms of a credit agreement and equity investments. If we lost his services, our relationships with acquisition and investment targets, joint ventures, and investors may suffer and could cause a material adverse impact on our operations, financial condition, and the value of our Common Stock.

157. 

 The following lists suspicious connections and

transactions in Frost-related entities in addition to the BioZone/Cocrystal, MabVax, VBI, ChromaDex and Sevion transactions discussed above:

Ladenburg Thalmann Financial Services, Inc.

158. Until recently, Frost served as Chairman and board member of Ladenburg Thalmann. Frost had been a director of Ladenburg Thalmann from 2001 to 2002 and again since 2004 and became chairman since July 2016. Frost is the principal stockholder of Ladenburg Thalmann, owning nearly 36% of its outstanding shares, for a total of 73,549,630 shares. On March 9, 2011, OPKO issued 27,000,000 shares of Common Stock, through which Frost Gamma purchased an aggregate of 3,200,000 shares for approximately \$12 million. Ladenburg Thalmann & Co. Inc., a subsidiary of Ladenburg Thalmann, acted as co-manager for the offering. Ladenburg Thalmann is also closely associated with the Frost related companies with its analysts covering and promoting ChromaDex, VBI, Neovasc Inc. (“Neovasc”) and inviting ChromaDex and VBI to present at Ladenburg Thalmann’s annual healthcare conference. Ladenburg Thalmann also maintains officers in the former IVAX Building. Ladenburg Thalmann has also acted as a banker for various Frost-related transactions:

- entered into a \$30,000,000 revolving credit agreement with Frost Gamma in 2007, which was amended and later replaced with a new credit agreement;
- entered into a management services agreement with Vector Group, where Frost is the largest stockholder;

- entered into amendment and renewal of an office lease agreement with Frost Real Estate Holdings, LLC;
- been party to an agreement with Castle Brands, Inc. (“Castle Brands”) under which it provides certain administrative, legal, and financial services to Castle Brands. Ladenburg Thalmann’s President and CEO is also the President and CEO of Castle Brands. Various of its directors serve as directors of Castle Brands, and Frost is the principal stockholder of both companies.
- issued a fairness opinion for MusclePharm Corporation’s (another Frost entity that invested in BioZone) debt restructuring in November 2017;
- served as lead manager for a \$71.9 million follow-on offering at VBI in October 2017;
- issued a fairness opinion for ChromaDex’s sale of analytical testing services in August 2017;
- acted as sole placement agent for ChromaDex’s \$25 million private placement in April 2017;
- served as co-manager for a \$50 million follow-on offering for TransEnterix, Inc. (“TransEnterix”) in June 2015;
- served as co-manager for Neovasc’s \$86.8 million follow-on offering in January 2015;
- served as co-manager for TransEnterix’s \$56.4 million follow-on offering in April 2014;
- served as co-placement agent for OPKO’s \$175 million PIPE transaction in January 2013;
- served as exclusive placement agent for Castle Brand’s \$7 million PIPE transaction in June 2011;
- served as co-manager for OPKO’s \$101.25 million follow-on offering in March 2011;

- served as co-placement agent for a \$24.4 million PIPE transaction done by Prolor Biotech, Inc. (“Prolor”, which in August 2013 was acquired by OPKO) in March 2010; and
- served as a financial advisor to certain investors in connection with Castle Brand’s \$15 million PIPE transaction in October 2008.

159. On September 20, 2018 (thirteen days after the SEC Action was commenced), Ladenburg Thalmann announced that Frost “had decided to retire” from the board. On December 24, 2018, Ladenburg Thalmann announced that it has entered into an agreement to buy out Frost’s equity position in exchange for a combination of cash and 7.25% senior notes.

Neovasc Inc.

160. On August 17, 2011, OPKO invested \$2 million in Neovasc, which was 36% owned by Frost. In exchange for this investment, OPKO received, 2 million shares of common stock and 1 million two-year warrants. OPKO also entered into a consulting agreement with Neovasc in exchange for an option to purchase 913,750 additional shares of common stock. [REDACTED]

[REDACTED] As of August 4, 2011, Frost owned 36%, Hsiao 6% and Rubin less than 1% of Neovasc. In August 2012, the Company received additional stock options to purchase 86,250 shares of Neovasc

common stock as compensation under the consulting agreement. In November 2017, the Company invested an additional \$3.0 million in Neovasc for 2,054,794 shares of its common stock, 2,054,794 Series A warrants, 2,054,794 Series B warrants, and 822,192 Series C warrants. As of December 31, 2017, the Company holds an approximately 8% beneficial ownership interest in Neovasc

RXi Pharmaceuticals Corporation

161. In March 2013, the Company entered into an Asset Purchase Agreement and a Stock Purchase Agreement with RXi Pharmaceuticals Corporation (“RXi”). In exchange, RXi agreed to issue RXi stock worth an aggregate of at least \$10 million to OPKO and “certain accredited investors”. OPKO invested \$2.5 million; Frost Gamma invested \$1,000,000, Hsu Gamma invested \$250,000, and Rubin invested \$30,000. These investors also included Brauser, Birchtree, and Wolf’s wife, Marie V. Wolf. OPKO then invested another \$200,000 in December 2016. As of December 31, 2017, the Company had an approximate 2.8% beneficial ownership interest in RXi

[REDACTED] Lockshin was also a director of RXi, which is now known as Phio Pharmaceuticals Corp.

Arno Therapeutics, Inc.

162. In October 2013, the Company entered into an agreement with Arno pursuant to which the Company invested \$2.0 million as part of an approximate \$30 million financing.

[REDACTED] In connection with the transaction, Arno agreed that for so long as the Company continued to hold at least 3% of the total number of outstanding shares of Arno's common stock on a fully-diluted basis, the Company would have the right to appoint a non-voting observer to attend all meetings of Arno's board of directors and the Company would have a right of first negotiation that provides the Company with exclusive rights to negotiate with Arno for a 45-day period regarding any potential strategic transactions that Arno's board of directors elects to pursue.

163. In January 2016, the Company made an additional \$250,000 investment and in August 2016 invested an additional \$250,000 in Arno. As of


December 31, 2017, the Company had an approximate 8.7% beneficial ownership

interest in Arno

Arno announced on December 22, 2017 that it was liquidating its assets and planned to dissolve.

BioCardia, Inc./Tiger X Medical, Inc.

164.



165. In October 2016, the Company entered into a consulting agreement to provide strategic advisory services to BioCardia. In connection with the consulting agreement, BioCardia granted OPKO 418,977 common stock options after adjusting for a 1-for-12 reverse stock split in 2017. In December 2016, the Company purchased 1,602,564 shares of BioCardia, (after adjusting for the reserve stock split) from Frost for \$2.5 million. The Company also purchased an aggregate of 5,022,000 shares of BioCardia in the open market. As of December 31, 2017, the Company had an approximate 5.6% beneficial ownership interest in BioCardia

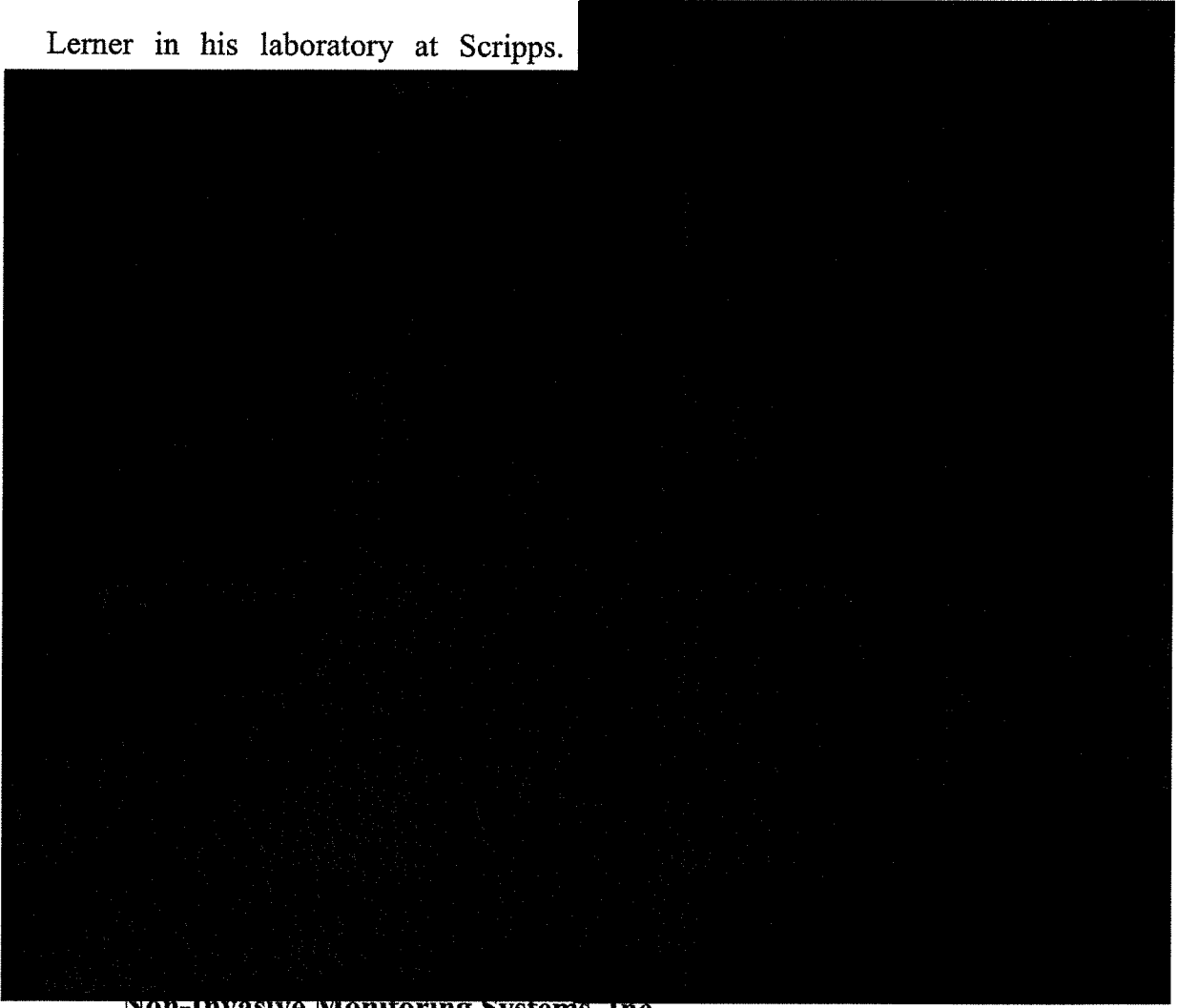


Prolor

166. In August 2013, OPKO acquired Prolor pursuant to an Agreement and Plan of Merger dated as of April 23, 2013 (the “Prolor Merger Agreement”) in an all-stock transaction. Under the terms of the Prolor Merger Agreement, holders of Prolor common stock received 0.9951 shares of Opko stock for each share of Prolor common stock they held. Prior to the completion of the acquisition of Prolor, Frost was a director of Prolor and held Prolor stock directly and through Frost Gamma. The Phillip & Patricia Philanthropic Foundation also held approximately 20.22% of the outstanding shares of Prolor.

Zebra Biologics, Inc.

167. In October 2013, the Company made an investment in Zebra Biologics, Inc. (“Zebra”) a privately held biotechnology company founded by Frost and Lerner. Zebra owned the license for a core technology developed by Lerner in his laboratory at Scripps.



Non-Invasive Monitoring Systems, Inc.

168. OPKO owns 1% of Non-Invasive Monitoring Systems, Inc. (“NIMS”), which leases its 4400 Biscayne Boulevard headquarters from Frost Real

Estate. Hsiao is Chairman and Rubin and Uppaluri are directors of NIMS. Frost finances NIMS through a series of high-interest (11%) promissory notes with Frost Gamma. Frost, through Frost Gamma, owns 25% of NIMS and is its largest stockholder; Hsiao owns 19% and is the second largest stockholder. NIMS has also rented warehouse space in Hialeah, Florida from an entity controlled by Frost and Hsiao.

Other Transactions involving Frost

169. The Company reimburses Frost for Company-related use by Frost and other executives of an airplane owned by a company that is beneficially owned by Frost. For the years ended December 31, 2017, 2016 and 2015, the Company reimbursed Frost approximately \$373,000, \$326,000 and \$532,000, respectively, for Company-related travel by Frost and other OPKO executives.

170. OPKO leases office space from Frost Real Estate, where its principal executive offices are located. Effective May 28, 2015, OPKO entered into an amendment to the lease agreement with Frost whereby it leased approximately 25,000 square feet of space for approximately \$66 thousand per month in the first year increasing annually to \$75 thousand per month in the fifth year. Effective January 1, 2017, the lease agreement was amended to increase the space to approximately 29,500 square feet increase the payments to approximately \$81

thousand per month in the first year increasing annually to \$86 thousand per month in the third year.

171. In November 2016, OPKO entered into a Pledge Agreement with the Frost Science Museum pursuant to which OPKO agreed to contribute an aggregate of \$1.0 million over a four-year period for constructing, equipping and the general operation of the Frost Science Museum.

There is no Majority of Disinterested Directors

172. The web of interconnected personal and business relationships between Frost and the members of the Board raise a reasonable doubt that they could impartially consider a demand to bring the claims herein, had a demand been made.

173. The Board consists of nine directors, including Frost. Three of the directors (Frost, Hsiao, and Rubin) are current employees of OPKO, and seven of the directors (Frost, Rubin, Hsiao, Pfenniger, Krasno, Lerner, and Yu) are part of Frost's co-mingling of OPKO funding of personal investments.

Frost

174. Frost, in his capacity as a director of the Company, cannot be independent with respect to misconduct for which he is accused.

Hsiao

175. Hsiao, as OPKO's CTO, reports directly to Frost is reliant on Frost for her employment with the Company. Indeed, Hsiao's employment by Frost-related entities has made her a wealthy woman. As CTO of OPKO, Hsiao has earned more than \$16 million since 2007. She is also a controlling member of the Frost Group and is so closely tied to the Frost Group that she must disclaim ownership of the OPKO shares held by the Frost Group in OPKO's annual proxies. Hsiao was part of the investment group including Frost, Rubin, Lerner, OPKO, and Frost Gamma which invested \$3.7 million in ChromaDex. In addition, Hsiao has served in numerous capacities in Frost-affiliated or controlled companies, including:

- a. Director of Cocystal;
- b. Director and Vice-Chairman-Technical Affairs of IVAX for the years 1995 to through 2006, while Frost was Chairman and CEO;
- c. Chairman, CEO, and President of IVAX Animal Health from 1998 through 2006;
- d. Director of IVAX Diagnostics Inc., a subsidiary of IVAX;
- e. Director of IVAX Pharmaceuticals s.r.o.;
- f. Vice President of Quality Assurance and Compliance of IVAX Research;

- g. Director of Safestitch from 2007 until it was merged into TransEnterix, on September 3, 2013;
- h. Director of TransEnterix, a company Frost owned 6.5 million shares in as of 12/5/13, with Pfenniger;
- i. Director of Prolor, from 2008 until it was acquired by OPKO in 2013;
- j. Director of Neovasc;
- k. Director of Acuity;
- l. Member of the Board of Managers of Fabrus, where Frost is also a member of the Board of Managers. Lerner also owned 5% of Fabrus at the time OPKO filed its April 26, 2011 proxy solicitation;
- m. Director of Froptix;
- n. President of Ophthalmic Technologies, Inc., in which OPKO invested \$5 million in 2007;
- o. Director of Sorrento Therapeutics, Inc. (“Sorrento”), in which OPKO invested \$2.3 million in 2009;
- p. President from 2010-11 of Etamota Corporation, which listed an address at the former IVAX Building.
- q. Chairman and CEO of NIMU since 2008; and

- r. Director of Orthodontix Inc. (“Orthodontix”), which merged with Protalix BioTherapeutics Ltd. (“Protalix”) in 2006. Protalix is an Israeli company which collaborated with Teva on recombinant plant cell expression technology and which was merged with Orthodontix. Frost is a stockholder of the combined company and was a large and early investor in Protalix.

176. Through these Frost related positions, in addition to the undisclosed compensation from certain Frost related private and public companies, Hsiao holds over 306,000 shares in Cocystal, 4,990,230 shares of TransEnterix, held 9,861,577 shares of IVAX prior to its acquisition and held 2,288,189 shares of Prolor prior to its acquisition by OPKO and received \$70,093 in cash compensation.

177. Hsiao has also contributed to the Patricia & Phillip Frost Art Museum, where the “Jane Hsiao Asian Art Endowment” has supported an exhibition entitled Many Visions, Many Versions: Art from Indigenous Communities in India. As mentioned above, Hsiao is the widow of Charles Hsiao, who worked with Frost at Key and was one of the first employees at IVAX – indeed, in a press release entitled “IMPAX Mourns the Death of Dr. Charles Hsiao, Co-Founder and Chairman” dated September 15, 2008, IMPAX Laboratories, Inc. called Hsiao “one of three co-founders of IVAX Corporation”. Hsiao and Frost have a decades-

long relationship spanning multiple companies, and philanthropy. According to *Forbes*, they lunch together regularly. In total, Hsiao has earned more than \$25 million in compensation from Frost-related companies, which qualifies as material compensation sufficient to render Hsiao beholden to Frost when making business decisions for OPKO.

Rubin

178. Rubin, as OPKO's Executive Vice President – Administration, works directly under Frost and is therefore dependent on Frost for his position within OPKO. Since 2007, Rubin has earned roughly \$15 million in compensation from his employment at OPKO. Rubin is also a controlling member of the Frost Group and is so closely tied to the Frost Group that he must disclaim ownership of the OPKO shares held by the Frost Group in OPKO's annual proxies. In addition, Rubin has served in numerous capacities for Frost-affiliated entities, including:

- a. Director of Castle Brands, a company in which Frost beneficially owns roughly 33.5% of the equity;
- b. Interim CEO and Interim CFO and as a member of the Board of Directors of Tiger X until its merger with BioCardia in October 2016;
- c. Advisor to MabVax;
- d. Director of Cocrystal;

- e. Senior Vice President, General Counsel and Secretary of IVAX from 2001 to 2006, during Frost's tenure as CEO.
- f. Director of Safestitch from 2007 until it merged into TransEnterix on September 3, 2013.
- g. Director of Neovasc;
- h. Director and stockholder of NIMS since 2008, along with Hsiao, who is Chairman and CEO.
- i. Director of Prolor, from 2008 until it was acquired by OPKO in 2013;
- j. Director of Sevion/Eloxx starting in 2014-15, in which both OPKO and Frost have large investments.
- k. Director of SciVac in 2012, after which OPKO made a large investment in the company. SciVac became VBI in 2015. OPKO is now a 17% beneficial owner of VBI;
- l. Director of ChromaDex;
- m. Board Observer at Arno;
- n. Director of Cogint, Inc. ("Cogint"), where Brauser and Frost served as chairman and vice chairman of the board, respectively;

- o. Director of Dreams, Inc., where Frost was formerly the third-largest stockholder;
- p. Secretary and Director of Ideation Acquisition Corp. of which Frost was a substantial stockholder and chairman;
- q. Member of Supervisory Board of interCLICK, Inc., in which Frost, Honig, and Brauser invested;
- r. Director of Kidville, Inc. (“Kidville”), in which Frost led a group of investors who made a \$10 million investment in which Rubin, Uppaluri, and Hsiao participated;
- s. Director of Longfoot Communications Corp., which acquired Kidville;
- t. Director of Red Violet, Inc. (“Red Violet”) which was spun-off from Cogint and where Brauser and Frost remain directors;
- u. Member of Supervisory Board of Teva Czech Industries s.r.o.;
- v. Director of Tiger Media, Inc. prior to its acquisition by IDI;
- w. Strategic Advisor at usell.com, Inc., a secondhand phone website in which Frost invested and where Brauser’s son Daniel served as CEO; and
- x. Registered Agent for Frost Real Estate Holdings, LLC.

179. Frost was Vice Chairman of Cogint (f/k/a IDI, Inc. and Tiger Media, Inc. and now known as Fluent, Inc.) from 2015-March 2018, and its largest stockholder with 28.5% beneficial ownership. Rubin was a Cogint director from 2009-March 2018, and served on the Cogint board's audit committee. For his service on the Cogint board and audit committee, Rubin received 30,000 restricted stock units ("RSU") and additional stock awards for his service. As of December 31, 2016, Rubin held 150,000 shares of Cogint common stock and 32,000 additional shares subject to options awards.

180. Through these Frost related positions, in addition to the undisclosed compensation from certain Frost related private and public companies, Rubin holds over 241,000 shares in Castle Brands and earned nearly \$200,000 in cash compensation as a director, holds 564,952 shares of Cocystal, held 336,156 shares of Safestitch prior to its acquisition, held 124,753 shares of Prolor prior to its acquisition by OPKO and received over \$65,000 in cash compensation as a director, holds 59,120 shares in Eloxx and has received over \$236,000 as a director, holds 45,311 shares of VBI and has received \$87,375 in director compensation and has received over \$137,562 in compensation as a director of ChromaDex. For his director service at Sevion, Rubin received for fiscal year 2015, \$16,875 in cash and \$17,374 in options; for fiscal year 2016, \$32,763 in options (or 129,773 shares subject to options); and for fiscal year 2017, \$17,625 in

options (160,227 shares). Additionally, Rubin was paid 7,000 options (valued at \$14,039) for his service on the SafeStitch board. In total, Rubin has earned more than \$25 million in compensation from Frost-related companies, which qualified as material compensation sufficient to render Rubin beholden to Frost when making business decisions for OPKO.

Pfenniger

181. Pfenniger has a significant business relationship with Frost going back approximately 30 years, has been described as a “longtime Frost executive,” and owes his current and former success and wealth to Frost. Starting in 1989, Pfenniger joined IVAX, where Frost was Chairman and CEO and principal stockholder, as Senior Vice President –Legal Affairs and General Counsel. From May 1994 to March 1997, Pfenniger was COO of IVAX under Frost. In 1992, Frost invested in Whitman Education Group, Inc. (“Whitman”) and became its Chairman and principal stockholder, and Pfenniger, who was still an executive at IVAX, was appointed a director of Whitman. When IVAX was acquired by Teva, Pfenniger held 219,768 IVAX shares and 28,125 options of Ivax stock. In March 1997, Pfenniger left IVAX to join Whitman as Vice Chairman and CEO and served in that capacity until Whitman was acquired by Career Education Group in 2003. During his tenure at Whitman, Pfenniger acquired 613,049 shares and received over \$1,000,000 in cash compensation. In 2003, Pfenniger joined

Continucare Corp (“Continucare”), where Frost was the controlling stockholder and then-Vice Chairman. Pfenniger was CEO and Chairman of the board of Continucare from that time until Frost sold Continucare to Metropolitan Health Networks in 2011. As of 2011, Pfenniger held 1,306,003 shares of Continucare, which were exchanged for \$6.25 in cash and 0.0414 shares of Metropolitan stock on a per-share basis. He received about \$5.1 million in cash for his cancelled Continucare options and received over \$4.5 million in compensation from Continucare. Pfenniger also serves as a member of the board of directors of BioCardia, formerly Tiger X, an entity in which Frost beneficially owns more than 30% of the equity. As a director of BioCardia, Pfenniger holds 258,286 shares and has received roughly \$25,000 in cash compensation.

182. Since at least 2011 until the present, Pfenniger has served as a director of the 3-person board and the Secretary of Frost Administrative Services, Inc. Frost is one of the two remaining directors of Frost Administrative Services. Since at least 2012 until the present, Pfenniger has been a director of the 3-person board of the Phillip and Patricia Frost Philanthropic Foundation, Inc., and Frost and his wife consist of the remaining two directors of the board and the only executives of the company.

183. In February 2016, Pfenniger was appointed to the Board of Trustees of the Frost Science Museum, which was named after Frost and his wife in

recognition of their major contributor status to the museum. At that time, the Frost Science Museum dissolved its 40-member Board of Trustees and replaced its longtime co-chairs with a 4-person board, including Pfenniger and Frost's wife Patricia, and given the duty of helping to recruit a new, smaller board with more fundraising firepower. Currently, Pfenniger is the Vice Chairman of the Board of Trustees and sits on the executive committee. Frost's son Riley Pfenniger, a 23-year-old recent graduate of the University of Miami, has been a business analyst at the Frost Science Museum since February 2018. Pfenniger has been a director of BioCardia from 2016 to the present. Pfenniger was paid \$45,000 cash and \$213,280 in options in 2017 for his board service at BioCardia. In 2013, Pfenniger invested alongside Frost in Arno and currently holds 21,000 shares of ARNO. Pfenniger also invested in RXi and currently holds 6,896 shares of RXi common stock. Pfenniger currently serves as a director of TransEnterix (formerly SafeStich), along with Hsiao, which has received considerable funding from Frost and OPKO. And, notably, Pfenniger is the Chairman of the Audit Committee

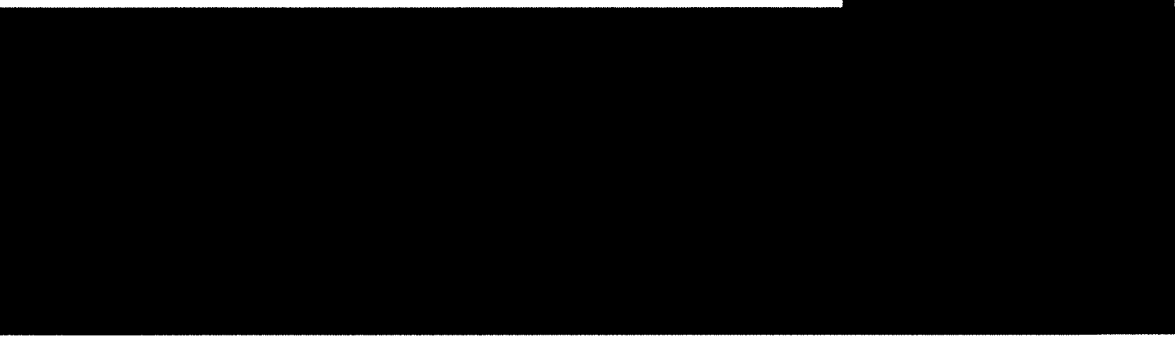

Pfenniger.

was paid \$10,028 in option awards at SafeStich in 2013 alone, bringing his total

holdings to 71,400 SafeStitch shares (48,000 shares and 23,400 options) as of May 12, 2014.

Lerner

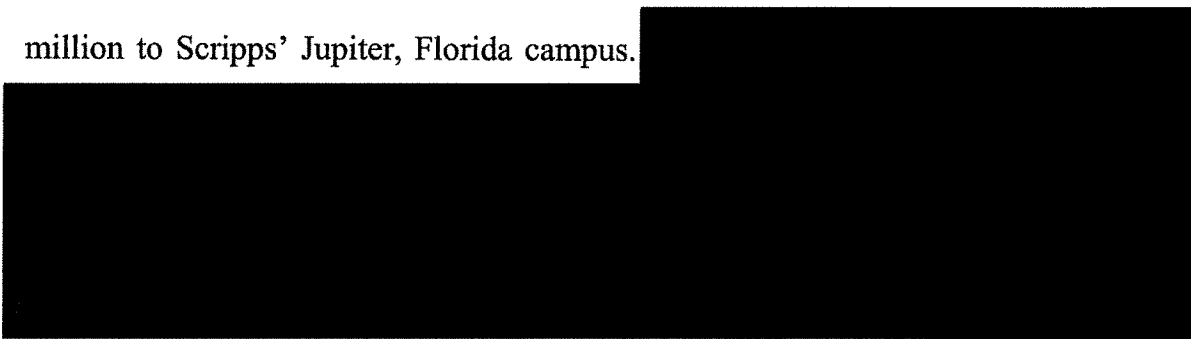
184. Lerner has a significant business relationship with Frost and continues to rely on Frost/OPKO to fund his research at Zebra. Lerner is a scientific founder of Zebra, a biotechnology company that was co-founded by Frost and funded in large part by Frost and OPKO. Frost is a director of Zebra



185. Frost served as director, Vice Chairman and of Teva Chairman from 2006-2014. Lerner was a director of Teva from 2012 until 2015. For his service on the Teva board, Lerner was paid an annual fee of \$190,000, plus a per meeting fee of \$2,000 and annual fees of \$10,000 for each of his board committee memberships (two – the human resources and compensation committee and the science and technology committee). Additionally, he was paid an annual equity-based award of \$130,000 in RSUs following each annual general meeting of stockholders. Accordingly, for his service at Teva, Lerner was paid a total of at

least \$570,000 in annual director compensation, \$60,000 for his board committee memberships, and \$390,000 in RSUs.

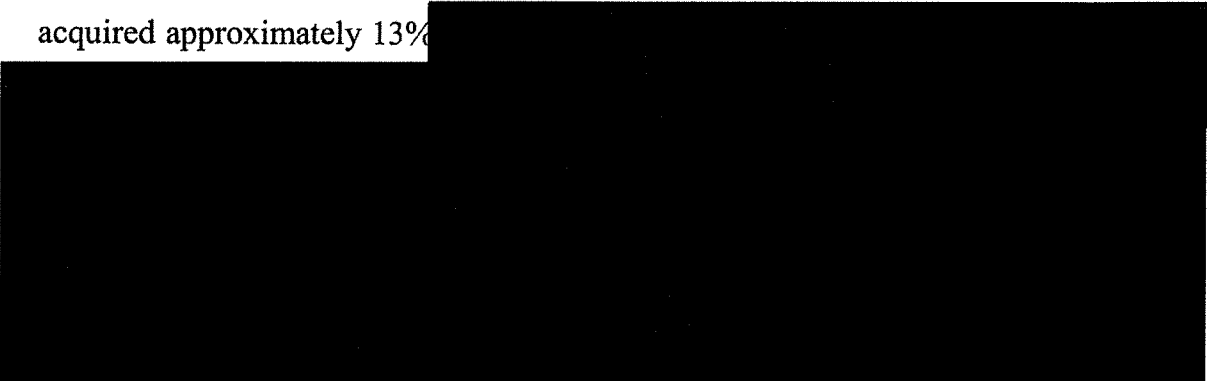
186. Additionally, Lerner served as President of Scripps from 1986 until December 2011 and is currently serving as an institute professor. During that time, Lerner's compensation at Scripps climbed to over \$1.2 million in annual salary, placing Lerner among the top 10% of nonprofit executives in the United States. Frost was a member of the Scripps Board of Trustees from 2004 until November 2012 and served on the compensation committee of Scripps from 2011-2012. While Lerner was President of Scripps, Frost made numerous donations in the millions of dollars to Scripps: in 2008, Frost and his wife donated \$1 million to Scripps, as a result of which, the entrance of the campus' drug discovery building was named the "Frost Lobby" and in January 2010, Frost and his wife donated \$1 million to Scripps' Jupiter, Florida campus.



187. Lerner has publicly stated that "[o]ver the years of our expansion into Jupiter, Phil [Frost] has been an invaluable resource as a member of our Board of Trustees, and both he and Patricia [Frost] have been among the strongest supporters of the work we do."

188. Lerner is a consultant and scientific advisor to Sorrento, positions he held when OPKO and Frost invested in Sorrento on June 10, 2009. He is also a member of Scientific Advisory Board of Protalix.

189. Lerner owned approximately 5% of Fabrus at the time of the Company's investment in Fabrus in November 2010. At that time, the Company acquired approximately 13%



190. In February 2012, Lerner invested alongside of OPKO, Frost Gamma and Hsu Gamma in ChromaDex as part of a \$3.7 million private placement. Lerner serves on the scientific advisory board and the board of directors of InterX, Inc., where former OPKO director Kolosov had previously served as CEO. Frost also sits on the board of directors of InterX. On its website, InterX touts its connection with Cocrystal, one of the companies whose stock was alleged by the SEC to have been pumped and dumped by Frost and his associates. In fact, on September 5, 2017, Cocrystal, InterX, Inc., and a third company announced that they had entered into a drug discovery collaboration.

191. In total, Lerner has earned more than \$927,000 in compensation for his services on OPKO's Board, which qualified as material compensation sufficient to render Lerner beholden to Frost when making business decisions for OPKO.

Krasno

192. Krasno has a multitude of business relationships with Frost that makes him beholden to Frost. Krasno is or was also involved in the following capacities at other Frost-related companies:

- a. Krasno is a director of Ladenburg Thalmann and was paid \$249,400 in director compensation for the year ending May 30, 2018 and he holds roughly 683,000 shares of Ladenburg Thalmann common stock. In the aggregate, Krasno has been paid over \$1.3 million in compensation for his years as a Ladenburg Thalmann director;
- b. Krasno serves alongside Frost and Rubin as directors of Castle Brands, for which Krasno has accumulated 140,000 shares and received over \$33,000 in compensation for the year ended March 31, 2018.

- c. Krasno is a director of BioCardia, formerly Tiger X, for which he has received 24,499 BioCardia shares and \$257,030 in compensation for the year ending December 31, 2017; and
- d. As a director of OPKO, Krasno received over \$229,000 in director compensation and 60,000 stock options for the year ended December 31, 2017.
- e. Krasno was a director at Whitman, where Frost served as chairman of the board while owning more than a third of the company's stock. He also held 82,500 stock of Whitman before it was acquired by Career Education Group in 2003.
- f. Krasno is a member of the Board of Advisors at the Frost School of Music at the University of Miami, together with Frost and Patricia Frost and where Baron had also served; and
- g. He is also Executive Director of the William R. Kenan, Jr. Charitable Trust, which gave \$2 million to the Frost Science Museum in the fiscal year ended June 30, 2015, and president of four affiliated William R. Kenan, Jr. Funds. Indeed, there is now a "William R. Kenan, Jr. Charitable Trust Gallery" at the Frost Science Museum.

193. According to certain Findings of Fact and Conclusions of Law reached in *SEC v. Zachariah, et al.*, No. 08-cv-60698 (S.D. Fla), “Krasno had known Dr. Frost for at least ten years before being invited to join the board of IVAX, *was a personal friend of Dr. Frost*, and had served on a prior corporate board with him from the mid-1990’s until 2004.” (Emphasis added). In total, Krasno has earned approximately \$2 million in compensation from Frost-related companies, which qualified as material compensation sufficient to render Krasno beholden to Frost when making business decisions for OPKO. In fact, Krasno appears to only earn his annual compensation from OPKO and other Frost-related companies, making him completely dependent upon Frost, and thus lacking independence from Frost when making decisions as an OPKO director.

Paganelli

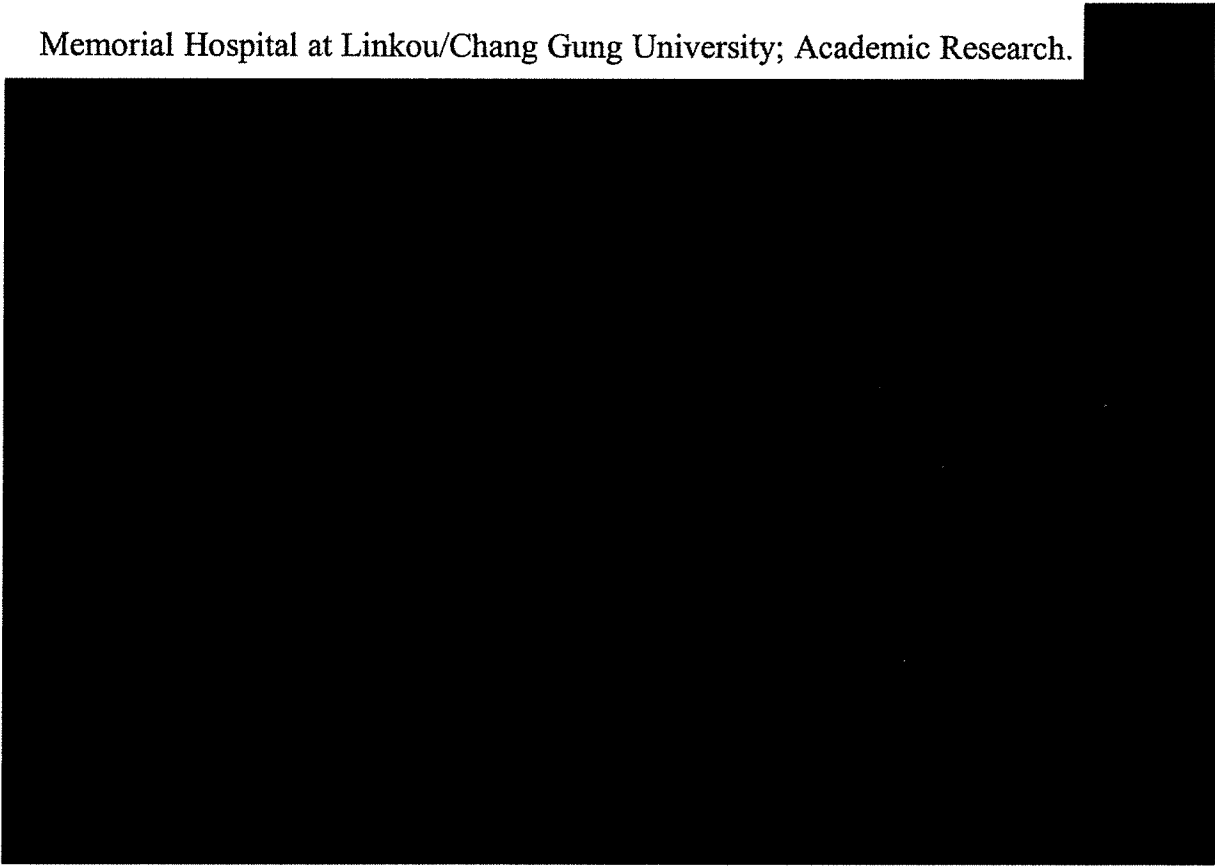
194. Paganelli has been at Frost’s side since the beginning of OPKO. Paganelli has served as a director of the Company and its predecessor, eXegenics Inc. since December 2003 and served as the predecessor company’s Interim CEO and secretary from June 29, 2005 through March 27, 2007, and Chairman of the eXegenics Board of Directors from December 2003 through March 27, 2007. Paganelli was also a member of eXegenics’s Business Opportunities Search Committee, which led to his introduction to Frost and Frost’s ultimate investment in eXegenics in 2006. As a result of his service on the eXegenics Business

Opportunities Search Committee in 2007, Paganelli was awarded 50,000 shares of eXegenics stock. Since 1987, Paganelli has been a partner in RFG Associates, a financial planning organization. While he was CEO of eXegenics, the Company leased office space from RFG Associates in an amount of approximately \$11,000, \$20,000, and \$238,000 for the years ended December 31, 2005, 2004 and 2003, respectively. On March 27, 2007, eXegenics acquired Froptix and Acuity and ceased all operations relating to its historical business and adopted the business plan of Froptix and Acuity. In June of that year, eXegenics changed its name to OPKO.

195. According to OPKO's annual proxy filings, Paganelli has been paid compensation worth approximately \$864,428 while serving in such capacities at eXegenics/OPKO. This figure is approximate because the Company's 2008 proxy filing does not cleanly delineate between which compensation related to Paganelli's roles as a director on the Board and as Interim CEO of eXegenics. Paganelli held 401 shares in Prolor prior to its acquisition by the Company in August 2013. In total, Paganelli has earned approximately \$1 million in compensation from Frost related, which qualified as material compensation sufficient to render Paganelli beholden to Frost when making business decisions for OPKO.

Yu

196. Yu was a distinguished Research Fellow and associate Director at the Genomics Research Center, Academia Sinica, in Taiwan from 2003 until 2013. From 2015-2018, Dr. Yu has been a Distinguished Chair, Professor & Co-director of the Institute of Stem Cell and Translational Cancer Research, Chang Gung Memorial Hospital at Linkou/Chang Gung University; Academic Research.



197. According to the Company's annual proxy filings, OPKO paid Yu compensation worth \$620,658 for her services on its Board.

COUNT I

BREACH OF FIDUCIARY DUTY AGAINST FROST AS CONTROLLER

198. Plaintiffs incorporate by reference every allegation contained above, as though fully set forth herein.

199. Frost exercised control over OPKO in the actions and transactions challenged herein to profit, himself, at the unfair expense of OPKO, in breach of his fiduciary duties of loyalty as OPKO's controlling stockholder, CEO, and Director.

200. By misusing OPKO and its assets in his self-dealing fraudulent penny stock schemes, Frost put his own pecuniary interests ahead of the interests of OPKO, in breach of his fiduciary duty of loyalty.

201. As a direct and proximate result of Frost's breaches of fiduciary loyalty, the Company has been damaged, and Frost has been unjustly enriched.

202. Plaintiffs have no adequate remedy at law.

COUNT II

**BREACH OF FIDUCIARY DUTY
AGAINST THE AUDIT COMMITTEE DEFENDANTS**

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

204. Pfenniger, Paganelli, Krasno, and Baron (“Audit Committee Defendants”) constituted the members of the Audit Committee, [REDACTED] [REDACTED] As Directors of OPKO acting under the Audit Committee Charter, the Audit Committee Defendants owed fiduciary duties to OPKO in the discharge of their responsibilities.

205. The Audit Committee Defendants, as alleged herein, were not independent [REDACTED] [REDACTED]

206. As a result of the breaches by the Audit Committee Defendants, the Company has been damaged.

207. Plaintiffs have no adequate remedy at law.

COUNT III

BREACH OF FIDUCIARY DUTY AGAINST FROST, HSIAO, AND RUBIN AS OFFICERS

208. Plaintiffs incorporate by reference every allegation contained above, as though fully set forth herein.

209. Frost, Hsiao, and Rubin, as Officers of OPKO, owe the same fiduciary duties to the Company as Directors.

210. Frost, Hsiao, and Rubin have breached their duty of loyalty by elevating and favoring their interests over the interests of OPKO and its other

stockholders. The conduct of Frost, Hsiao, and Rubin, as officers of OPKO is not shielded by 8 *Del. C.* § 102(b)(7).

211. Frost, Hsiao, and Rubin have also breached their fiduciary duties in contemplating, planning, and/or effecting the foregoing conduct, and consciously and deliberately serving the interests of Frost to the detriment of OPKO and its other stockholders. Frost, Hsiao, and Rubin breached their duty of good faith toward, and acted in bad faith with respect to, the Company.

212. As a result of these actions of Frost, Hsiao, and Rubin, the Company has been damaged.

213. Plaintiffs have no adequate remedy at law.

COUNT IV

BREACH OF FIDUCIARY DUTY OF LOYALTY AGAINST DIRECTORS LERNER, YU, AND FISHEL

214. Plaintiffs incorporate by reference every allegation contained above, as though fully set forth herein.

215. Lerner, Yu, and Fishel as Directors of OPKO, owe fiduciary duties to OPKO and its stockholders. The duties include the obligation to exercise effective oversight of the Company's assets and transactions. Lerner, Yu, and Fishel breached their duty of loyalty in their failure to exercise independent oversight of

the misuse of OPKO assets alleged herein, in the face of Frost's self-interest and the lack of independence of the Audit Committee required by the Charter.

216. As a result of the breaches of loyalty, OPKO has been damaged and Frost has been unjustly enriched at the expense of OPKO.

217. Plaintiffs have no adequate remedy of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Determining that this suit is a proper derivative action and certifying Plaintiffs as appropriate representatives of OPKO for said action;

B. Finding that Frost breached his fiduciary duties as an officer, director, and controlling stockholder of OPKO;

C. Finding that each of the Defendants breached her or his fiduciary duties either as an officer and/or director of OPKO;

D. Ordering the Defendants to disgorge all remuneration received from OPKO during the Relevant Time Period;

E. Directing each of the Defendants to account to the Company for all damages sustained or to be sustained by the Company and all profits obtained by the Defendants by reason of the wrongs alleged herein;

F. Ordering the Defendants, and those under their supervision and control, to implement and enforce policies, practices, and procedures on behalf of

OPKO and its stockholders designed to detect and prevent illegal conduct by the Company's employees and representatives;

G. Granting equitable and injunctive relief as permitted by law and/or equity;

H. Directing each of the Defendants to pay pre- and post-judgment interest at the highest rate allowable by law on the amount of damages sustained by the Company because of Defendants' actions as described herein;

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

J. Granting such other and further relief as the Court may deem just and proper.

Dated: February 11, 2019

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