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23 UNITED STATES DISTRICT COURT  
24 NORTHERN DISTRICT OF CALIFORNIA  
25 SAN JOSE DIVISION

26 **IN RE KALOBIOS PHARMACEUTICALS,  
27 INC. SECURITIES LITIGATION**

28 **THIS DOCUMENT RELATES TO ALL  
ACTIONS**

Case No. 15-cv-05841-EJD

CLASS ACTION

**FIRST CONSOLIDATED AMENDED  
COMPLAINT FOR VIOLATION OF  
THE FEDERAL SECURITIES LAWS**

DEMAND FOR JURY TRIAL

**INTRODUCTION**

1  
2 1. Lead Plaintiffs Kaniz Fatema, Zeke Ingram, Bhaskar R. Gudlavenkatasiva, and  
3 Abuhena M. Saifulislam (the “KaloBios Investor Group”), together with Plaintiff Austin Isensee  
4 (altogether, the “Plaintiffs”), individually and on behalf of all the other persons similarly  
5 situated, by their undersigned attorneys, allege the following based upon personal knowledge as  
6 to themselves and their own acts, and upon information and belief as to all other matters based  
7 on the ongoing investigation conducted by and through their attorneys, which included, among  
8 other things, a review of Securities and Exchange Commission (“SEC”) filings, press releases,  
9 transcripts of earnings calls, and other public statements by KaloBios Pharmaceuticals, Inc.  
10 (“KaloBios”) and the other Defendants; extensive interviews with numerous confidential  
11 witnesses; review of the Securities and Exchange Commission (“SEC”) complaint and the  
12 criminal indictments against Defendant Shkreli; and review and analysis of other publicly  
13 available information, including pertinent press coverage and analyst reports. Plaintiffs believe  
14 that substantial evidentiary support will exist for the allegations set forth herein after a  
15 reasonable opportunity for discovery.  
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**SUMMARY OF THE ACTION**

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20 2. As against Defendant Martin Shkreli, this is a federal securities class action on  
21 behalf of a class (the “Class”) consisting of all persons or entities who purchased or otherwise  
22 acquired the common stock of KaloBios between November 19, 2015 and December 16, 2015  
23 (the “Class Period”), both dates inclusive, seeking to recover damages caused by Defendants’  
24 violations of the federal securities laws and to pursue remedies under §§10(b) and 20(a) of the  
25 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.  
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1 company Retrophin in 2011.<sup>1</sup> Unbeknownst to KaloBios investors, between September 2009  
2 and September 2014, he engaged in extensive fraudulent and illegal misconduct at these  
3 companies by, *inter alia*, stealing hundreds of thousands of dollars from MSMB; fraudulently  
4 inducing investments in MSMB by deceiving investors as to its insufficient liquidity and as to  
5 his own abysmal track record as a hedge fund manager; lying to large investors in stating  
6 MSMB's assets under management as \$35 million when they were only \$700 and by identifying  
7 as MSMB's independent auditor and administrator firms that had never been hired; deceiving  
8 MSMB's broker by misrepresenting that he had located shares sufficient to cover a failed short  
9 sale, when he had not done so, leading to the broker closing at a loss of \$7 million; working with  
10 his lawyer (who was later indicted) to defraud Retrophin into settling MSMB debts and  
11 personal debts, including through use of MSMB settlement agreements disguised as sham  
12 Retrophin consulting agreements; working with lawyer and corrupt employees to fabricate  
13 investments by MSMB in Retrophin through concealed stock transfers and backdated  
14 agreements; and working with his lawyer to hide settlements with defrauded MSMB and Elea  
15 Capital investors as sham consulting agreements with Retrophin, for which Retrophin paid  
16 consideration but received no services.  
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20 6. On November 18, 2015, the day before the start of the Class Period as against  
21 Defendant Shkreli, KaloBios issued a press release listing Defendant Cross (its then-CFO) as the  
22 company contact (the "11/18/2015 Press Release") stating, *inter alia*, that it "has been informed  
23 that an investor group comprised of Martin Shkreli and associates together have acquired more  
24

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25  
26  
27 <sup>1</sup> As used herein, "MSMB" refers to an umbrella of affiliated investment companies co-founded by Defendant  
28 Shkreli and Marek Biestek, including MSMB Capital LLC, MSMB Capital Management LLC, and MSMB  
Healthcare Management LLC. As used herein, "Retrophin" refers to affiliated drug companies founded by  
Defendant Shkreli, including Retrophin, Inc. and Retrophin LLC.

1 than 50% of the outstanding shares of KaloBios, and that the company is in discussions with Mr.  
2 Shkreli regarding possible direction for the company to continue in operation.” It also quoted  
3 Defendant Martell (its then-Executive Chairman), as stating, “We have received communications  
4 from Mr. Shkreli informing us of his group’s ownership position, and a proposal to continue the  
5 company’s operations. Our board of directors is prepared to entertain any constructive proposal,  
6 which we will act upon promptly.”

7  
8 7. By that point, Defendant Shkreli had gained effective control over KaloBios due  
9 to his majority ownership and his having orchestrated the company’s rejection of an alternative  
10 funding proposal in favor of his completely assuming the helm as CEO and Chairman. The  
11 specifics of Shkreli’s proposal for running KaloBios were closely guarded and knowledge  
12 thereof restricted to the highest levels of KaloBios. Shkreli and his investor group (the “Shkreli  
13 Group”) had acquired its controlling stake, which was over 50.1% on November 17, 2015 and  
14 swelled to 70.0% by November 23, 2015, for an average per-share price of just \$1.51.  
15 Specifically, a Form 8-K filed on November 23, 2015 later disclosed that, by that date, Shkreli’s  
16 group had purchased 2,885,000 shares of KaloBios for just \$4,363,853.00, and Form 13D filed  
17 on November 25, 2015 later disclosed that Shkreli himself controlled 72% of that majority-  
18 ownership stake. Defendant Shkreli was highly motivated to commit the fraud alleged herein,  
19 *inter alia*, to drive up the value of this newly-acquired majority stake through his false and  
20 misleading statements during the Class Period.  
21

22  
23  
24 8. The Class Period as against Shkreli began on November 19, 2015, when KaloBios  
25 issued a press release entitled “KaloBios Pharmaceuticals, Inc. Appoints Martin Shkreli CEO  
26 and Announces New Financing” and listing “Martin Shkreli, KaloBios CEO” as the company  
27 contact (the “11/19/2015 Press Release”). After announcing that Shkreli’s investor group had  
28

1 acquired 70% of KaloBios's outstanding shares and that he had been appointed its CEO and  
2 elected its Chairman, the 11/19/2015 Press Release falsely and misleadingly stated, among other  
3 things, "***In his new role, Mr. Shkreli will work with the company's senior management team to***  
4 ***ensure the Company's continued operations.***"<sup>2</sup> It also touted that "***KaloBios has received a***  
5 ***commitment from Mr. Shkreli and other investors for an equity investment of at least \$3.0***  
6 ***million.*** In addition, ***Mr. Shkreli and the group of investors have committed to a \$10 million***  
7 ***equity financing facility,*** subject to applicable shareholder approval."

9 9. On this news, KaloBios's stock rose from its \$2.07 close on November 18, 2015  
10 to open at \$14.00 on November 19, 2015, reach an intra-day trading high of \$14.72, and close at  
11 \$10.40 on November 19, 2015, an increase of \$8.33, or more than 400%. At this price, the  
12 Shkreli Group's 70% stake in KaloBios had risen in value to \$30.0 million.

14 10. Thereafter, Defendant Shkreli made and authored a steady stream of false and  
15 misleading statements to investors that drove up KaloBios's stock price and with it, the value of  
16 the Shkreli Group's controlling stake in the company. Among them were a KaloBios Form 8-K  
17 filed with the SEC on November 23, 2015 that touted Shkreli's leadership of Retrophin and  
18 MSMB as a basis to assert that "***Mr. Shkreli's prior experience, attributes and skills are***  
19 ***indicators of his professional competence for the role as Chief Executive Officer***" of KaloBios.  
20 It also touted the appointment of numerous Shkreli associates to KaloBios's Board and its Audit  
21 Committee, including MSMB's co-founder and longtime Retrophin executives, while stating that  
22 the resigning Directors they were replacing "had no disagreement with the Company that led to  
23 their respective resignations." These statements drove KaloBios's stock as high as \$45.82 on  
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28 <sup>2</sup> All bolded, italicized and/or underlined text herein, if used within a quotation, indicates emphasis added unless otherwise noted.

1 November 23, 2015, before it closed at \$39.50, up over 200% from its prior day's close, a price  
2 that pushed the Shkreli Group's 70% stake to \$113.9 million in value.

3  
4 11. In an interview on November 25, 2015, Shkreli made more false and misleading  
5 statements about KaloBios's operations and financing options, including, among others that  
6 lenzilumab "*trials [are] starting right now...and we'll know in Q1 or Q2 if our trial works,*"  
7 that "we...named ourselves the management...and *now the company has the cash to do this*  
8 *clinical trial,*" that "*we're in talks with three separate acquisitions*" and "*all three are*  
9 *progressing rapidly and could be great fits,*" that "*KaloBios needs another \$100 million that*  
10 *I'm going to give to it so that we can develop lenzilumab for CMML,*" and that he would  
11 succeed at KaloBios due to his "*credibility and trustworthiness*" and that "*investors who have*  
12 *been in my last two companies know my track record is very good.*" These statements and  
13 others by Defendant Shkreli that day again boosted KaloBios's stock price, which closed at  
14 \$26.63, up nearly 45% from its prior day's close at \$18.40, a price that pushed the Shkreli  
15 Group's 70% stake to \$76.8 million.  
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18 12. On December 3, 2015, Defendant Shkreli continued the fraud via a slew of press  
19 releases that, among other things, falsely and misleadingly touted his appointment of longtime  
20 associates from Retrophin and MSMB, stating, "*We are moving quickly to build a very high*  
21 *quality team* focused on optimizing the growth opportunities at KaloBios Pharmaceuticals," and  
22 touted KaloBios's entry into an agreement for \$8.2 million in financing, to close in December  
23 2015, that it "*intends to use...for an acquisition and to advance its pipeline of drug candidates,*  
24 *including its lead compound, lenzilumab.*" The same day, in conjunction with a conference  
25 calls, Shkreli and KaloBios issued a set of slides that contained numerous additional false and  
26 misleading statements, including, among others, that Shkreli's gaining control of the company  
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1 and ascension as CEO and Chairman meant “*permanent access to capital and M&A deal flow*”;  
2 that KaloBios was taking numerous steps to advance its drug candidates and pipeline, including  
3 that it was “*focused on lenzilumab (formerly KB003)*” and was “*Initiating Phase 1 / 2 study in*  
4 *CMML by YE 2015*” (just weeks away) and “*is in near-term negotiations to acquire several*  
5 *assets in the next 30 to 90 days*”; and that Retrophin was one “*fastest growing*  
6 *biopharmaceutical companies in the history of the industry*” and his appointment of longtime  
7 associates from Retrophin to high-level positions at KaloBios was a positive. These  
8 misstatements maintained the price inflation in KaloBios’s, which closed at \$29.32 on December  
9 3, 2015 and \$31.13 on December 4, 2015, prices that valued the Shkreli Group’s 70% stake in  
10 KaloBios at between \$84.5 million and \$89.8 million.  
11

12  
13 13. On December 16, 2015, a KaloBios Form 8-K that Defendant Shkreli wrote and  
14 signed disclosed that had closed the transaction to sell 350,224 shares of KaloBios common  
15 stock in an \$8.2 million private placement. That day, KaloBios’s stock closed at \$23.59, which  
16 valued the Shkreli Group’s 70% stake at \$68.1 million.  
17

18 14. With investors in the dark, the effect of these false and misleading statements on  
19 KaloBios’s stock price was dramatic. KaloBios’s stock traded as high as \$45.82 during the Class  
20 Period due to the inflation caused by Defendant Shkreli’s fraud, in the process greatly enriching  
21 him and the other members of the Shkreli Group.  
22

23 15. The market was therefore shocked when Defendant Shkreli was *led away in*  
24 *handcuffs* on December 17, 2015, arrested based on a 30-page federal indictment, as superseded  
25 by a Superseding Indictment in June 2016 (both indictments together the “Shkreli Indictments”),  
26 which along with a contemporaneously filed 22-page SEC complaint (the “SEC Shkreli  
27 Complaint”), outlined the massive scale of Shkreli’s fraudulent and illegal conduct at his other  
28



1 companies, particularly MSMB and Retrophin. KaloBios terminated Shkreli as CEO that day.  
2 Investors came to understand what Shkreli already knew – that he had been *incapable* of  
3 overseeing KaloBios’s continued operations, securing necessary financing, or delivering on any  
4 of the Class Period statements he had made and that he was *unfit* to lead KaloBios, as were his  
5 associates from Retrophin and MSMB. The funding and financing promised by Shkreli was  
6 completely illegitimate, non-viable, and only obtainable (if at all) through additional frauds. In  
7 reality, KaloBios remained on the brink of bankruptcy.  
8

9         16. On this news, KaloBios’s stock plummeted 53% in pre-open trading before  
10 NASDAQ halted all trading so it could request more information from KaloBios. NASDAQ put  
11 out a statement on December 17, 2015, stating it had halted trading at 6:48 a.m. and that trading  
12 would remain halted “until KaloBios Pharmaceuticals, Inc. has fully satisfied NASDAQ’s  
13 request for additional information” as to the circumstances surrounding Shkreli’s arrest. With  
14 trading halted, the bad news piled up. On December 21, 2015, KaloBios’s independent  
15 accounting firm, Marcum LLP, hired less than two weeks earlier, resigned. On December 24,  
16 2015, NASDAQ announced that KaloBios’s stock would be delisted due to Shkreli’s arrests and  
17 other issues. KaloBios filed for bankruptcy on December 29, 2015. When KaloBios finally  
18 resumed trading, on the over the counter (OTC) market, on January 13, 2016, it opened at \$2.51,  
19 reached an intra-day low of \$1.02, and finally closed at \$4.39.  
20  
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22         17. As a result of Defendant Shkreli’s materially false and misleading statements and  
23 omissions, KaloBios securities traded at inflated prices during the Class Period. After the fraud  
24 was revealed, KaloBios’s stock suffered a precipitous decline in market value, thereby causing  
25 significant losses and damages to Plaintiffs and other Class members.  
26  
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**JURISDICTION AND VENUE**

1  
2 18. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the  
3 Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the  
4 SEC (17 C.F.R. §240.10b-5). Jurisdiction is conferred by 28 U.S.C. §1331 and §27 of the  
5 Exchange Act, 15 U.S.C. § 78aa.  
6

7 19. Venue is proper in this District pursuant to §27 of the Exchange Act, 15 U.S.C.  
8 §78aa, §22 of the Securities Act, 15 U.S.C. §77v, and 28 U.S.C. §1391(b), as Defendant  
9 KaloBios is headquartered in this district and many of the acts and practices complained of  
10 herein occurred in substantial part in this district.  
11

12 20. In connection with the acts, conduct and other wrongs alleged herein, Defendants,  
13 directly or indirectly, used the means and instrumentalities of interstate commerce, including but  
14 not limited to, the United States mail, interstate telephone communications and the facilities of  
15 the national securities exchange.  
16

**PARTIES**

17  
18 21. Lead Plaintiff Kaniz Fatema purchased or otherwise acquired KaloBios common  
19 stock as described in Lead Plaintiff’s prior-submitted certification and was damaged by the  
20 conduct alleged herein.  
21

22 22. Lead Plaintiff Zeke Ingram purchased or otherwise acquired KaloBios common  
23 stock as described in Lead Plaintiff’s prior-submitted certification and was damaged by the  
24 conduct alleged herein.  
25

26 23. Lead Plaintiff Bhaskar R. Gudlavenkatasiva purchased or otherwise acquired  
27 KaloBios common stock as described in Lead Plaintiff’s prior-submitted certification and was  
28 damaged by the conduct alleged herein.

1           24.     Lead Plaintiff Abuhena M. Saifulislam purchased or otherwise acquired KaloBios  
2 common stock as described in Lead Plaintiff’s prior-submitted certification and was damaged by  
3 the conduct alleged herein.

4           25.     Plaintiff Austin Isensee purchased or otherwise acquired KaloBios common stock  
5 as described in Plaintiff’s prior-submitted certification and was damaged by the conduct alleged  
6 herein.

7           26.     Defendant KaloBios is incorporated in Delaware and is headquartered at 442  
8 Littlefield Avenue, South San Francisco, California 94080. Defendant KaloBios made  
9 materially false and misleading misstatements and omissions as alleged herein. The claims  
10 against Defendant KaloBios are presently subject to the terms of the Partial Settlement, and a  
11 resultant stay of the litigation as regards Defendant KaloBios pending final approval by the  
12 Court.

13           27.     Defendant Ronald Martell, as described herein, served as KaloBios’s Executive  
14 Chairman before and into the Class Period. Defendant Martell made materially false and  
15 misleading misstatements and omissions as alleged herein. The claims against Defendant  
16 Martell are presently subject to the terms of the Partial Settlement, and a resultant stay of the  
17 litigation as regards him pending final approval by the Court.

18           28.     Defendant Herb Cross, as described herein, served as KaloBios’s Chief Financial  
19 Officer before and into the Class Period. Defendant Cross made materially false and misleading  
20 misstatements and omissions as alleged herein pending final approval by the Court. The claims  
21 against Defendant Cross are presently subject to the terms of the Partial Settlement, and a  
22 resultant stay of the litigation as regards him pending final approval by the Court.

1           29. Defendant Martin Shkreli, as described herein, gained control of KaloBios and  
2 then served as its CEO and Chairman during the Class Period, during which he made materially  
3 false and misleading misstatements and omissions as alleged herein. Defendant Shkreli also co-  
4 founded MSMB (in September 2009) and Retrophin (in 2011), both of which he led prior to  
5 taking over KaloBios.  
6

7                           **KEY NON-PARTY ASSOCIATES OF DEFENDANT SHKRELI**

8           30. Marek Biestek (“Biestek”) is a long-time associate of Defendant Shkreli. He was  
9 a Managing Member and Co-Founder of MSMB from September 2009 – 2011. (He is the “MB”  
10 of MSMB, while Defendant Shkreli is the “MS” in its name.) He served a variety of capacities  
11 over four years at Retrophin, including Vice President, Co-Head of Business Development.  
12 Biestek was part of Defendant Shkreli’s investor group that gained a controlling interest in  
13 KaloBios, and KaloBios’s Shkreli-controlled Board appointed him to serve as a KaloBios  
14 Director during the Class Period.  
15

16           31. Thomas Fernandez (“Fernandez”) is another long-time associate of Defendant  
17 Shkreli. He served as Co-Founder (with Defendant Shkreli) and Senior VP, Corporate  
18 Development at Retrophin from 2011 – August 2015. He also served as President of MSMB. .  
19 During the Class Period, KaloBios’s Shkreli-controlled Board appointed Fernandez to serve as a  
20 KaloBios Director and as a member of its Audit Committee.  
21

22           32. Michael Harrison (“Harrison”) is another long-time associate of Defendant  
23 Shkreli. He served as an executive at multiple companies run by Defendant Shkreli, including  
24 service as Controller at Retrophin from July 2013 – November 2014. During the Class Period,  
25 KaloBios’s Shkreli-controlled Board appointed Harrison to serve as a KaloBios Director and as  
26 both a member of and the Chairman of its Audit Committee.  
27  
28



1 included managing regulatory documents for the medical regulatory agencies, managing clinical  
2 documents, quality control, documenting standard operating procedures for filing and  
3 documentation, working with vendors on maintaining records and auditing those vendors. CW3  
4 also served as the chief company archivist, typically involved when any person or entity was  
5 performing due diligence on KaloBios.  
6

7 38. CW4 was the Senior Manager of Regulatory Operations at KaloBios from  
8 October 2007 to November 17, 2015, reporting to Charles Democko, Vice President of  
9 Regulatory Affairs. CW4's job duties included preparing, editing, and assembling regulatory  
10 submissions for agencies such as the FDA. If a clinical trial was approved, CW4 would also  
11 compile and work on the updates to the trial, including safety reports and annual reports until the  
12 study is completed. CW4 also worked closely with KaloBios senior management, as CW4 was  
13 often authoring reports in which they were involved.  
14

15 39. CW5 was the Manager, Drug Safety Operations from August 2105 to January 31,  
16 2016, reporting to KaloBios's Interim Development Leader Morgan Lam and, later, Senior  
17 Director of Clinical Science Ted Shih. CW5 was responsible for managing the contract research  
18 organization (CRO) overseeing the KaloBios clinical trial of KB-003. Among other things,  
19 CW5 oversaw incoming cases and checked the CRO's work to ensure it was being done in  
20 compliance with the established study protocol.  
21

22 40. CW6 was the Head of Quality at KaloBios, responsible for all quality control and  
23 assurance of quality functions, and worked at KaloBios from September 2012 to November  
24 2015, reporting to Senior Vice President of Regulatory Affairs Charles Democko. CW6 oversaw  
25 the contract testing of study drugs and ensured quality was maintained at each manufacturer and  
26 reviewed documents related to manufacturing and testing of drug products.  
27  
28

**SUBSTANTIVE ALLEGATIONS****KaloBios Suffers Operational Setbacks And Nears Closure**

1  
2  
3 41. Entering the Class Period, KaloBios's drug product candidates under study in  
4 clinical trials included KB003, which is used in the treatment of patients with severe asthma, and  
5 KB004, which is used to treat patients with hematologic malignancies. KaloBios also engaged in  
6 transactions to acquire rights to drugs or drug candidates from other pharmaceutical companies.  
7

8 42. However, KaloBios was struggling, both operationally and financially, in the lead  
9 up to the Class Period. For instance, its antibody treatment, lenzilumab, a/k/a KB003, failed a  
10 Phase II trial in severe asthma, leading KaloBios's ex-partner Sanofi to abandon a partnership in  
11 which it had promised up to \$255 million in milestones. In January 2015, KaloBios disclosed  
12 that its KB001-A antibody failed to meet its primary endpoint in a Phase II study on bacterial  
13 infection related cystic fibrosis. Layoffs and a CEO departure followed. In its Form 10-Q for  
14 the period ended June 30, 2015, KaloBios disclosed that it had "incurred significant losses and  
15 had an accumulated deficit of \$193.9 million" by that date.  
16  
17

18 43. These failures and setbacks had devastating effects on KaloBios's workforce. For  
19 instance, in or about January 2015, CW2 met with Defendant Cross and Head of Human  
20 Relations Diane Petty and was offered a severance package. CW2 wound up staying on staff  
21 until June 30, 2015, and then one more month as a KaloBios contractor. CW2 stated that, during  
22 that time, Defendant Cross and management were telling employees that KaloBios had enough  
23 money to last through summer 2015 and would try to raise funds in the fall and that meetings  
24 with potential investors were yielding positive feedback. Inasmuch as CW2's job duties  
25 included preparation of documents for review by potential investors, CW2 was aware that  
26 KaloBios was at that time trying to recruit smaller investors, such as other pharmaceutical  
27  
28

1 companies that might invest in a particular drug in development at KaloBios, perhaps partnering  
2 in the development process. CW2 heard of firms such as Geron and Threshold Pharmaceuticals  
3 conducting due diligence on KaloBios and its drugs in that time frame.

4  
5 44. Similarly, in or about February 2015, CW1 was informed that CW1 was being  
6 laid off along with about seven other people, due to the need to downsize and preserve cash.  
7 Between then and the end of June 2015, when CW1 departed, CW1 received updates that  
8 Defendant Cross was meeting with potential investors and was confident that KaloBios was on  
9 track to raise money by November 2015.

10  
11 45. However, CW4 said that KaloBios managers began expressing concern  
12 September or October 2015 that insufficient funds had been raised and that the prospects for  
13 doing so before the end of the year did not look good. According to CW4, in October 2015,  
14 KaloBios staff was called in for what they thought was a regular monthly staff meeting, only to  
15 be informed that they would be laid off.

16  
17 46. CW3 and CW6 stated that Defendant Cross held monthly meetings with KaloBios  
18 employees in which he expressed optimism that KaloBios could raise the money necessary to  
19 continue operations. CW3 said that KaloBios employees only learned of the failure to raise  
20 necessary funds in November 2015. That was because, as KaloBios attempted to regroup, and to  
21 refocus its efforts on a new leukemia indication for KB003, it was running out of time and  
22 money. In a November 5, 2015 press release, KaloBios announced a 61% workforce reduction  
23 and the pursuit of “strategic alternatives.”

24  
25 47. In a Form 12b-25 notification of late filing of a Form 10-Q filed with the SEC on  
26 November 9, 2015, KaloBios announced that, as part of its restructuring, it would halt enrollment  
27 in its KB004 clinical study and that the “strategic alternatives” it was considering included  
28



1 “potentially the sale of the Company or its assets, or a corporate acquisition” or, if those efforts  
2 failed, “further restricting activities, wind-down of operations and bankruptcy proceedings.”

3  
4 48. KaloBios announced in a November 13, 2015 press release that its limited cash  
5 resources precluded continued investigation of strategic alternatives, such that it would  
6 discontinue its KB003 and KB004 development programs and had engaged the Brenner Group to  
7 lead efforts to “wind down its operations” and liquidate the company’s assets. It quoted  
8 KaloBios’s CFO and interim CEO as stating, “Recent discussions around a number of possible  
9 strategic transactions have ended, and as a result, the company believes it is highly unlikely that  
10 continuing to explore strategic alternatives could generate a viable transaction within the time  
11 frame allowed by our limited cash resources.” KaloBios instituted deep employee cuts. CW5  
12 was among those laid off on November 13, 2015, with the understanding that KaloBios was  
13 intending to “wind down operations.” CW5 said that, at that point, the CRO and clinical sites  
14 were contacted and told to halt the KB-003 trial and told that it was cancelled. CW6 also left  
15 KaloBios on November 13, 2015 and said no one at the company had been aware that Shkreli  
16 was interested in buying a controlling stake.

17  
18  
19 49. On this news, KaloBios’s stock closed at \$0.90 on November 13, 2015.

20 **Defendant Shkreli Takes Control Of KaloBios**

21  
22 50. KaloBios issued the November 18, 2015 Press Release, which listed Defendant  
23 Cross, KaloBios’s CFO, as the corporate contact. It stated, *inter alia*, that it “has been informed  
24 that an investor group comprised of Martin Shkreli and associates together have acquired more  
25 than 50% of the outstanding shares of KaloBios, and that the company is in discussions with Mr.  
26 Shkreli regarding possible direction for the company to continue in operation.” It also quoted  
27 KaloBios’s Executive Chairman, Defendant Martell, as stating,  
28

1 We have received communications from Mr. Shkreli informing us of his group's  
2 ownership position, and a proposal to continue the company's operations. Our  
3 board of directors is prepared to entertain any constructive proposal, which we  
4 will act upon promptly. Addressing short-term cash needs is our first priority, and  
5 we continue to be open to further dialogue.

6 Together, these statements were the first public disclosures as to Defendant Shkreli's large  
7 ownership stake in KaloBios and his proposal for reviving it and running it going forward. The  
8 Partial Settlement resolves the potential liability of the Settling Defendants for these statements.

9 51. Notably, the specifics of Shkreli's proposal were closely guarded and restricted to  
10 the highest levels of KaloBios and its Board, as indicated by the statements of multiple CWs.  
11 Specifically, CW3 indicated that, despite being KaloBios's chief archivist, CW3 had no  
12 knowledge of the process that led to Defendant Shkreli's investment and ascension as CEO.  
13 CW6 said that very few people would have met with Shkreli, possibly including Defendant  
14 Cross and KaloBios's legal counsel, Don Joseph. CW4 never knew that Defendant Shkreli was a  
15 potential CEO for KaloBios and was never part of any discussion regarding his investment in  
16 KaloBios. Instead, on CW4's last day, November 17, 2015, CW4 heard that a new CEO would  
17 be visiting KaloBios's offices. CW5, having been laid off on November 13, 2015, was invited  
18 back to work on November 19, 2015, at which point CW5 learned that KaloBios had a new  
19 CEO. At that time, CW5 was not familiar with Shkreli and had known that he was a potential  
20 investor or that there even was a potential large investor. Thereafter, CW5 described employee  
21 sentiment as having lifted amidst a feeling that KaloBios was "a new company." CW5 called the  
22 KB-0003 clinical site and told them that KaloBios was still in business and to resume the KB-  
23 003 trial, which many agreed to do. CW6 said that Shkreli effectively rescued the company.

24 52. Significantly, as was later revealed to investors, *after* Shkreli had acquired  
25 majority control in KaloBios, it rejected an alternative funding proposal from a different source  
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1 that had been on the table as of November 18, 2015. Specifically, as KaloBios later disclosed,  
2 via a Form 8-K filed with the SEC on December 9, 2015, “On November 18, 2015, Armistice  
3 Capital Fund (‘Armistice’) advised the Company that it was prepared to provide an immediate  
4 equity infusion if the Company needed it to fund operations. The Company elected not to accept  
5 such financing.” The Armistice offer was sufficiently substantial that, on December 4, 2015,  
6 KaloBios later awarded it a warrant to purchase an aggregate of 125,000 shares. On information  
7 and belief, KaloBios rejected the Armistice proposal at the direction of Defendant Shkreli, who  
8 was by that point its majority shareholder and was either already its CEO and Chairman or was  
9 about to ascend to those roles and was effectively filling them already.  
10

11  
12 53. Also significant is the fact that Defendant Shkreli’s controlling stake, which  
13 swelled to 70.0% by November 23, 2015, was acquired for an average price of just \$1.51 per-  
14 share. As disclosed in a Form 8-K filed on November 23, 2015, Shkreli’s group had purchased  
15 2,885,000 shares of KaloBios for \$4,363,853.00. Defendant Shkreli was motivated to commit  
16 the fraud alleged herein, *inter alia*, to drive up the value of this newly-acquired majority stake  
17 through his false and misleading statements during the Class Period.  
18

19 **Defendant Shkreli’s False and Misleading Statements During The Class Period**

20 54. On November 19, 2015, KaloBios issued the 11/19/2015 press release, which was  
21 later filed with the SEC as an exhibit to a Form 8-K signed by Defendant Shkreli and filed with  
22 the SEC on November 23, 2015 (the “11/23/2015 8-K”), which was entitled “KaloBios  
23 Pharmaceuticals, Inc. Appoints Martin Shkreli CEO and Announces New Financing” and which  
24 listed “Martin Shkreli, KaloBios CEO” as the company contact and which he wrote, edited, and  
25 authorized. It announced that the Shkreli Group had acquired 70% of KaloBios’s outstanding  
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1 shares and that he had been appointed its CEO and elected its Chairman. In addition, it included  
2 numerous false and misleading statements, as follows:

3 (a) It falsely and misleadingly touted Defendant Shkreli's leadership, his ability to  
4 secure necessary financing, and his ability to continue KaloBios's operations. It stated, "***In his***  
5 ***new role, Mr. Shkreli will work with the company's senior management team to ensure the***  
6 ***Company's continued operations.***" It touted that "***KaloBios has received a commitment from***  
7 ***Mr. Shkreli and other investors for an equity investment of at least \$3.0 million.*** In addition,  
8 ***Mr. Shkreli and the group of investors have committed to a \$10 million equity financing***  
9 ***facility, subject to applicable shareholder approval.***" It added, "The company has approximately  
10 \$5 million in cash and ***will endeavor to file its quarterly results on Form 10-Q as soon as***  
11 ***possible. Mr. Shkreli will continue as Chief Executive Officer of Turing Pharmaceuticals AG***  
12 and the two companies will operate independently."

15 (b) The 11/19/2015 Press Release also falsely and misleadingly described the  
16 prospects for KaloBios's drug candidates, painting the false and misleading impression that  
17 Shkreli's leadership and financing would create a viable pathway toward FDA approval. It  
18 quoted Shkreli as stating, "***We believe that the KaloBios' lenzilumab is a very promising***  
19 ***candidate for the treatment of various rare and orphan diseases.*** This monoclonal antibody  
20 neutralizes soluble granulocyte-macrophage colony stimulating factor (GM-CSF), a central actor  
21 in leukocyte differentiation, autoimmunity and inflammation. Lenzilumab has particular  
22 promise in Chronic Myelomonocytic Leukemia (CMML), a disease with no FDA-approved  
23 treatment options and a 3-year overall survival rate of 20%." It added:  
24  
25

26 An IND for a Phase I/II CMML monotherapy study of lenzilumab has been  
27 cleared by the Food and Drug Administration (NCT02546284). Preclinical studies  
28 have shown lenzilumab can be used to cause apoptosis in CMML cells by  
depriving them of GM-CSF. Lenzilumab may also have clinical utility in other

1 rare autoimmune and inflammatory disorders. ***A 31-patient Phase I/II clinical***  
2 ***trial of lenzilumab will begin enrollment at eight leading oncology clinical trial***  
3 ***sites by year end 2015 with interim results possible as soon as the first half of***  
4 ***2016.***

5 55. Unbeknownst to investors, these statements were materially false and misleading  
6 due, *inter alia*, to the facts and circumstances of Defendant Shkreli's prior improprieties, frauds,  
7 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
8 Shkreli Complaint and as set forth in ¶83 *infra*. As Shkreli knew, he had already committed a  
9 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
10 including, among others, Retrophin and MSMB. As Shkreli knew or was reckless in not  
11 knowing, these facts and circumstances rendered him *incapable* of ensuring KaloBios's  
12 continued operations, overseeing its filing of a Form 10-Q, overseeing enrollment in clinical  
13 trials, or advancing KaloBios's drug candidates toward FDA approval, and conversely, rendered  
14 KaloBios *incapable* of taking these steps with Shkreli at the helm. As Shkreli knew, or was  
15 reckless in not knowing, these facts and circumstances also made him *unfit* to lead KaloBios,  
16 made his associates from Retrophin and MSMB (who either knew of his misconduct or were  
17 reckless in not knowing it) also *unfit* to assume high-ranking positions at KaloBios or to oversee  
18 its operations, and rendered Shkreli *incapable* of providing or securing necessary financing and  
19 funding for KaloBios's continued operations. Shkreli's knowledge was imputable to KaloBios.  
20 The funding and financing promised by Shkreli was a mirage, completely illegitimate, non-  
21 viable, and only obtainable (if at all) through additional frauds, such that KaloBios was in reality  
22 still facing imminent bankruptcy.  
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25 56. This press release had its intended effect, prompting investors to buy back into  
26 KaloBios, thereby rapidly driving up its stock price and greatly enhancing the value of  
27 Defendant Shkreli's newly-acquired majority stake. After reaching an intra-day trading high of  
28

1 \$14.72, KaloBios's stock closed at \$10.40 on November 19, 2015, an increase of \$8.33, or more  
2 than 400%, from its \$2.07 closing price on November 18, 2015. At this price, the Shkreli  
3 Group's 70% stake in KaloBios had risen in value to \$30,004,000.00.

4  
5 57. On November 20, 2015, Defendant Shkreli gave an interview to Bloomberg News  
6 (the "11/20/2015 Bloomberg Interview"), in which he falsely and misleadingly said, "***I think we***  
7 ***will grow KBIO into a large company***" and that he was ***targeting the company to be the next***  
8 ***Incyte or large blood-cancer developer*** and that KaloBios needed to "***replenish the pipeline***  
9 ***through discipline, diversification and value-based strategy.***"

10  
11 58. Unbeknownst to investors, these statements were materially false and misleading  
12 due, *inter alia*, to the facts and circumstances of Defendant Shkreli's prior improprieties, frauds,  
13 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
14 Shkreli Complaint and as set forth in ¶83, *infra*. As Shkreli knew, he had already committed a  
15 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
16 including, among others, Retrophin and MSMB. As Shkreli knew or was reckless in not  
17 knowing, these facts and circumstances rendered him *incapable* of growing KaloBios into a large  
18 company, replenishing its pipeline, or leading KaloBios in any course of conduct requiring  
19 "discipline," and conversely, rendered KaloBios *incapable* of taking these steps with Shkreli at  
20 the helm. As Shkreli knew, or was reckless in not knowing, these facts and circumstances also  
21 made him *unfit* to lead KaloBios, made his associates from Retrophin and MSMB (who either  
22 knew of his misconduct or were reckless in not knowing it) also *unfit* to assume high-ranking  
23 positions at KaloBios or to oversee its operations, and rendered Shkreli *incapable* of providing or  
24 securing necessary financing and funding for KaloBios's continued operations. Shkreli's  
25 knowledge was imputable to KaloBios. The funding and financing promised by Shkreli was a  
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1 mirage, completely illegitimate, non-viable, and only obtainable (if at all) through additional  
2 frauds, such that KaloBios was in reality still facing imminent bankruptcy.

3  
4 59. Defendant Shkreli's misstatements again drove up KaloBios's stock price. On  
5 November 20, 2015, its stock reached an intra-day high of \$23.11 and closed at \$18.25, up over  
6 75% from its prior day's close of \$10.40. At this price, the Shkreli Group's 70% stake in  
7 KaloBios had risen in value to \$52,651,250.00.

8  
9 60. Defendant Shkreli made false and misleading statements on Sunday, November  
10 22, 2015, via his Twitter account (@MartinShkreli), when he stated, "CMML and JMML are  
11 rapidly fatal blood cancers. *Lenxilumab, the important asset at \$KBIO is an exciting potential*  
12 *agent for these diseases.*" The next day, he tweeted a message stating, "*Turnaround in*  
13 *progress. \$KBIO*" that included this picture:



1           61.     Unbeknownst to investors, these statements were materially false and misleading  
2 due, *inter alia*, to the facts and circumstances of Defendant Shkreli’s prior improprieties, frauds,  
3 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
4 Shkreli Complaint and as set forth in ¶83, *infra*. As Shkreli knew, he had already committed a  
5 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
6 including, among others, Retrophin and MSMB. As Shkreli knew or was reckless in not  
7 knowing, these facts and circumstances rendered him *incapable* of ensuring KaloBios’s  
8 development of its drug candidates or making any sustainable “progress” in its turnaround, and  
9 conversely, rendered KaloBios *incapable* of taking these steps with Shkreli at the helm. As  
10 Shkreli knew, or was reckless in not knowing, these facts and circumstances also made him *unfit*  
11 to lead KaloBios, made his associates from Retrophin and MSMB (who either knew of his  
12 misconduct or were reckless in not knowing it) also *unfit* to assume high-ranking positions at  
13 KaloBios or to oversee its operations, and rendered Shkreli *incapable* of providing or securing  
14 necessary financing and funding for KaloBios’s continued operations. Shkreli’s knowledge was  
15 imputable to KaloBios. The funding and financing promised by Shkreli was a mirage,  
16 completely illegitimate, non-viable, and only obtainable (if at all) through additional frauds, such  
17 that KaloBios was in reality still facing imminent bankruptcy.  
18

19           62.     Defendant Shkreli made false and misleading statements in the 11/23/2015 8-KK,  
20 which he signed as its CEO and filed with the SEC on November 23, 2015 and which attached  
21 the 11/19/2015 Press Release as an exhibit. The 11/23/2015 8-K announced leadership changes  
22 at KaloBios and touted Shkreli’s prior experiences at other companies, including Retrophin and  
23 MSMB, in a series of false and misleading statements:  
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1 (a) In announcing Defendant Shkreli's appointment as KaloBios's CEO, the  
2 11/23/2015 8-K falsely and misleadingly touted his prior experiences, stating, *inter alia*:

3  
4 Martin Shkreli, age 32, is currently the Chief Executive Officer and is founder of  
5 Turing Pharmaceuticals AG.... From December 17, 2012 until October 13, 2014,  
6 Mr. Shkreli served as the **Chief Executive Officer and as a director of**  
7 **Retrophin, Inc....** (NASDAQ: RTRX), a biotechnology company that develops  
8 treatments for rare and catastrophic diseases. In March 2011, Mr. Shkreli **founded**  
9 **Retrophin, LLC** (the predecessor to Retrophin, Inc.) and served as the **President**  
10 **of Retrophin, LLC** from the date of its formation. Mr. Shkreli was also the  
11 **founder and managing partner of MSMB Capital Management**, a New York  
12 hedge fund firm founded in 2006 that ceased to operate in 2013 that managed a  
variety of partnerships. Mr. Shkreli is an experienced biotechnology and  
pharmaceutical industry investor, particularly in businesses with orphan drugs.  
Mr. Shkreli received his Bachelors of Business Administration from Baruch  
College. **The Company believes that Mr. Shkreli's prior experience, attributes  
and skills are indicators of his professional competence for the role as Chief  
Executive Officer of the Company.**

13 (b) The 11/23/2015 8-K misleadingly announced that on November 19, 2015,  
14 KaloBios's Shkreli-controlled Board **appointed Shkreli as its Chairman** and **appointed**  
15 **numerous Shkreli associates as members of the Board, including Biestek**, MSMB's Co-  
16 Founder and a longtime Retrophin executive. It stated that, thereafter, the then-current Board  
17 members resigned, "effective immediately after such appointments," falsely or misleadingly  
18 adding, "**The Resigning Directors had no disagreement with the Company that led to their**  
19 **respective resignations.**"

20  
21 (c) In addition, the 11/23/2015 8-K misleadingly announced that the newly-appointed  
22 and Shkreli-controlled Board had appointed other longtime Shkreli associates from Retrophin  
23 and MSMB to Board positions, stating, "**On November 22, 2015, the Board appointed Tom**  
24 **Fernandez and Michael Harrison as members of the Board and members of the Board's Audit**  
25 **Committee, with Mr. Harrison appointed as chairman of such committee.**"  
26  
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1 (d) The 11/23/2015 8-K also falsely and misleadingly stated that “Under  
2 [NASDAQ’s listing] rules, the Company has 60 calendar days from November 17, 2015 to  
3 submit a plan to NASDAQ to regain compliance with the Rules. *The Company intends to file*  
4 *the 2015 Third Quarter 10-Q prior to such date and will submit a compliance plan to*  
5 *NASDAQ on or prior to January 16, 2016.”*

7 63. Unbeknownst to investors, these statements were materially false and misleading  
8 due, *inter alia*, to the facts and circumstances of Defendant Shkreli’s prior improprieties, frauds,  
9 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
10 Shkreli Complaint and as set forth in ¶83, *infra*. As Shkreli knew, he had already committed a  
11 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
12 including, among others, Retrophin and MSMB – such that his prior work as founder, CEO,  
13 managing partner, and director of these companies were negatives and did not support the  
14 statement that his “prior experience, attributes, and skills are indicators of his professional  
15 competence for the role of Chief Executive Officer of [KaloBios].” As Shkreli knew or was  
16 reckless in not knowing, these facts and circumstances rendered him *incapable* of overseeing  
17 KaloBios’s filing its Form 10-Q or submitting a compliance plan to NASDAQ, and conversely,  
18 rendered KaloBios *incapable* of taking these steps with Shkreli at the helm. As Shkreli knew, or  
19 was reckless in not knowing, these facts and circumstances also made him *unfit* to lead  
20 KaloBios, made his associates from Retrophin and MSMB (who either knew of his misconduct  
21 or were reckless in not knowing it) – including Biestek, Harrison, and Fernandez – also *unfit* to  
22 assume high-ranking positions at KaloBios or to oversee its operations, and rendered Shkreli  
23 *incapable* of providing or securing necessary financing and funding for KaloBios’s continued  
24 operations. Shkreli’s knowledge was imputable to KaloBios. The funding and financing  
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1 promised by Shkreli was a mirage, completely illegitimate, non-viable, and only obtainable (if at  
2 all) through additional frauds, such that KaloBios was in reality still facing imminent  
3 bankruptcy.

4  
5 64. Once again, Defendant Shkreli's misstatements had the desired effect. On  
6 November 23, 2015, KaloBios's stock reached an intra-day high of \$45.82 and closed at \$39.50,  
7 up over 200% from its prior day's close of \$18.25. At this price, the Shkreli Group's 70% stake  
8 in KaloBios had risen in value to \$113,957,500.00.

9  
10 65. On November 24, 2015, Defendant Shkreli gave an interview to NBC Bay Area  
11 (the "11/24/2015 NBC Interview"), in which said, he falsely and misleadingly said, "We've been  
12 watching KaloBios for some time, and then we finally felt that it time to buy the company" and  
13 that "***At the end of the day my constituency is not the media, it's my investors, who I work for,***  
14 ***and the patients who we all work for together.***" As regards KaloBios's staff, he falsely and  
15 misleadingly said, "***Right now, we're about 12, and we're looking to double and triple that***  
16 ***number over the next few months.***"  
17

18 66. Unbeknownst to investors, these statements were materially false and misleading  
19 due, *inter alia*, to the facts and circumstances of Defendant Shkreli's prior improprieties, frauds,  
20 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
21 Shkreli Complaint and as set forth in ¶83, *infra*. As Shkreli knew, he had already committed a  
22 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
23 including, among others, Retrophin and MSMB. As Shkreli knew or was reckless in not  
24 knowing, these facts and circumstances rendered him *incapable* of growing KaloBios's  
25 workforce or creating *bona fide* investment returns for KaloBios's investors, and conversely,  
26 rendered KaloBios *incapable* of taking these steps with Shkreli at the helm. As Shkreli knew, or  
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1 was reckless in not knowing, these facts and circumstances also made him *unfit* to lead  
2 KaloBios, made his associates from Retrophin and MSMB (who either knew of his misconduct  
3 or were reckless in not knowing it) also *unfit* to assume high-ranking positions at KaloBios or to  
4 oversee its operations, and rendered Shkreli *incapable* of providing or securing necessary  
5 financing and funding for KaloBios's continued operations. Shkreli's knowledge was imputable  
6 to KaloBios. The funding and financing promised by Shkreli was a mirage, completely  
7 illegitimate, non-viable, and only obtainable (if at all) through additional frauds, such that  
8 KaloBios was in reality still facing imminent bankruptcy.

9  
10  
11 67. Defendant Shkreli's misstatements again had the desired effect. On November  
12 24, 2015, KaloBios's stock reached an intra-day high of \$43.75 before closing at \$18.40, a price  
13 at which the Shkreli Group's 70% stake in KaloBios would be worth \$53,084,000.00.

14 68. On November 25, 2015, Defendant Shkreli gave an interview with Bloomberg  
15 (the "11/25/2015 Bloomberg Interview"), in which he made extensive false and misleading  
16 statements, including, *inter alia*:

17  
18 (a) Defendant Shkreli falsely and misleadingly touted the progress being made on  
19 KaloBios's drug candidates, stating, "The main asset of the company is a drug called lenzilumab,  
20 which is a potential drug for chronic myelomonocytic leukemia. ***Trials starting right now***  
21 ***actually, so we're really excited to see that...and we'll know in Q1 or Q2 if our trial works.***"

22  
23 (b) He falsely and misleadingly touted the advantages of his and his associates'  
24 leadership of KaloBios, including access to needed funds, stating, "[W]e went in and we bought  
25 the company in the open market ourselves and ***named ourselves the management*** - - new  
26 management of the company, and ***now the company has the cash to do this clinical trial that***  
27 ***could be a life-saving drug for cancer patients.***"  
28

1 (c) He falsely and misleadingly boasted as to the strength of KaloBios’s business,  
 2 stating, “We’re focused on creating the value of KaloBios through not only lenzilumab, but **I**  
 3 **expect that we could announce in acquisition for KaloBios to acquire new products as soon as**  
 4 **by the end of this year.** In fact, **we’re in talks with three separate acquisitions that could create**  
 5 **even more value for KaloBios.**” When asked for details as to whether the drugs were for  
 6 treatment of common or rare diseases, he falsely and misleadingly added, “**Probably rare**  
 7 **diseases. Two of them are not yet FDA approved, and one of them is FDA approved. So all**  
 8 **three are progressing rapidly and could be great fits for KaloBios.**”  
 9

10 (d) When asked why he would succeed at leading KaloBios whereas its prior  
 11 leadership had failed, he falsely and misleadingly stated  
 12

13 **I think it’s credibility and trustworthiness.** This is a company that tried  
 14 lenzilumab in rheumatoid arthritis, and they failed. They tried it in asthma. They  
 15 failed. And so the third attempt, if you ask investors to fund yet another program,  
 16 it often is not going to be received very well. **So I think when we came in with**  
 17 **fresh capital and fresh ideas and said we underwrite this; we support this.** And  
 18 **investors who have been in my last two companies know my track record is very**  
 19 **good,** and I think we’ll see success with lenzilumab in CMML.

20 (e) Defendant Shkreli falsely and misleadingly committed to fund KaloBios’s  
 21 ongoing drug candidate development work, stating, “**KaloBios needs another \$100 million that**  
 22 **I’m going to give to it so that we can develop lenzilumab for CMML.**”  
 23

24 69. Unbeknownst to investors, these statements were materially false and misleading  
 25 due, *inter alia*, to the facts and circumstances of Defendant Shkreli’s prior improprieties, frauds,  
 26 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
 27 Shkreli Complaint and as set forth in ¶83, *infra*. As Shkreli knew, he had already committed a  
 28 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
 including, among others, Retrophin and MSMB – such that his prior work as founder, CEO,

1 managing partner, and director of these companies were negatives and did not support the  
2 statements that he brought “credibility and trustworthiness” to KaloBios and that his “investors  
3 who have been in my last two companies know my track record is very good.” As Shkreli knew  
4 or was reckless in not knowing, these facts and circumstances rendered him *incapable* of leading  
5 KaloBios through lenzilumab clinical trials and three drug acquisitions, and conversely, rendered  
6 KaloBios *incapable* of taking these steps with Shkreli at the helm. As Shkreli knew, or was  
7 reckless in not knowing, these facts and circumstances also made him *unfit* to lead KaloBios,  
8 made his associates from Retrophin and MSMB (who either knew of his misconduct or were  
9 reckless in not knowing it) also *unfit* to assume high-ranking positions at KaloBios or to oversee  
10 its operations, and rendered Shkreli *incapable* of providing or securing necessary financing and  
11 funding for KaloBios’s continued operations. Shkreli’s knowledge was imputable to KaloBios.  
12 The funding and financing promised by Shkreli was a mirage, completely illegitimate, non-  
13 viable, and only obtainable (if at all) through additional frauds, such that his funding statements  
14 “now the company has the cash to do this clinical trial” and “KaloBios needs another \$100  
15 million that I’m going to give to it” were patently false and such that KaloBios was in reality still  
16 facing imminent bankruptcy.

17  
18  
19  
20 70. Also on November 25, 2015, Defendant Shkreli and the members of his investor  
21 group including Biestek, filed a Schedule 13D with the SEC (the “11/25/2015 13D”), in which  
22 they are referred to as the “Reporting Persons” and which they signed and certified via the false  
23 and misleading statement: “*After reasonable inquiry and to the best of my knowledge and*  
24 *belief, I certify that the information set forth in this statement is true, complete and correct.*”  
25 After disclosing that the Reporting Persons had acquired a majority of KaloBios’s common  
26 shares on November 17, 2015, the 11/25/2015 13D falsely and misleadingly stated, “On  
27  
28

1 November 18, 2015, the Reporting Persons *made a proposal to [KaloBios] regarding financing*  
2 *options (including those that may lead to the acquisition of additional securities of [KaloBios]*  
3 *by the Reporting Persons and third parties*, and those that would lead to a material change in the  
4 present capitalization of [KaloBios]), *continuing operations of [KaloBios]* and a change in  
5 [KaloBios]’s management and composition of the Board.” It then disclosed the appointment of  
6 Shkreli as CEO and Chairman of the Board on November 19, 2015 and the appointment of his  
7 associates, including Biestek, Fernandez, and Harrison, as Board members on November 19 and  
8 22, 2015.

9  
10 71. Unbeknownst to investors, these statements were materially false and misleading  
11 due, *inter alia*, to the facts and circumstances of Defendant Shkreli’s prior improprieties, frauds,  
12 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
13 Shkreli Complaint and as set forth in ¶83, *infra*. As Shkreli knew, he had already committed a  
14 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
15 including, among others, Retrophin and MSMB. As Shkreli knew or was reckless in not  
16 knowing, these facts and circumstances rendered him *incapable* of overseeing the continuing  
17 operations of KaloBios, and conversely, rendered KaloBios *incapable* of continuing its  
18 operations with Shkreli at the helm. As Shkreli knew, or was reckless in not knowing, these  
19 facts and circumstances also made him *unfit* to lead KaloBios, made his associates from  
20 Retrophin and MSMB (who either knew of his misconduct or were reckless in not knowing it) –  
21 including Biestek, Harrison, and Fernandez – also *unfit* to assume high-ranking positions at  
22 KaloBios or to oversee its operations, and rendered Shkreli *incapable* of providing or securing  
23 necessary financing and funding for KaloBios’s continued operations. Shkreli’s knowledge was  
24 imputable to KaloBios. The funding and financing promised by Shkreli was a mirage,  
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1 completely illegitimate, non-viable, and only obtainable (if at all) through additional frauds, such  
2 that KaloBios was in reality still facing imminent bankruptcy.

3 72. Once again, Defendants' misstatements boosted KaloBios's stock price. On  
4 November 25, 2015, its stock closed at \$26.63, up nearly 45% from its prior day's close at  
5 \$18.40. At this price, the Shkreli Group's 70% stake in KaloBios was worth \$76,827,550.00.  
6

7 73. On December 3, 2015, KaloBios issued a series press releases that were written,  
8 edited, and authorized by Defendant Shkreli and that quoted him, in which additional false and  
9 misleading statements were made, as follows:

10 (a) One press release, entitled "KaloBios Announces Management Additions" (the  
11 "12/3/2015 Management Press Release"), touted the appointment of several Shkreli associates to  
12 executive positions, including Retrophin alumnus Crutcher as KaloBios's Head of Business  
13 Development. In it, regarding the announced appointments, Defendant Shkreli falsely and  
14 misleadingly stated, "***We are moving quickly to build a very high quality team*** focused on  
15 optimizing the growth opportunities at KaloBios Pharmaceuticals."  
16

17 (b) Another press release, entitled "KaloBios Pharmaceuticals, Inc. Raises \$8.2  
18 Million in Private Placement" (the "12/3/2015 Funding Press Release"), misleadingly stated:  
19

20 KaloBios Pharmaceuticals, Inc. (Nasdaq: KBIO), today announced it has entered  
21 definitive agreements with institutional and accredited investors in connection  
22 with a private placement, or PIPE financing. ***Upon closing of the transaction, the  
23 Company will receive gross proceeds of approximately \$8.2 million*** in exchange  
24 for the issuance to investors of 280,170 shares of common stock of the Company.  
25 The Company may increase the number of shares sold based on additional  
26 definitive agreements that may be received. ***Closing of the transaction is  
27 anticipated to occur the week of December 7, 2015*** and is subject to customary  
28 closing conditions.

***The Company intends to use the proceeds from the PIPE financing for an  
acquisition and to advance its pipeline of drug candidates, including its lead  
compound, lenzilumab*** for the treatment of myelomonocytic leukemia (CMML).



1 (c) A third press release, entitled “KaloBios Announces Agreement to Acquire  
2 Benznidazole Program for the Treatment of Chagas Disease” (the “12/3/2015 Benznidazole  
3 Press Release”), announced that KaloBios had signed an agreement to acquire a benznidazole  
4 program for the treatment of Chagas Disease from privately-held Savant Neglected Diseases,  
5 LLC, in exchange for an upfront payment of \$2 million plus regulatory milestones and a royalty  
6 based on product sales. It quoted Defendant Shkreli as falsely and misleadingly saying, *inter*  
7 *alia*, “Benznidazole is an extremely important medicine that is currently unavailable in the  
8 United States or Europe. ***KaloBios will work to bring this vital therapy to help patients avoid***  
9 ***progression to Chagas’ cardiomyopathy by offering early disease intervention.***”  
10

11  
12 74. Unbeknownst to investors, these statements were materially false and misleading  
13 due, *inter alia*, to the facts and circumstances of Defendant Shkreli’s prior improprieties, frauds,  
14 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
15 Shkreli Complaint and as set forth in ¶83, *infra*. As Shkreli knew, he had already committed a  
16 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
17 including, among others, Retrophin and MSMB. As Shkreli knew or was reckless in not  
18 knowing, these facts and circumstances rendered him *incapable* of legitimately securing the  
19 PIPE financing, overseeing KaloBios’s efforts to advance its drug pipeline and move lenzilumab  
20 toward FDA approval, legitimately securing any drug acquisitions or, if secured, overseeing  
21 development, approval and/or marketing of the acquired drugs, and conversely, rendered  
22 KaloBios *incapable* of taking these steps with Shkreli at the helm. As Shkreli knew, or was  
23 reckless in not knowing, these facts and circumstances also made him *unfit* to lead KaloBios,  
24 made his associates from Retrophin and MSMB (who either knew of his misconduct or were  
25 reckless in not knowing it) – including Crutcher – also *unfit* to assume high-ranking positions at  
26  
27  
28

1 KaloBios or to oversee its operations, and rendered Shkreli *incapable* of providing or securing  
2 necessary financing and funding for KaloBios’s continued operations, including the \$8.2 million  
3 PIPE financing. Shkreli’s knowledge was imputable to KaloBios. The funding and financing  
4 promised by Shkreli was a mirage, completely illegitimate, non-viable, and only obtainable (if at  
5 all) through additional frauds, such that KaloBios was in reality still facing imminent  
6 bankruptcy.  
7

8 75. On December 3, 2015, KaloBios held a conference call (the “12/3/2015  
9 Conference Call”) in which it discussed the substance of the three press releases issued that day.  
10 In conjunction therewith, Defendants Shkreli and KaloBios issued a slide presentation (the  
11 “12/3/2015 Slides”), which they posted to KaloBios’s corporate website and filed as an  
12 attachment to a Form 8-K (the “12/4/2015 8-K”), dated and signed by Defendant Shkreli as  
13 KaloBios’s CEO on December 3, 2015 and filed with the SEC on December 4, 2015. The  
14 12/3/2015 Slides, which were written, prepared, and authorized by Defendant Shkreli, made  
15 numerous materially false and misleading statements, including, *inter alia*:  
16  
17

18 (a) They falsely and misleadingly touted that “*The Shkreli Group had acquired a*  
19 *controlling stake of KaloBios,*” that “*Martin Shkreli named Chairman and CEO of KaloBios,*”  
20 and that these developments meant “*Permanent access to capital and M&A deal flow.*”  
21

22 (b) The 12/3/2015 Slides also falsely and misleadingly touted that “*Employees #1*  
23 *and #2 of Retrophin, Inc. (NASDAQ: RTRX have joined the Board of Directors of KaloBios*”  
24 and that “*Turing and Retrophin are two of the fastest growing biopharmaceutical companies*  
25 *in the history of the industry.*”

26 (c) They falsely and misleadingly stated that KaloBios’s “Turnaround focused on  
27 benznidazole and lenzilumab” and included development details and specific timelines, stating,  
28

1 *inter alia*, that KaloBios would “**File NDA [for benznidazole] by Year End 2016**” and was  
2 otherwise “**Focused on lenzilumab (formerly KB003)**” and was “**Initiating Phase 1 / 2 study in**  
3 **CMML by YE 2015**” (just weeks away) and would “**Initiate Phase 2 study in JMML in 1H**  
4 **2016**” and “**Initiate multiple proof-of-concept studies for new orphan indications in 2016.**”

5  
6 (d) The 12/3/2015 Slides also falsely and misleadingly represented KaloBios’s  
7 “Business Development” prospects, touting the “**Addition of experienced business development**  
8 **team led by Patrick Crutcher**” and representing that “**KaloBios is in near-term negotiations to**  
9 **acquire several assets in the next 30 to 90 days**” and that “**Opportunities include transactions**  
10 **with large pharma, biotech and specialty pharma companies.**”

11  
12 (e) The 12/3/2015 Slides also falsely and misleadingly represented KaloBios’s  
13 “Corporate Milestones,” stating that in “**December 2015**” it would “**Close Savant transaction**”  
14 and “**File 10-Q with new audit firm,**” while “**KB003 CMML Phase I Study first patient dosed.**”

15  
16 76. Unbeknownst to investors, these statements were materially false and misleading  
17 due, *inter alia*, to the facts and circumstances of Defendant Shkreli’s prior improprieties, frauds,  
18 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
19 Shkreli Complaint and as set forth in ¶83, *infra*. As Shkreli knew, he had already committed a  
20 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
21 including, among others, Retrophin and MSMB – such that his prior work as founder, CEO,  
22 managing partner, and director of these companies were negatives and did not support the  
23 statement positively depicting the addition to KaloBios’s Board of “Employees #1 and #2 of  
24 Retrophin” or positively describing Retrophin as one of “the fastest growing biopharmaceutical  
25 companies in the history of the industry.” As Shkreli knew or was reckless in not knowing, these  
26 facts and circumstances rendered him *incapable* of providing “permanent access to capital and  
27  
28

1 M&A deal flow,” or of overseeing KaloBios’s efforts to file an NDA for benznidazole by year  
2 end 2016, initiate clinical trials for lenzilumab in CMML by year end 2015 (just weeks away at  
3 the time he spoke) and in JMML in the first half of 2016, initiate studies for new orphan  
4 indications in 2016, “acquire several assets in the next 30 to 90 days,” file its Form 10-Q in  
5 December 2015, and both close the Savant deal and pursue FDA approval for benznidazole, and  
6 conversely, rendered KaloBios *incapable* of taking these steps with Shkreli at the helm. As  
7 Shkreli knew, or was reckless in not knowing, these facts and circumstances also made him *unfit*  
8 to lead KaloBios, made his associates from Retrophin and MSMB (who either knew of his  
9 misconduct or were reckless in not knowing it) – including Crutcher and other unnamed early  
10 Retrophin employees (presumably Shkreli and Biestek) – also *unfit* to assume high-ranking  
11 positions at KaloBios or to oversee its operations, and rendered Shkreli *incapable* of providing or  
12 securing necessary financing and funding for KaloBios’s continued operations. Shkreli’s  
13 knowledge was imputable to KaloBios. The funding and financing promised by Shkreli was a  
14 mirage, completely illegitimate, non-viable, and only obtainable (if at all) through additional  
15 frauds, such that KaloBios was in reality still facing imminent bankruptcy.

16  
17  
18  
19 77. These misstatements continued the price inflation of KaloBios’s stock during the  
20 Class Period. After reaching an intra-day high of \$34.30, its stock price closed at \$29.32 on  
21 December 3, 2015. After reaching an intra-day high of \$34.63, it closed at \$31.13 on December  
22 4, 2015. At these prices, the Shkreli Group’s 70% stake in KaloBios was worth between  
23 \$84,588,200.00 and \$89,810,050.00. The same day, Defendant Shkreli re-tweeted a day trader’s  
24 post touting KaloBios’s value: “\$KBIO worth minimum \$60 bucks per share.”

25  
26 78. On December 16, 2015, KaloBios filed a Form 8-K with the SEC (the  
27 “12/16/2015 8-K”), which Defendant Shkreli wrote, edited, authorized, and signed as KaloBios’s  
28

1 CEO, stating that it had consummated a transaction to sell 350,224 shares of KaloBios common  
2 stock in an \$8.2 million private placement via an amended securities purchase agreement that it  
3 appended as an exhibit.

4  
5 79. Unbeknownst to investors, these statements were materially false and misleading  
6 due, *inter alia*, to the facts and circumstances of Defendant Shkreli's prior improprieties, frauds,  
7 and illegal and criminal misconduct, as later revealed in the Shkreli Indictments and the SEC  
8 Shkreli Complaint and as set forth in ¶83, *infra*. As Shkreli knew, he had already committed a  
9 myriad of improper, fraudulent, illegal, and criminal actions at his other companies and ventures,  
10 including, among others, Retrophin and MSMB. As Shkreli knew or was reckless in not  
11 knowing, these facts and circumstances rendered him *incapable* of legitimately securing the \$8.2  
12 million PIPE financing or any other financing options, and conversely, rendered KaloBios  
13 *incapable* of doing so with Shkreli at the helm. As Shkreli knew, or was reckless in not  
14 knowing, these facts and circumstances also made him *unfit* to lead KaloBios, made his  
15 associates from Retrophin and MSMB (who either knew of his misconduct or were reckless in  
16 not knowing it) also *unfit* to assume high-ranking positions at KaloBios or to oversee its  
17 operations, and rendered Shkreli *incapable* of providing or securing necessary financing and  
18 funding for KaloBios's continued operations. Shkreli's knowledge was imputable to KaloBios.  
19 The funding and financing promised by Shkreli was a mirage, completely illegitimate, non-  
20 viable, and only obtainable (if at all) through additional frauds, such that KaloBios was in reality  
21 still facing imminent bankruptcy.  
22  
23  
24

25 80. On December 16, 2015, KaloBios's stock closed at \$23.59, after reaching an  
26 intra-day high of \$25.30. At these prices, the Shkreli Group's 70% stake in KaloBios was worth  
27 \$68,057,150.00.  
28

**The Truth Begins To Emerge**

81. The market was shocked when investors awoke to the news that Defendant Shkreli had been led away in handcuffs during his pre-market-open arrest on December 17, 2015. He was immediately terminated as KaloBios CEO that same day.



82. Shkreli’s arrest was based on misconduct outlined in a 30-page federal indictment unsealed on December 17, 2015 (and superseded in June 2016), which along with a 22-page SEC complaint filed that day, outlined the massive scale of Shkreli’s fraudulent and illegal conduct at his other companies and ventures, including Retrophin and MSMB. Significantly, Defendant Shkreli had taken associates of his with high-ranking positions at these *very same* companies, appointed them to high-level leadership positions at KaloBios during the Class Period, and in doing so, touted their experience and his own experience leading those companies.

83. The SEC Shkreli Complaint and the Shkreli Indictments contained new information that materially altered the total mix of information for KaloBios investors. They

1 included, *inter alia*, the following details that were material omissions from the false and  
2 misleading Class Period statements alleged *supra*, all of which also constituted additional  
3 reasons why those misstatements had been materially false and misleading when made:

4 (a) **Shkreli stole funds from MSMB.** Defendant Shkreli misappropriated funds from  
5 MSMB by withdrawing funds from MSMB that were far in excess of the 1% management fee  
6 and the 20% net profit incentive allocation permitted by the MSMB partnership agreement.  
7 Without the knowledge or consent of the Capital Limited Partners of MSMB, Shkreli withdrew  
8 and spent more than \$200,000.00 from MSMB during the life of the fund, which was far in  
9 excess of any permitted fees. Part of the drastic decline in MSMB's value was attributable to the  
10 fact that between October 2009 and January 2011, over \$450,000.00 invested in MSMB was  
11 used to pay expenses, and at least \$120,000.00 of these expenses were not properly chargeable to  
12 MSMB under the terms of the partnership agreement, including charges for office rent, food,  
13 medical expenses, clothing and cash withdrawals.

14 (b) **Shkreli fraudulently induced investments in MSMB.** Between September 2009  
15 and December 2010, Defendant Shkreli misrepresented material facts to potential investors,  
16 including, *inter alia*, that MSMB was a transparent investment vehicle with monthly liquidity,  
17 the investment advisor was entitled to a 1% management fee per annum based on net partnership  
18 assets, the general partner was entitled to 20% of the limited partners' annual net profits, and  
19 MSMB had retained independent certified public accountants as auditors who would issue an  
20 audit report on MSMB's annual financials. Based on these statements and representations about  
21 Shkreli's success as a portfolio manager and personal investment in MSMB, between September  
22 2009 and November 2010, he induced \$700,000.00 in MSMB investments from four Capital  
23 Limited Partners. In actuality, however, MSMB did not retain an independent auditor, was not  
24  
25  
26  
27  
28

1 transparent, and lacked sufficient monthly liquidity to satisfy large redemption requests.  
2 Moreover, Shkreli failed to disclose that he had lost all of the money he managed in Elea Capital,  
3 his prior hedge fund, and that there was a \$2.3 million default judgment against him from  
4 Lehman Brothers resulting from his trading activity.  
5

6 (c) **Shkreli lied to MSMB's largest investors.** On or about December 2, 2010, a  
7 potential large investor being solicited by Defendant Shkreli for investment in MSMB asked him  
8 about MSMB's assets under management and for the names of its independent auditor and fund  
9 administrator. Shkreli responded by saying MSMB had \$35 million in assets under management  
10 and that MSMB's independent auditor and administrator were Kass & Company, P.C. and NAV  
11 Consulting. In reliance on these representations, the investor invested \$1.25 million in MSMB in  
12 December 2010 and January 2011, and seven other investors invested another \$1.75 million.  
13 However, at the time of Shkreli's representations, MSMB did not have an independent auditor or  
14 administrator and the total value of assets in its bank and brokerage accounts was just \$700.00.  
15

16 (d) **Shkreli deceived a broker to MSMB and failed to deliver promised securities.**  
17 On or about February 1, 2011, Defendant Shkreli took a large short sale position in Orexigen  
18 Therapeutics, Inc. ("Orexigen") in MSMB's brokerage account at Merrill Lynch. Shkreli  
19 represented to Merrill Lynch that he had located Orexigen shares to borrow in order to settle  
20 MSMB's short sales when, in actuality, he had not located such shares. As a result, MSMB  
21 failed to settle a short position of over 11 million Orexigen shares, which Merrill Lynch had to  
22 close at a loss of over \$7 million. These and other trading losses dropped MSMB's total account  
23 balances to just \$58,500.00 by the end of February 2011.  
24

25 (e) **Shkreli worked with his lawyer and employees to defraud Retrophin into**  
26 **settling MSMB debts and personal debts.** Between February 2011 and September 2014,  
27  
28



1 Defendant Shkreli and Greebel, who served as Retrophin’s lead outside counsel and at times as  
2 counsel to Shkreli and MSMB, engaged in a scheme to defraud Retrophin by causing Retrophin:  
3 to transfer Retrophin securities to MSMB, even though MSMB had never invested in Retrophin;  
4 to enter into settlement agreements with defrauded MSMB investors to settle liabilities owed by  
5 MSMB and Shkreli; and to enter into sham consulting agreements with other defrauded MSMB  
6 investors and an Elea Capital investor as an alternative means to settle liabilities owed by MSMB  
7 and Shkreli. Shkreli’s and Greebel’s scheme was aided by “Corrupt Employee 1” and “Corrupt  
8 Employee 2,” identified in the Shkreli Indictments as “individuals employed by Shkreli” who, on  
9 information and belief, are among the Shkreli associates rewarded with high-level positions at  
10 KaloBios.  
11

12  
13 (f) **Shkreli worked with his lawyer and employees to fabricate MSMB investments**  
14 **in Retrophin.** Defendant Shkreli and Greebel, along with others including “Corrupt Employee  
15 1” and “Corrupt Employee 2,” engaged in a scheme to fabricate an investment by MSMB in  
16 Retrophin through a series of fraudulent transactions backdated to the summer of 2012. In or  
17 about November and December 2012, Shkreli and Greebel orchestrated a transfer of shares to  
18 Shkreli from “Co-Conspirator 1,” as well as “Corrupt Employee 1” and “Corrupt Employee 2”;  
19 backdated them to the summer of 2012; and then Shkreli transferred, pursuant to a backdated  
20 agreement, 75,000 shares to MSMB that he received from “Co-Conspirator 1,” “Corrupt  
21 Employee 1” and “Corrupt Employee 2.” Shkreli and Greebel compensated “Co-Conspirator  
22 1,” “Corrupt Employee 1” and “Corrupt Employee 2” for their roles in this scheme by providing  
23 them with the opportunity to acquire, for a nominal amount, 5% of Retrophin’s unrestricted or  
24 free trading shares.  
25  
26  
27  
28

1 The scheme involving Shkreli, Greebel, and the scheme's other participants was well-  
2 documented, as evidenced by, *inter alia*, the following: (i) on November 20, 2012, Greebel  
3 provided Retrophin Employee 1 with a template share transfer agreement previously provided to  
4 Shkreli; (ii) on November 25, 2012, in response Shkreli's question about cancelling a transfer of  
5 Retrophin shares previously given by Shkreli, Greebel responded, "hard to unwind stuff - easier  
6 if they transfer back."; (iii) on November 29, 2012, Retrophin Employee 1 emailed Greebel and  
7 accountants an agreement, signed by Shkreli and Co-Conspirator 1, transferring 4,167 shares  
8 from Co-Conspirator 1 to Shkreli; (iv) also on November 29, 2012, within a half-hour later,  
9 Shkreli, Greebel, Co-Conspirator 1 and Retrophin Employee 1 exchanged emails, from which  
10 Greebel removed the accountants, wherein Shkreli stated, "that agreement was signed in June";  
11 (v) a few minutes later, Retrophin Employee 1 emailed Shkreli and Greebel, copying Co-  
12 Conspirator 1, attaching the same transfer agreement, which had been changed so that the  
13 November 29, 2012 dates below the signature lines for Shkreli and Co-Conspirator 1 were  
14 covered by clearly-visible redacting tape and replaced with the date of July 1, 2012; (vi) one  
15 minute later, in response, Greebel emailed Retrophin Employee 1 and stated, "please call me";  
16 (vii) amidst this email exchange, one of the accountants who had received the original share  
17 transfer agreement from Retrophin Employee 1, exclaimed, "WT .... F."; (viii) 30 minutes after  
18 Greebel asked Retrophin Employee 1 to call him, Retrophin Employee 1 emailed Shkreli and  
19 Greebel, copying Co-Conspirator 1, attaching the transfer agreement between Shkreli and Co-  
20 Conspirator 1 with a new signature page, without any visible redacting tape and a new date of  
21 June 1, 2012 typed in rather than being handwritten; (ix) on December 3, 2012, Retrophin  
22 Employee 1 emailed the accountant, attaching Co-Conspirator 1's backdated agreement, as well  
23 as similar backdated share transfer agreements by Corrupt Employee 1 and Corrupt Employee 2  
24  
25  
26  
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28

1 dated July 1, 2012, along with an agreement between Shkreli and MSMB dated July 1, 2012  
2 transferring 75,000 shares from Shkreli to MSMB; and (x) although none of the MSMB  
3 capitalization tables prepared in July, September, and November 2012 reflected any of these  
4 agreements, later on December 3, 2012, Shkreli emailed Greebel and Retrophin Employee 1,  
5 attaching a “final capitalization table” containing an entry for MSMB for 75,000 shares.  
6

7 (g) **Shkreli worked with his lawyer to hide settlements with defrauded MSMB and**  
8 **Elea Capital investors as sham consulting agreements with Retrophin.** Between September  
9 2013 and March 2014, Defendant Shkreli and Greebel, along with others, caused Retrophin to  
10 enter into four sham “consulting” agreements with defrauded investors of Elea Capital and  
11 MSMB that were, in actuality, settlement agreements. Three of the four “consulting” agreements  
12 provided that the defrauded investors would provide consulting services “on strategic and  
13 corporate governance matters to the management of the company” and contained releases as to  
14 Shkreli, MSMB and Retrophin. The fourth, entered into with the defrauded Elea Capital  
15 investor, provided that the investor would provide consulting services “on cluster headache drug  
16 development and other matters to the Company.” Retrophin received no legitimate consulting  
17 services based on these sham agreements. Shkreli and Greebel tried to conceal the true nature of  
18 these sham consulting agreements, three of which were never presented to Retrophin’s Board for  
19 approval. The fourth was put on the Board’s agenda, but never approved. On April 19, 2013,  
20 Greebel emailed Shkreli attaching a form consulting agreement to use in settling claims and  
21 stated, “I think you should get blanket approval from the board for you to retain consultants who  
22 may be paid in cash or stock up to an aggregate amount of \$.”  
23  
24  
25

26 This scheme, too, was well-documented, including an email exchange on October 16,  
27 2013, in which: (i) Greebel emailed Shkreli informing him that a defrauded investor wanted  
28

1 100,000 Retrophin shares as part of his settlement and did not want to enter into a consulting  
2 agreement; (ii) when Shkreli indicated that was acceptable, Greebel stated, “Where will the 100k  
3 come from? If it’s from the company it would need to be in a consulting agreement.”; (iii)  
4 Shkreli questioned Greebel’s approach, stating, “Why would it need to be a consulting  
5 agreement????! Have you heard of the term settlement?”; and (iv) Greebel responded by  
6 explaining, “We can call it a settlement agreement, but given [the auditor’s] recent behavior they  
7 may require it to be disclosed in the financials. I was trying to prevent that issue.”  
8

9 84. These facts, circumstances, and events revealed to investors for the first time on  
10 December 17, 2015 that, despite Defendant Shkreli’s prior statements during the Class Period, he  
11 and his associates were utterly unfit to run KaloBios, the funding and financing he promised for  
12 KaloBios’s future operations was completely non-viable, KaloBios’s announced plans for  
13 strategic acquisitions, advancement of its drug programs, and regulatory approvals from FDA  
14 were unrealistic and non-viable, and KaloBios faced imminent bankruptcy.  
15

16 85. On this news, KaloBios’s stock plummeted 53% in pre-open trading before  
17 NASDAQ halted all trading (when trading volume had only reached 13,700 shares) so that  
18 NASDAQ could request more information from KaloBios. Even the exchange itself was  
19 blindsided. NASDAQ put out a statement at 10:41 a.m. on December 17, 2015, stating that it  
20 had halted trading at 6:48 a.m. and that trading would remain halted “until KaloBios  
21 Pharmaceuticals, Inc. has fully satisfied NASDAQ’s request for additional information” as to the  
22 circumstances surrounding Shkreli’s arrest.  
23

24 86. With trading still halted, the bad news for KaloBios investors piled up.  
25

26 87. On December 21, 2015, KaloBios’s independent accounting firm, Marcum LLP,  
27 which had only been hired less than two weeks earlier, resigned.  
28

1 88. On December 24, 2015, NASDAQ announced that KaloBios's stock would be  
2 delisted on December 30, 2015 due to Shkreli's arrests and other issues.

3 89. KaloBios filed for bankruptcy on December 29, 2015, and withdrew its appeal of  
4 its NASDAQ delisting on January 12, 2016.

5 90. When KaloBios finally resumed trading, on the over the counter (OTC) market,  
6 on January 13, 2016, it opened at \$2.51, reached an intra-day low of \$1.02, and finally closed at  
7 \$4.39.

8 91. As a result of Defendants' materially false and misleading statements and  
9 omissions, KaloBios securities traded at inflated prices during the Class Period. However, after  
10 Defendants' fraud was revealed, KaloBios's stock suffered a precipitous decline in market value,  
11 thereby causing significant losses and damages to Plaintiffs and other Class members.

#### 14 CLASS ACTION ALLEGATIONS

15 92. As against Defendant Shkreli, Plaintiffs bring this action as a class action  
16 pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of the Class of persons or  
17 entities who purchased or otherwise acquired the common stock of KaloBios during the Class  
18 Period extending from November 19, 2015 and December 16, 2015, both dates inclusive,  
19 seeking to recover damages caused by Defendants' violations of the federal securities laws and  
20 to pursue remedies under Exchange Act §§10(b) and 20(a) and Rule 10b-5 promulgated  
21 thereunder. Excluded from the Class are Defendants, their immediate family members, and  
22 KaloBios's officers, directors, executive employees, subsidiaries and affiliates.<sup>3</sup>

23  
24  
25  
26  
27  
28 <sup>3</sup> As noted in ¶3 *supra*, the facts and circumstances alleged herein also give rise to claims against Settling Defendants Martell, Cross, and KaloBios on behalf of investors who purchased or otherwise acquired the common stock of KaloBios between November 18, 2015 and December 16, 2015, inclusive, for violations of Exchange Act

1           93. The members of the Class are so numerous that joinder of all members is  
2 impracticable. Throughout the Class Period, KaloBios' securities were actively traded on the  
3 NASDAQ. While the exact number of Class members is unknown to Plaintiffs at this time and  
4 can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds  
5 or thousands of members in the proposed Class. Millions of KaloBios shares were traded  
6 publicly during the Class Period on the NASDAQ. As of August 7, 2015, KaloBios had  
7 4,123,921 shares of common stock outstanding. Record owners and other members of the Class  
8 may be identified from records maintained by KaloBios or its transfer agent and may be notified  
9 of the pendency of this action by mail, using the form of notice similar to that customarily used  
10 in securities class actions.  
11

12           94. Plaintiffs' claims are typical of the claims of the Class members as all Class  
13 members are similarly affected by Defendant Shkreli's wrongful conduct in violation of federal  
14 law that is complained of herein.  
15

16           95. Plaintiffs will fairly and adequately protect the interests of the Class members and  
17 have retained counsel competent and experienced in class and securities litigation. Plaintiffs  
18 have no interests antagonistic to or in conflict with those of the Class.  
19

20           96. Common questions of law and fact exist as to all members of the Class and  
21 predominate over any questions solely affecting individual members of the Class. Among the  
22 questions of law and fact common to the Class are:  
23

- 24           • whether the federal securities laws were violated by Defendant Shkreli's acts as  
25 alleged herein;

26  
27  
28           §§10(b) and 20(a), claims which are, at present, subject to the "Partial Settlement" and, pursuant to its terms, a stay of this action as against the Settling Defendants pending its final approval by the Court.

- 1 • whether statements made by Defendant Shkreli to the investing public during the  
2 Class Period, as alleged herein, misrepresented and/or omitted material facts  
3 about the business, operations, management, and prospects of KaloBios and/or the  
4 facts and circumstances surrounding Defendant Shkreli's experiences at other  
5 companies including Retrophin and MSMB;
- 6 • whether Defendant Shkreli acted knowingly or recklessly in issuing false and  
7 misleading public statements as alleged herein;
- 8 • whether the prices of KaloBios securities during the Class Period were artificially  
9 inflated because of Defendant Shkreli's conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the  
proper measure of damages.

10 97. A class action is superior to all other available methods for the fair and efficient  
11 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as  
12 the damages suffered by individual Class members may be relatively small, the expense and  
13 burden of individual litigation make it impossible for members of the Class to individually  
14 redress the wrongs done to them. There will be no difficulty in the management of this action as  
15 a class action.  
16

#### 17 **FRAUD ON THE MARKET PRESUMPTION**

18 98. Plaintiffs will rely, in part, upon the presumption of reliance established by the  
19 fraud-on-the-market doctrine in that, *inter alia*:  
20

- 21 • Defendant Shkreli made public misrepresentations or failed to disclose material  
22 facts during the Class Period;
- 23 • the omissions and misrepresentations were material;
- 24 • KaloBios securities traded in an efficient market at all relevant times;
- 25 • KaloBios's shares were liquid and traded with moderate to heavy volume at all  
26 relevant times;
- 27 • KaloBios's shares traded on the NASDAQ during the Class Period and was  
28 covered by multiple analysts at all relevant times;
- the misrepresentations and omissions alleged would tend to induce a reasonable  
investor to misjudge the value of KaloBios's securities; and

- Plaintiffs and members of the Class purchased, acquired and/or sold KaloBios securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

99. Based upon the foregoing, Plaintiffs and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

100. Alternatively, Plaintiffs and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendant Shkreli omitted substantial material information in his Class Period statements in violation of a duty to disclose such information, as detailed above.

#### **NO SAFE HARBOR**

101. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the false and misleading statements pleaded herein, which were not properly identified as forward-looking statements when made.

102. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

103. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendant Shkreli is nonetheless liable for making such statements because, at the time each statement was made, he knew the statement was materially false and/or misleading.

#### **SCIENTER**

104. To the extent it is required to be plead for certain of the claims alleged herein, Defendant Shkreli scienter is readily apparent.



1           105. It is also clear that, at all relevant times, Defendant Shkreli acted knowingly. In  
2 making the totality of his misstatements alleged herein, he had full knowledge of the facts and  
3 circumstances concerning his own fraudulent and illegal misconduct at all of his companies and  
4 ventures – including Retrophin and MSMB – his unfitness and that of his associates to lead  
5 KaloBios, his inability to deliver necessary funding and financing, and his fraud concerning the  
6 \$8.2 million private placement transaction. He knew all of the details set forth in the SEC  
7 complaint and the criminal indictments made public after the Class Period.  
8

9           106. Moreover, each of Defendant Shkreli’s misstatements alleged herein were made  
10 by him as CEO and Chairman of KaloBios. In those roles, he had a legal duty to monitor  
11 information indicating that his statements were false, such that his failure to do so could only  
12 have been through his recklessness. Moreover, the information rendering his statements false  
13 and misleading is imputable to him, due to his titles, roles, and responsibilities at KaloBios.  
14

15           107. Defendant Shkreli also had substantial motive to commit the fraud alleged herein,  
16 so as to secure massive profits by running up the price of KaloBios stock. He gained control of  
17 KaloBios through open-market purchases of its stock at prices as low as \$0.30. Through the  
18 fraud alleged herein, he drove its stock price as high as \$45.82 during the Class Period. At that  
19 price, the Shkreli Group’s 70% stake in KaloBios was worth over \$132 million.  
20

21           108. Defendant Shkreli’s lack of stock sales during the short, one-month Class Period  
22 cannot credibly be pointed to as an exonerating fact as to his scienter, as during the 11/25/2015  
23 Bloomberg interview, he admitted that he could not sell his shares for six months or he would  
24 have to disgorge the profits to the company, stating: “[Y]ou have to keep in mind that there’s  
25 Section 16B of the SEC Act, which states that you cannot sell a stock within 6 months after  
26 acquiring more than 10 percent stake without disgorging the profits to the company. So, I don’t  
27  
28

1 plan on disgorging the profits to the company.” This quote illustrates that he *investigated* the  
2 possibility of selling at a profit, and made a calculated decision to wait for 6 months so as to  
3 ensure retention of the profits for himself. Thus, Defendant Shkreli was motivated to drive up  
4 the price of KaloBios, through the false and misleading statements alleged herein, long enough to  
5 cash in at inflated prices once permitted to retain the proceeds.  
6

7 109. Defendant Shkreli was also under a clear duty to speak truthfully and, having  
8 chosen to speak, was obligated to speak the whole truth. As discussed *supra*, Defendant Shkreli  
9 made and/or caused to be made the alleged false and misleading statements and omissions  
10 alleged herein and signed the SEC filings within which such misstatements and omissions  
11 appeared. As discussed herein, Defendant Shkreli violated such duties.  
12

13 110. Moreover, the fraud alleged herein implicates the core operations of KaloBios. Its  
14 ability to stabilize its leadership, secure necessary funding and financing, and identify a viable  
15 path forward in the wake of several operational failures were existential issues for KaloBios, as it  
16 was on the brink of bankruptcy and liquidation heading into the Class Period. In light of these  
17 facts, it is inconceivable that Defendant Shkreli did not know the facts and circumstances of the  
18 fraud as alleged herein.  
19

#### 20 **LOSS CAUSATION / ECONOMIC LOSS**

21 111. The market for KaloBios shares was open, well-developed, and efficient at all  
22 relevant times. During the Class Period, as detailed herein, Defendant Shkreli engaged in a  
23 course of conduct and a scheme to deceive the market that artificially inflated KaloBios shares  
24 and operated as a fraud or deceit on Class Period purchasers of KaloBios shares by  
25 misrepresenting the material facts detailed herein. As detailed above, when Defendant Shkreli's  
26 prior misrepresentations became known to the public, the price of KaloBios shares fell  
27  
28

1 precipitously, as the prior artificial inflation came out. As a result of their purchases of KaloBios  
2 shares during the Class Period, Plaintiffs and the other Class members suffered economic loss,  
3 *i.e.*, damages, under the federal securities laws.

4  
5 112. During the Class Period, Defendant Shkreli presented a misleading picture of his  
6 own expertise and qualifications, his ability to procure necessary funding for KaloBios, his  
7 ability to lead KaloBios forward and achieve its stated goals, the legitimacy of his leadership and  
8 business acumen, the illegality of his prior conduct, the legitimacy and qualifications of his  
9 longtime associates from Retrophin and MSMB to fill leadership positions at KaloBios, as well  
10 as KaloBios's financial condition, operations, and business prospects. Defendant Shkreli's false  
11 and misleading statements had the intended effect, driving up the value of the Shkreli Group's  
12 70% stake in KaloBios by causing its shares to trade at artificially inflated prices throughout the  
13 Class Period and until the truth was revealed to the market.

14  
15 113. In response to the corrective events on December 17, 2015, the price of  
16 KaloBios shares dropped so sharply that NASDAQ halted trading before the markets even  
17 opened. Once trading in KaloBios stock resumed, its price immediately cratered, removing  
18 inflation due to the alleged fraud, causing real economic loss to investors who had purchased  
19 KaloBios shares during the Class Period.

20  
21 114. The decline was a direct result of the nature and extent of Defendant Shkreli's  
22 fraud being revealed to investors and the market. The timing and magnitude of the price decline  
23 in KaloBios shares negates any inference that the loss suffered by Plaintiffs and the other Class  
24 members was caused by changed market conditions, macroeconomic factors or company-  
25 specific facts unrelated to Defendant Shkreli's fraudulent conduct.  
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1 115. The economic loss, *i.e.*, damages, suffered by Plaintiffs and other Class members  
2 was a direct result of Defendant Shkreli's fraudulent scheme to artificially inflate KaloBios's  
3 share price and the subsequent significant decline in the value of KaloBios shares when his prior  
4 misrepresentations and other fraudulent conduct were revealed.  
5

6 **COUNT I**  
7 **(Against All Defendants For Violations Of**  
8 **Exchange Act Section 10(b) And Rule 10b-5 Promulgated Thereunder)**

9 116. Plaintiffs repeat and reallege each and every allegation contained above as if fully  
10 set forth herein.

11 117. This Count is asserted against Defendants and is based upon Section 10(b) of the  
12 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

13 118. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and  
14 course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions,  
15 practices and courses of business which operated as a fraud and deceit upon Plaintiffs and the  
16 other members of the Class; made various untrue statements of material facts and omitted to state  
17 material facts necessary in order to make the statements made, in light of the circumstances  
18 under which they were made, not misleading; and employed devices, schemes and artifices to  
19 defraud in connection with the purchase and sale of securities. Such scheme was intended to,  
20 and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiffs and  
21 other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of  
22 KaloBios securities; and (iii) cause Plaintiffs and other members of the Class to purchase or  
23 otherwise acquire KaloBios securities and options at artificially inflated prices. In furtherance of  
24 this unlawful scheme, plan and course of conduct, Defendant Shkreli and the other Defendants,  
25 and each of them, took the actions set forth herein.  
26  
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1           119. Pursuant to the above plan, scheme, conspiracy and course of conduct, Defendant  
2 Shkreli and the other Defendants participated directly or indirectly in the preparation and/or  
3 issuance of the press releases, SEC filings, and other public statements as described above,  
4 including statements made to securities analysts and the media that were designed to influence  
5 the market for KaloBios securities. Such releases, filings, and statements were materially false  
6 and misleading in that they failed to disclose material adverse information and misrepresented  
7 the truth about Shkreli's expertise and qualifications, his ability to procure necessary funding for  
8 KaloBios, his ability to lead KaloBios forward and achieve its stated goals, the legitimacy of his  
9 leadership and business acumen, the illegality of his prior conduct, the legitimacy and  
10 qualifications of his longtime associates from Retrophin and MSMB to fill leadership positions  
11 as KaloBios, as well as KaloBios's financial condition, operations, and business prospects  
12

13  
14           120. Information showing that Defendant Shkreli and the other Defendants acted  
15 knowingly or with reckless disregard for the truth was peculiarly within their knowledge and  
16 control.  
17

18           121. In the case of Defendant Shkreli and Defendant KaloBios, their actual knowledge  
19 of the materially false and misleading statements and material omissions made throughout the  
20 Class Period, by which they intended to deceive and did deceive Plaintiffs and the other  
21 members of the Class, cannot reasonably be disputed as Shkreli had full knowledge of the facts  
22 and circumstances concerning his own fraudulent and illegal misconduct at all of his companies  
23 and ventures (including Retrophin and MSMB), his unfitness and that of his associates to lead  
24 KaloBios, his inability to deliver necessary funding and financing, and the fraud concerning the  
25 \$8.2 million KaloBios private placement transaction. Such knowledge would in any event be  
26 imputable to Defendant Shkreli due to his positions and oversight roles at KaloBios and the  
27  
28

1 implication of the core operations of KaloBios. As its controlling shareholder, CEO, and  
2 Chairman, Defendant Shkreli's knowledge is imputable to Defendant KaloBios.

3  
4 122. In the alternative, Defendants Shkreli and KaloBios acted with reckless disregard  
5 for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the  
6 materially false and misleading nature of the statements made, although such facts were readily  
7 available to them. Said acts and omissions of Defendants Shkreli and KaloBios were committed  
8 willfully or with reckless disregard for the truth. In addition, they knew or recklessly  
9 disregarded that material facts were being misrepresented or omitted as described above.

10  
11 123. As discussed herein, Defendant Shkreli was personally motivated to commit the  
12 alleged fraud so as to reap massive profits from driving up KaloBios's stock price orders of  
13 magnitude higher than the prices he paid on the open market to secure a controlling stake in  
14 KaloBios and maintaining its price inflated levels until such time as he could liquidate some or  
15 all of his position in KaloBios. Defendant KaloBios was motivated by the prospects of avoiding  
16 bankruptcy, securing the \$8.2 million private placement, and completing strategic transactions  
17 that might stave off its demise.

18  
19 124. Defendant Shkreli is liable both directly and indirectly for the wrongs complained  
20 of herein. Because of his positions of control and authority, he was able to and did, directly or  
21 indirectly, control the content of the statements of KaloBios as alleged herein. As an officer  
22 and/or director of a publicly-held company, he had a duty to disseminate timely, accurate, and  
23 truthful information with respect to KaloBios's businesses, operations, future financial condition  
24 and future prospects. As a result of the dissemination of the false misleading public statements  
25 as alleged herein, the market price of KaloBios securities was artificially inflated throughout the  
26 Class Period. In ignorance of the adverse facts concerning KaloBios's business and financial  
27  
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1 condition which were concealed by Defendants Shkreli and KaloBios, Plaintiffs and the other  
2 members of the Class purchased or otherwise acquired KaloBios securities at artificially inflated  
3 prices and relied upon the price of the securities, the integrity of the market for the securities  
4 and/or upon statements disseminated by Defendants Shkreli and KaloBios, and were damaged  
5 thereby.  
6

7         125. During the Class Period, KaloBios securities were traded on an active and  
8 efficient market. Plaintiffs and the other members of the Class, relying on the materially false  
9 and misleading statements described herein, which the Defendant Shkreli made, issued or caused  
10 to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired  
11 shares of KaloBios securities at prices artificially inflated by his wrongful conduct. Had  
12 Plaintiffs and the other members of the Class known the truth, they would not have purchased or  
13 otherwise acquired said securities, or would not have purchased or otherwise acquired them at  
14 the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiffs  
15 and the Class, the true value of KaloBios securities was substantially lower than the prices paid  
16 by Plaintiffs and the other members of the Class. The market price of KaloBios securities  
17 declined precipitously upon public disclosure revealed the truth as alleged herein, to the injury of  
18 Plaintiffs and Class members.  
19  
20

21         126. By reason of the conduct alleged herein, Defendants Shkreli and KaloBios  
22 knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act  
23 and Rule 10b-5 promulgated thereunder.  
24

25         127. As a direct and proximate result of Defendant Shkreli's wrongful conduct,  
26 Plaintiffs and the other members of the Class suffered damages in connection with their  
27 respective purchases, acquisitions and sales of KaloBios's securities during the Class Period,  
28

1 upon the corrective events outlined herein that revealed that Defendants Shkreli and KaloBios  
2 had been disseminating material misrepresentations and omissions to the investing public.

3  
4 **COUNT II**  
5 **(Violations Of Section 20(a) Of The Exchange Act**  
6 **Against Defendant Shkreli)**

7 128. Plaintiffs repeat and reallege each and every allegation contained in the foregoing  
8 paragraphs as if fully set forth herein.

9 129. During the Class Period, Defendant Shkreli participated in the operation and  
10 management of KaloBios, and conducted and participated, directly and indirectly, in the conduct  
11 of KaloBios's business affairs. Due, *inter alia*, to his complete control over KaloBios, stemming  
12 from the Shkreli Group's 70% stake in KaloBios and his majority ownership of that stake, as  
13 well as his positions as CEO and Chairman and related oversight roles, he knew the adverse non-  
14 public information about KaloBios's leadership, business and operations, internal controls, and  
15 finances, and future prospects, including without limitation the material information alleged to  
16 have been omitted in their public statements as discussed herein.

17  
18 130. As an officer and/or director of a public company, Defendant Shkreli had a duty  
19 to disseminate accurate and truthful information with respect to his own expertise and  
20 qualifications, his ability to procure necessary funding for KaloBios, his ability to lead KaloBios  
21 forward and achieve its stated goals, the legitimacy of his leadership and business acumen, the  
22 illegality of his prior conduct, the legitimacy and qualifications of his longtime associates from  
23 Retrophin and MSMB to fill leadership positions at KaloBios, as well as KaloBios's leadership,  
24 business, operations, finances, financial condition and future prospects, and to correct promptly  
25 any public statements issued by Defendants which had become materially false or misleading.  
26  
27  
28



1 131. Because of his position of control and authority as controlling shareholder, CEO,  
2 and Chairman, Defendant Shkreli was able to, and did, control the contents of the press releases,  
3 SEC filings and other public statements which KaloBios disseminated in the marketplace during  
4 the Class Period, as alleged herein. Throughout the Class Period, he exercised his power and  
5 authority to cause KaloBios to engage in the wrongful acts complained of herein. Defendant  
6 Shkreli therefore, was a “controlling person” of KaloBios within the meaning of Section 20(a) of  
7 the Exchange Act. In this capacity, he participated in the unlawful conduct alleged which  
8 artificially inflated the market price of KaloBios securities.  
9

10  
11 132. Defendant Shkreli, therefore, acted as a controlling person of KaloBios. By  
12 reason of his controlling interest in KaloBios, and his positions as CEO and Chairman, he had  
13 the power to direct the actions of, and exercised the same to cause, KaloBios to engage in the  
14 unlawful acts and conduct complained of herein. Defendant Shkreli exercised control over the  
15 general operations of KaloBios and possessed the power to control the specific activities which  
16 comprise the primary violations about which Plaintiffs and the other members of the Class  
17 complain.  
18

19 133. By reason of the above conduct, Defendant Shkreli is liable pursuant to Section  
20 20(a) of the Exchange Act, 15 §78t(a), for the violations committed by KaloBios.  
21

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

24 A. Determining that this action may be maintained as a class action under Rule 23 of  
25 the Federal Rules of Civil Procedure, designating the KaloBios Investor Group as Lead  
26 Plaintiffs, and certifying the KaloBios Investor Group and Plaintiff Isensee as a Class  
27 representatives and their choice of counsel as Lead Counsel;  
28

1 B. Requiring Defendants to pay, jointly and severally, the damages sustained by  
2 Plaintiffs and the Class by reason of the acts and transactions alleged herein, in an amount to be  
3 proven at trial;

4  
5 C. Awarding Plaintiffs and the other members of the Class prejudgment and post-  
6 judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

7 D. Awarding such other and further relief as this Court may deem just and proper.

8 **JURY DEMAND**

9 Plaintiffs hereby demand a trial by jury.

10  
11 DATED: July 14, 2016

Respectfully submitted,

12  
13 /s/Jennifer Pafiti  
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