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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AI PHUONG CHI, derivatively on behalf of ACELRX PHARMACEUTICALS, INC., Plaintiff, v. VINCENT J. ANGOTTI, RAFFI ASADORIAN, ADRIAN ADAMS, RICHARD AFABLE, MARK G. EDWARDS, STEPHEN J. HOFFMAN, PAMELA P. PALMER, HOWARD B. ROSEN and MARK WAN, Defendants, and ACELRX PHARMACEUTICALS, INC., Nominal Defendant.	Case No.: **JURY TRIAL DEMANDED**

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

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INTRODUCTION

Plaintiff Ai Phuong Chi ("Plaintiff"), by Plaintiff's undersigned attorneys, derivatively and on behalf of Nominal Defendant AcelRx Pharmaceuticals, Inc. ("AcelRx" or the "Company"), files this Verified Shareholder Derivative Complaint against Individual Defendants Vincent J. Angotti, Raffi Asadorian, Adrian Adams, Richard Afable, Mark G. Edwards, Stephen J. Hoffman, Pamela P. Palmer, Howard B. Rosen, and Mark Wan, (collectively, the "Individual Defendants") for violations of the Securities Exchange Act of 1934 (the "Exchange Act"), breaches of their fiduciary duties as directors and/or officers of AcelRx, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and for contribution under Sections 10(b) and 21D Exchange Act. As for Plaintiff's complaint against the Individual Defendants, Plaintiff alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding AcelRx, legal filings, news reports, securities analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a shareholder derivative action that seeks to remedy wrongdoing committed by AcelRx's directors and officers between March 17, 2020 and February 12, 2021 (the "Relevant Period").

2. AcelRx is a pharmaceutical company specializing in the development and commercialization of therapies for acute pain treatment. The Company's lead product candidate is a sublingual opioid tablet called DSUVIA, a sufentanil-based treatment for moderate-to-severe acute pain.

3. The Company announced on November 2, 2018 that the United States Food and Drug Administration ("FDA") had approved DSUVIA "for the management of acute pain in adults that is severe enough to require an opioid analgesic in certified medically supervised healthcare settings, such as hospitals, surgical centers, and emergency departments."

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4. Under the Federal Food, Drug and Cosmetic Act ("FD&C Act"), it is prohibited to introduce or deliver for introduction into interstate commerce any drug that is misbranded.

5. In contravention of the FD&C Act, the Company developed and used a banner and a tabletop display as promotional materials that were materially false or misleading and that misbranded DSUVIA by, among other things, giving greater prominence to the benefits of DSUVIA while relegating information regarding limitations of use and risks to significantly less prominent locations and employing typographical and layout techniques less apt to achieve emphasis (the "Misbranding Violations").

6. Throughout the Relevant Period, Individual Defendants made or caused AcelRx to make false and/or materially misleading statements and failed to disclose, *inter alia*, that: (1) AcelRx failed to implement and/or maintain sufficient disclosure controls and procedures regarding the marketing of DSUVIA; (2) as a result, the Company engaged in the Misbranding Violations; and (3) the Company was therefore subject to increased risk of regulatory investigations or enforcement actions. As a result, the Company's public statements were materially false and misleading at all relevant times.

7. The truth was revealed on February 16, 2021, when AcelRx disclosed that it had received a warning letter from the FDA regarding promotional claims it had made about DSUVIA in a banner ad and a tabletop display. In the letter, which the Company received on February 11, 2021, the FDA stated as follows:

> The Office of Prescription Drug Promotion (OPDP) of the U.S. Food and Drug Administration (FDA) has reviewed an "SDS Banner Ad" (banner) (PM-US-DSV-0018) and a tabletop display (PM-US-DSV-0049) (display) for DSUVIA (sufentanil) sublingual tablet, CII (Dsuvia) submitted by AcelRx Pharmaceuticals, Inc. (AcelRx) under cover of Form FDA 2253. The promotional communications, the banner and display, ***make false or misleading claims and representations about the risks and efficacy of DSUVIA. Thus, the banner and display misbrand Dsuvia within the meaning of the Federal Food, Drug and Cosmetic Act (FD&C Act) and make its distribution violative.***

(Emphasis added.)

8. The warning letter "request[ed] that AcelRx cease any violations of the FD&C Act," and it instructed the Company to submit a response to the warning letter within fifteen days of having received the warning letter, "listing all other promotional communications . . . for Dsuvia that contain representations like those described above, and explaining any plan for discontinuing use of such

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communications, or for ceasing distribution of Dsuvia."

9. Following the disclosure of the warning letter, AcelRx's stock price fell $0.21 per share, or 8.37%, from its closing price on February 12, 2021 to close at $2.30 per share on February 16, 2021.

10. During the Relevant, the Individual Defendants breached their fiduciary duties by personally engaging in and/or causing the Company to engage in the Misbranding Violations.

11. Also during the Relevant Period, the Individual Defendants breached their fiduciary duties by personally making and/or causing the Company to make to the investing public a series of materially false and misleading statements regarding the Company's business, operations, and prospects. Specifically, the Individual Defendants willfully or recklessly made and/or caused the Company to make false and misleading statements that failed to disclose, *inter alia*, that: (1) AcelRx failed to implement and/or maintain sufficient disclosure controls and procedures regarding the marketing of DSUVIA; (2) as a result, the Company engaged in the Misbranding Violations; and (3) the Company was therefore subject to increased risk of regulatory investigations or enforcement actions. As a result, the Company's public statements were materially false and misleading at all relevant times.

12. The Individual Defendants also breached their fiduciary duties by failing to correct and/or causing the Company to fail to correct these false and misleading statements and omissions of material fact.

13. Additionally, in breach of their fiduciary duties, the Individual Defendants caused the Company to fail to maintain adequate internal controls.

14. In light of the Individual Defendants' misconduct—which has subjected the Company, its Chief Executive Officer ("CEO"), and its Chief Financial Officer ("CFO") to a federal securities fraud class action lawsuit pending in the United States District Court for the Northern District of California (the "Securities Class Action"), the need to undertake intake internal investigations, the need to implement adequate internal controls, losses from the waste of corporate assets, and losses due to the unjust enrichment of Individual Defendants who were improperly overcompensated by the Company, and/or who benefitted from the wrongdoing alleged herein—the Company will have to expend many millions of dollars.

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15. The Company has been substantially damaged as a result of the Individual Defendants' knowing or highly reckless breaches of fiduciary duty and other misconduct.

16. In light of the breaches of fiduciary duty engaged in by the Individual Defendants, most of whom are the Company's current directors, of the collective engagement in fraud and misconduct by the Company's directors, of the substantial likelihood of the directors' liability in this derivative action and of the CEO's and CFO's liability in the Securities Class Action, of their not being disinterested and/or independent directors, a majority of the Company's Board of Directors (the "Board") cannot consider a demand to commence litigation against themselves on behalf of the Company with the requisite level of disinterestedness and independence.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under Section 14(a) of the Exchange Act (15 U.S.C. § 78n(a)(1)) and Rule 14a-9 promulgated thereunder (17 C.F.R. § 240.14a-9), Section 10(b) of the Exchange Act (15 U.S.C. § 78j(b)), and Section 21D of the Exchange Act (15 U.S.C. § 78u-4(f)). Plaintiff's claims also raise a federal question pertaining to the claims made in the Securities Class Actions based on violations of the Exchange Act.

18. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds the sum or value of $75,000 exclusive of interest and costs.

19. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

20. This derivative action is not a collusive action to confer jurisdiction on a court of the United States that it would not otherwise have.

21. Venue is proper in this District because AcelRx is headquartered in this District. In addition, a substantial portion of the transactions and wrongs complained of herein occurred in this District, the Defendants have conducted business in this District, and Defendants' actions have had an effect in this District.

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