

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

SUSAN FINGER, )  
 )  
 Plaintiff, ) Case No. \_\_\_\_\_

v. )

CONSTELLATION )  
 PHARMACEUTICALS, INC., SCOTT N. ) **COMPLAINT FOR VIOLATIONS OF**  
 BRAUNSTEIN, MARK A. GOLDSMITH, ) **THE FEDERAL SECURITIES LAWS**  
 JIGAR RAYTHATHA, RICHARD S. )  
 LEVY, ELIZABETH G. TRÈHU, JAMES )  
 E. AUDIA, and STEVEN L. HOERTER, ) JURY TRIAL DEMANDED  
 )  
 Defendants. )

Plaintiff Susan Finger (“Plaintiff”), by and through her undersigned counsel, for her complaint against defendants, alleges upon personal knowledge with respect to herself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action against Constellation Pharmaceuticals, Inc. (“Constellation” or the “Company”) and the members of its Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(d)(4), 14(e) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(d)(4), 78n(e), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14d-9, 17 C.F.R. §240.14d-9(d) (“Rule 14d-9”), and to enjoin the expiration of a tender offer (the “Tender Offer”) on a proposed transaction, pursuant to which Constellation will be acquired by MorphoSys AG (“MorphoSys”), through its subsidiary MorphoSys Development Inc. (“Purchaser”) (the “Proposed Transaction”).

2. On June 2, 2021, Constellation and MorphoSys issued a joint press release

announcing that they had entered into an Agreement and Plan of Merger (the “Merger Agreement”) dated June 2, 2021, to sell Constellation to MorphoSys. Under the terms of the Merger Agreement, MorphoSys will acquire all outstanding shares of Constellation for \$34.00 in cash per share of Constellation common stock (the “Offer Price”). Pursuant to the Merger Agreement, Purchaser commenced the Tender Offer on June 16, 2021. The Tender Offer is scheduled to expire at one minute after 11:59 p.m. New York City Time on July 14, 2021. The Proposed Transaction is valued at approximately \$1.7 billion.

3. On June 16, 2021, Constellation filed a Solicitation/Recommendation Statement on Schedule 14D-9 (the “Recommendation Statement”) with the SEC. The Recommendation Statement, which recommends that Constellation stockholders tender their shares in the Tender Offer, omits or misrepresents material information concerning, among other things: (i) Constellation management’s financial projections, relied upon by the Company’s financial advisor, Centerview Partners LLC (“Centerview”) in its financial analyses; (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Centerview; and (iii) the background of the Proposed Transaction. Defendants authorized the issuance of the false and misleading Recommendation Statement in violation of Sections 14(d), 14(e) and 20(a) of the Exchange Act.

4. In short, the Proposed Transaction will unlawfully divest Constellation’s public stockholders of the Company’s valuable assets without fully disclosing all material information concerning the Proposed Transaction to Company stockholders. To remedy defendants’ Exchange Act violations, Plaintiff seeks to enjoin the expiration of the Tender Offer unless and until such problems are remedied.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

6. This Court has jurisdiction over the defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because defendants are found or are inhabitants or transact business in this District.

### **PARTIES**

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Constellation.

9. Defendant Constellation is a Delaware corporation, with its principal executive offices located at 215 First Street, Suite 200, Cambridge, Massachusetts 02142. Constellation is a clinical-stage biopharmaceutical company developing novel therapeutics. Constellation's common stock is traded on the Nasdaq Global Select Market under the ticker symbol "CNST."

10. Defendant Scott N. Braunstein ("Braunstein") has been a director of the Company since February 2019.

11. Defendant Mark A. Goldsmith ("Goldsmith") has been a director of the Company since July 2009. Defendant Goldsmith also previously served as President and Chief Executive Officer ("CEO") of the Company from June 2009 to March 2012 and as Interim Executive

Chairman from June 2016 to March 2017.

12. Defendant Jigar Raythatha (“Raythatha”) has been President, CEO, and a director of the Company since March 2017. Defendant Raythatha also previously served as the Company’s Head of Corporate Development from March 2009 to February 2013.

13. Defendant Richard S. Levy (“Levy”) has been a director of the Company since April 2020.

14. Defendant Elizabeth G. Tréhu (“Tréhu”) has been a director of the Company since September 2018.

15. Defendant James E. Audia (“Audia”) has been a director of the Company since July 2017.

16. Defendant Steven L. Hoerter (“Hoerter”) has been a director of the Company since September 2018.

17. Defendants identified in paragraphs 10 to 16 are collectively referred to herein as the “Board” or the “Individual Defendants.”

#### **OTHER RELEVANT ENTITIES**

18. MorphoSys is a German corporation, with its principal executive offices located at Semmelweisstrasse 7, 82152 Planegg, Germany. It is a commercial-stage biopharmaceutical company dedicated to the discovery, development and commercialization of innovative therapies for people living with cancer and autoimmune diseases. Based on its leading expertise in antibody and protein technologies, MorphoSys is advancing its own pipeline of new drug candidates and has created antibodies which are developed by partners in different areas of unmet medical need. In 2017, Tremfya(R) (guselkumab) - developed by Janssen Research & Development, LLC and marketed by Janssen Biotech, Inc., for the treatment of plaque psoriasis - became the first drug

based on MorphoSys' antibody technology to receive regulatory approval. In July 2020, the U.S. Food and Drug Administration ("FDA") granted accelerated approval of the company's proprietary product Monjuvi(R) (tafasitamab-cxix) in combination with lenalidomide in patients with a certain type of lymphoma. The MorphoSys group, including the fully owned U.S. subsidiary MorphoSys US Inc., has more than 600 employees. MorphoSys' common stock is traded on the Nasdaq Global Select Market under the ticker symbol "MOR."

19. Purchaser is a Delaware corporation and an indirect wholly owned subsidiary of MorphoSys.

### **SUBSTANTIVE ALLEGATIONS**

#### **Company Background**

20. Constellation is a clinical-stage biopharmaceutical company using its expertise in epigenetics to discover and develop novel therapeutics that address serious unmet medical needs in patients with cancers associated with abnormal gene expression or drug resistance. The Company's integrated epigenetics platform enables it to validate targets and generate small molecules impacting these targets to selectively modulate gene expression in tumor and immune cells to drive anti-tumor activity. This platform reflects Constellation's deep understanding of the biology of regulation of gene expression by epigenetic regulatory proteins, or epigenetic regulators, the development of small-molecule product candidates that selectively modulate their activity, and the design of clinical development programs supported by novel biomarker strategies. Constellation is able to target a broad variety of epigenetic regulators using its platform and have generated development candidates acting against distinct classes of those regulators.

21. Constellation has utilized its epigenetics platform to discover and design its wholly owned product candidates, pelabresib (CPI-0610) and CPI-0209. The Company continues to leverage this platform and its clinical experience to develop these product candidates and to

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