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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

MICHAEL ZOMBER,

Plaintiff,

v.

BIODELIVERY SCIENCES  
INTERNATIONAL, INC., PETER S.  
GREENLEAF, JEFFREY A. BAILEY,  
TODD C. DAVIS, KEVIN KOTLER,  
VANILA M. SINGH, MARK A. SIRGO,  
and WILLIAM MARK WATSON,

Defendants.

Case No:

JURY TRIAL DEMANDED

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

Plaintiff Michael Zomber (“Plaintiff”), by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys.

**NATURE OF THE ACTION**

1. This is an action against BioDelivery Sciences International, Inc. (“BioDelivery” or the “Company”) and its Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(e), 14(d)(4), and 20(a) of the Securities Exchange Act of 1934 (the

“Exchange Act”), 15 U.S.C. §§ 78n(e), 78n(d)(4), and 78t(a), and Rule 14d-9 promulgated thereunder by the SEC, 17 C.F.R. § 240.14d-9, in connection with the proposed acquisition (the “Proposed Transaction”) of BioDelivery by Collegium Pharmaceutical, Inc. (“Collegium”).

### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 14(e), 14(d)(4), and 20(a) of the Exchange Act (15 U.S.C. §§ 78n(e), 78n(d)(4), and 78t(a)) and Rule 14d-9 promulgated thereunder by the SEC (17 C.F.R. § 240.14d-9).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as a substantial portion of the transactions and wrongs complained of herein had an effect in this District, the alleged misstatements entered and the subsequent damages occurred in this District, and the Company conducts business in New York City.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

### **PARTIES**

6. Plaintiff is, and has been at all relevant times hereto, an owner of BioDelivery common stock.

7. Defendant BioDelivery is a specialty pharmaceutical company that engages in the development and commercialization of pharmaceutical products for chronic conditions in the

United States and internationally. The Company is incorporated in Delaware. The Company's common stock trades on the NASDAQ under the ticker symbol, "BDSI."

8. Defendant Peter S. Greenleaf ("Greenleaf") is Chairman of the Board of the Company.

9. Defendant Jeffrey A. Bailey ("Bailey") is Chief Executive Officer and a director of the Company.

10. Defendant Todd C. Davis ("Davis") is a director of the Company.

11. Defendant Kevin Kotler ("Kotler") is a director of the Company.

12. Defendant Vanila M. Singh ("Singh") is a director of the Company.

13. Defendant Mark A. Sirgo ("Sirgo") is a director of the Company.

14. Defendant William Mark Watson ("Watson") is a director of the Company.

15. Defendants Greenleaf, Bailey, Davis, Kotler, Singh, Sirgo, and Watson are collectively referred to herein as the "Individual Defendants."

16. Defendants BioDelivery and the Individual Defendants are collectively referred to herein as the "Defendants."

## **SUBSTANTIVE ALLEGATIONS**

### **A. The Proposed Transaction**

17. On February 14, 2022, BioDelivery announced that it had entered into a definitive merger agreement for Collegium to purchase all outstanding shares of BioDelivery for \$5.60 per share in an all-cash transaction. The press release announcing the Proposed Transaction states, in pertinent part:

#### **Collegium to Acquire BioDelivery Sciences in an All-Cash Deal**

February 14, 2022 06:30 ET | Source: BioDelivery Sciences International

*Transaction is valued at \$5.60 per share representing a total equity value of \$604 million*

*Represents a 54% premium to BDSI stock's closing price of \$3.64 on February 11, 2022 and a 65% premium to the 30 trading days volume weighted average price of \$3.40*

*Transaction expected to close late in the first quarter of 2022*

RALEIGH, N.C., Feb. 14, 2022 (GLOBE NEWSWIRE) -- BioDelivery Sciences International, Inc. (NASDAQ: BDSI), a growing specialty pharmaceutical company dedicated to patients living with serious and complex chronic conditions, today announced that it has entered into a definitive merger agreement for Collegium Pharmaceutical, Inc. (NASDAQ: COLL) to purchase all outstanding shares of BDSI at \$5.60 per share in an all-cash transaction. This corresponds to a total equity value of approximately \$604 million (on a fully diluted basis). The merger agreement has been unanimously approved by the Board of Directors of both BDSI and Collegium.

Under the terms of the merger agreement, Collegium will promptly commence a tender offer to acquire all outstanding shares of BDSI's common stock, and BDSI will file a recommendation statement containing the unanimous recommendation of the BDSI board that BDSI shareholders tender their shares to Collegium.

"We are pleased to announce the transaction with Collegium, which we view as a testament to the attractiveness of our portfolio and long-term value of our brands," said Jeff Bailey, CEO of BDSI. "Our team has worked diligently to grow our differentiated products. We believe that this transaction will deliver benefits to patients and prescribers and create significant value for our shareholders."

### **Terms of the Agreement**

Under the terms of the merger agreement, Collegium will promptly commence a tender offer to acquire all of the outstanding shares of BDSI's common stock at a price of \$5.60 per share in cash. The consideration represents a 54% premium to BDSI common stock's closing price of \$3.64 on February 11, 2022 and a premium of 65% over the 30 trading days volume weighted average price of \$3.40.

The closing of the tender offer will be subject to a majority of BDSI's outstanding shares being tendered. In addition, the transaction is subject to the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and other customary conditions.

Following completion of the tender offer, Collegium will acquire all remaining shares at the same price of \$5.60 per share through a second step merger. The closing of the transaction is expected to take place late in the first quarter of 2022.

Moelis & Company LLC is acting as exclusive financial advisor and Goodwin Procter LLP is acting as legal counsel to BDSI. Jefferies LLC is acting as exclusive financial advisor to Collegium and Troutman Pepper Hamilton Sanders LLP is acting as legal counsel to Collegium.

**ABOUT BIODELIVERY SCIENCES INTERNATIONAL, INC.**  
BioDelivery Sciences International, Inc. (NASDAQ: BDSI) is a commercial-stage specialty pharmaceutical company dedicated to patients living with chronic conditions. BDSI has built a portfolio of differentiated pain and neurology products and leverages its experienced sales and marketing organization to educate prescribers on their unique features. BDSI's products address serious and debilitating conditions, including chronic pain, acute migraine and opioid-induced constipation.

**ABOUT COLLEGIUM**

Collegium Pharmaceutical is building a leading, diversified specialty pharmaceutical company committed to improving the lives of people suffering from serious medical conditions. Collegium's headquarters are located in Stoughton, Massachusetts. For more information, please visit the company's website at [www.collegiumpharma.com](http://www.collegiumpharma.com).

18. On February 18, 2022, Defendants caused to be filed with the SEC a Schedule 14D-9 Solicitation/Recommendation Statement under Section 14(d)(4) of the Exchange Act (the "Solicitation Statement") in connection with the Proposed Transaction.

**B. The Solicitation Statement Contains Materially False and Misleading Statements and Omissions**

19. The Solicitation Statement, which recommends that BioDelivery shareholders tender their shares in connection with the Proposed Transaction, omits and/or misrepresents material information concerning: (i) BioDelivery's financial projections; (ii) the financial analyses performed by the Company's financial advisor, Moelis & Company LLC ("Moelis"), in connection with its fairness opinion; (iii) potential conflicts of interest involving Moelis; and (iv) potential conflicts of interest involving Company insiders.

20. The omission of the material information (referenced below) renders the following sections of the Solicitation Statement false and misleading, among others: (i) Recommendation of the Board; (ii) Reasons for the Recommendation of the Board; (iii) Opinion of the Company's

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