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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

, Individually
and on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

IMMUNITYBIO, INC., RICHARD
ADCOCK, DAVID C. SACHS, and
PATRICK SOON-SHIONG,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

Plaintiff (“Plaintiff”), individually and on behalf of all
others similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
complaint against Defendants, 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

1 Plaintiff's attorneys, which included, among other things, a review of the
2 Defendants' public documents, conference calls and announcements made by
3 Defendants, United States ("U.S.") Securities and Exchange Commission ("SEC")
4 filings, wire and press releases published by and regarding ImmunityBio, Inc.
5 ("ImmunityBio" or the "Company"), analysts' reports and advisories about the
6 Company, and information readily obtainable on the Internet. Plaintiff believes that
7 substantial, additional evidentiary support will exist for the allegations set forth
8 herein after a reasonable opportunity for discovery.
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11 NATURE OF THE ACTION

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13 1. This is a federal securities class action on behalf of a class consisting
14 of all persons and entities other than Defendants that purchased or otherwise
15 acquired ImmunityBio securities between May 23, 2022 and May 10, 2023, both
16 dates inclusive (the "Class Period"), seeking to recover damages caused by
17 Defendants' violations of the federal securities laws and to pursue remedies under
18 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange
19 Act") and Rule 10b-5 promulgated thereunder, against the Company and certain of
20 its top officials.
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23
24 2. ImmunityBio is a clinical-stage biotechnology company that engages
25 in developing therapies and vaccines that complement, harness, and amplify the
26 immune system to defeat cancers and infectious diseases in the U.S. and Europe.
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1 The Company offers immunotherapy and cell therapy platforms, including, *inter*
2 *alia*, antibody cytokine fusion protein N-803, commercially referred to as “Anktiva”.
3
4 The Company uses third-party contract manufacturing organizations (“CMOs”) to
5 produce certain of its product candidates, including Anktiva.

6 3. In May 2022, ImmunityBio submitted a Biologics License Application
7 (“BLA”) for Anktiva to the U.S. Food and Drug Administration (“FDA”).
8
9 Following submission of its application, ImmunityBio consistently assured investors
10 that “[w]e have established Good Manufacturing Practice (GMP) manufacturing
11 capacity at scale with cutting-edge cell manufacturing expertise and ready-to-scale
12 facilities[.]”

14 4. Throughout the Class Period, Defendants made materially false and
15 misleading statements regarding the Company’s business, operations, and prospects.
16
17 Specifically, Defendants made false and/or misleading statements and/or failed to
18 disclose that: (i) ImmunityBio conducted insufficient due diligence to discover, or
19 else did discover and ignored, GMP deficiencies at its third-party CMOs for
20 Anktiva; (ii) one or more of the Company’s third-party CMOs for Anktiva did in
21 fact suffer from GMP deficiencies; (iii) the foregoing deficiencies was likely to
22 cause the FDA to reject the Anktiva BLA in its present form; (iv) accordingly, the
23 Company overstated the regulatory approval prospects for the Anktiva BLA; and (v)
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1 as a result, the Company’s public statements were materially false and misleading at
2 all relevant times.

3
4 5. On May 11, 2023, during pre-market hours, ImmunityBio announced
5 that the FDA had rejected the BLA for Anktiva in its present form, citing
6 “deficiencies relat[ing] to the FDA’s pre-license inspection of the Company’s third-
7 party contract manufacturing organizations.”
8

9 6. On this news, ImmunityBio’s stock price fell \$3.43 per share, or
10 55.14%, to close at \$2.79 per share on May 11, 2023.

11
12 7. As a result of Defendants’ wrongful acts and omissions, and the
13 precipitous decline in the market value of the Company’s securities, Plaintiff and
14 other Class members have suffered significant losses and damages.
15

16 **JURISDICTION AND VENUE**

17 8. The claims asserted herein arise under and pursuant to Sections 10(b)
18 and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5
19 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).
20

21 9. This Court has jurisdiction over the subject matter of this action
22 pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.
23

24 10. Venue is proper in this Judicial District pursuant to Section 27 of the
25 Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). ImmunityBio is
26 headquartered in this Judicial District, Defendants conduct business in this Judicial
27

1 District, and a significant portion of Defendants’ activities took place within this
2 Judicial District.

3
4 11. In connection with the acts alleged in this complaint, Defendants,
5 directly or indirectly, used the means and instrumentalities of interstate commerce,
6 including, but not limited to, the mails, interstate telephone communications, and the
7 facilities of the national securities markets.
8

9 **PARTIES**

10 12. Plaintiff, as set forth in the attached Certification, acquired
11 ImmunityBio securities at artificially inflated prices during the Class Period and was
12 damaged upon the revelation of the alleged corrective disclosures.
13

14 13. Defendant ImmunityBio is a Delaware corporation with principal
15 executive offices located at 3530 John Hopkins Court, San Diego, California 92121.
16 ImmunityBio’s common stock trades in an efficient market on the Nasdaq Global
17 Select Market (“NASDAQ”) under the ticker symbol “IBRX”.
18

19
20 14. Defendant Richard Adcock (“Adcock”) has served as ImmunityBio’s
21 Chief Executive Officer and President at all relevant times.
22

23 15. Defendant David C. Sachs (“Sachs”) has served as ImmunityBio’s
24 Chief Financial Officer at all relevant times.
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1 16. Defendant Patrick Soon-Shiong (“Soon-Shiong”) has served as
2 ImmunityBio’s Executive Chairman and Global Scientific & Medical Officer at all
3 relevant times.
4

5 17. Defendants Adcock, Sachs, and Soon-Shiong are sometimes referred to
6 herein collectively as the “Individual Defendants.”
7

8 18. The Individual Defendants possessed the power and authority to control
9 the contents of ImmunityBio’s SEC filings, press releases, and other market
10 communications. The Individual Defendants were provided with copies of
11 ImmunityBio’s SEC filings and press releases alleged herein to be misleading prior
12 to or shortly after their issuance and had the ability and opportunity to prevent their
13 issuance or to cause them to be corrected. Because of their positions with
14 ImmunityBio, and their access to material information available to them but not to
15 the public, the Individual Defendants knew that the adverse facts specified herein
16 had not been disclosed to and were being concealed from the public, and that the
17 positive representations being made were then materially false and misleading. The
18 Individual Defendants are liable for the false statements and omissions pleaded
19 herein.
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1 ImmunityBio [. . .] today announced it has submitted a Biologics
2 License Application (BLA) to the U.S. Food and Drug Administration
3 (FDA) for N-803, a first-in-class IL-15 superagonist, plus Bacillus
4 Calmette-Guérin (BCG) for the treatment of BCG-unresponsive non-
5 muscle invasive bladder cancer (NMIBC) carcinoma in situ (CIS) with
6 or without Ta or T1 disease. The BLA is supported by the results of
7 ImmunityBio’s studies in bladder cancer including the pivotal QUILT
8 3032 study (NCT03022825), where 71% of patients who had failed on
9 previous therapies showed an over 50% increase in both response and
10 median duration compared to the FDA-approved alternatives
11 Valrubicin and Pembrolizumab, a systemic checkpoint inhibitor
12 therapy for this indication.

13 ***

14 “This immunotherapy represents a potential new option for bladder
15 cancer patients who fail to respond to BCG, the current standard of care.
16 The results of the study of N-803 plus BCG indicate that this
17 combination provides a durable response with a reduced need for a
18 cystectomy,” said [Defendant] Soon-Shiong[.]. “We believe that the
19 durable responses seen in this study provide further support for our
20 hypothesis that by orchestrating natural killer cells, T cells and memory
21 T cells, long-term durable remissions can be achieved in patients
22 suffering from cancer. The results from the QUILT series of ongoing
23 trials across multiple tumor types, including pancreatic, lung and other
24 solid tumors, could lead to a paradigm shift in cancer therapy that
25 ImmunityBio is developing. We are hopeful that this combination
26 immunotherapy of BCG acting as a prime and N-803 as the boost to the
27 immune system will not only provide a new path for these patients, but
28 also help us continue to broaden our understanding of how we might
apply this novel mechanism of action to other difficult-to-treat
diseases.”

22. On July 28, 2022, ImmunityBio issued a press release entitled
“ImmunityBio Announces FDA Acceptance of Biologics License Application for
N-803 in BCG-Unresponsive Non-Muscle-Invasive Bladder Cancer Carcinoma In
Situ.” The press release stated, in relevant part:

1 The FDA accepted for review a Biologics License Application (BLA)
2 from ImmunityBio, Inc. [. . .], for its antibody cytokine fusion protein
3 as a treatment for patients with BCG-unresponsive non-muscle-
4 invasive bladder cancer carcinoma in situ (CIS) with or without Ta or
5 T1 disease. ImmunityBio, a leading clinical-stage immunotherapy
6 company, filed the BLA based on positive results from a series of
7 studies of the investigational treatment, including the ongoing QUILT
8 3.032 trial. The Prescription Drug User Fee Act (PDUFA) target action
9 date is May 23, 2023.

10 This combination of N-803 with BCG is ImmunityBio’s first BLA to
11 reach this stage of FDA acceptance for review. This marks an important
12 milestone in the pursuit of ImmunityBio’s vision of transforming how
13 cancer patients are treated without high-dose chemotherapy, but instead
14 by activating the patient’s innate immune system. If approved, N-803
15 plus BCG would be the first immunotherapy combination for this
16 indication in 23 years that can be delivered directly to the bladder
17 (intravesically) to induce natural killer cells and T cells. It represents
18 an essential step in the clinical demonstration of the Nant Cancer
19 Vaccine hypothesis proposed by [Defendant] Soon-Shiong[,] of
20 “Quantum oncotherapeutics: a longitudinal spatiotemporal
21 orchestration towards immunogenic cell death”.

22 ***

23 “This BLA acceptance brings us a very important step closer to being
24 able to offer this promising combination therapeutic to more people
25 living with NMIBC and, ultimately, reduce the incidence of
26 cystectomies,” said [Defendant] Soon-Shiong[.]. “This is a compelling
27 example of the power of inducing trained innate immune memory to
28 potentially provide long-term, durable effects against serious, life-
threatening diseases.”

“We are pleased the FDA has begun its review, and ImmunityBio is
prepared to move rapidly to manufacturing and marketing should the
Agency approve our therapeutic for this indication,” said [Defendant]
Adcock[.].

1 23. On August 8, 2022, ImmunityBio filed a Quarterly Report on Form 10-
2 Q with the SEC, reporting the Company’s financial and operational results for the
3 quarter ended June 30, 2022 (the “Q2 2022 10-Q”). In providing an overview of the
4 Company’s business, the Q2 2022 10-Q stated, in relevant part:
5

6 ImmunityBio, Inc. is a clinical-stage biotechnology company
7 developing next-generation therapies and vaccines that complement,
8 harness, and amplify the immune system to defeat cancers and
9 infectious diseases. We strive to be a vertically-integrated
10 immunotherapy company designing and manufacturing our products so
11 they are more effective, accessible, more conveniently stored, and more
12 easily administered to patients.

13 Our broad immunotherapy and cell therapy platforms are
14 designed to attack cancer and infectious pathogens by activating both
15 the innate immune system—natural killer (NK) cells, dendritic cells,
16 and macrophages—and the adaptive immune system—B cells and T
17 cells—in an orchestrated manner. The goal of this potentially best-in-
18 class approach is to generate immunogenic cell death thereby
19 eliminating rogue cells from the body whether they are cancerous or
20 virally infected. Our ultimate goal is to employ this approach to
21 establish an “immunological memory” that confers long-term benefit
22 for the patient.

23 Although such designations may not lead to a faster development
24 process or regulatory review and may not increase the likelihood that a
25 product candidate will receive approval, N-803, our novel antibody
26 cytokine fusion protein, has received Breakthrough Therapy and Fast
27 Track designations in combination with bacillus Calmette-Guérin
28 (BCG) from the United States (U.S.) Food and Drug Administration
(FDA) for BCG-unresponsive non-muscle invasive bladder cancer
(NMIBC) with carcinoma in situ (CIS). In May 2022, we announced
the submission of a Biologics License Application (BLA) to the FDA
for our product candidate, N-803 in combination with BCG for the
treatment of patients with BCG-unresponsive NMIBC with CIS with or
without Ta or T1 disease. In July 2022, we announced the FDA has
accepted our BLA for review and set a Prescription Drug User Fee Act

1 (PDUFA) target action date of May 23, 2023. It is unclear when the
2 FDA will approve our BLA, if at all.

3 ***

4 We have established Good Manufacturing Practice (GMP)
5 manufacturing capacity at scale with cutting-edge cell manufacturing
6 expertise and ready-to-scale facilities, as well as extensive and
7 seasoned research and development (R&D), clinical trial, and
8 regulatory operations, and development teams.

9 24. Appended to the Q2 2022 10-Q as exhibits were signed certifications
10 pursuant tot the Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants Adcock and
11 Sachs, attesting that “the information contained in the [Q2 2022 10-Q] fairly
12 presents, in all material respects, the financial condition and results of operations of
13 the Company.”

14 25. On November 9, 2022, ImmunityBio filed a Quarterly Report on Form
15 10-Q with the SEC, reporting the Company’s financial and operational results for
16 the quarter ended September 30, 2022 (the “Q3 2022 10-Q”). The Q3 2022 10-Q
17 contained a substantively similar description of the Company’s business as
18 discussed, *supra*, in ¶ 23.

19 26. Appended to the Q3 2022 10-Q as exhibits were signed certifications
20 pursuant to SOX by Defendants Adcock and Sachs, attesting that “the information
21 contained in the [Q3 2022 10-Q] fairly presents, in all material respects, the financial
22 condition and results of operations of the Company.”

1 27. On March 1, 2023, ImmunityBio filed an Annual Report on Form 10-
2 K, reporting the Company’s financial and operating results for the year ended
3 December 31, 2022 (the “2022 10-K”). The 2022 10-K contained a substantively
4 similar overview of the Company’s business as discussed, *supra*, in ¶ 23.
5

6 28. Further, in discussing the Company’s strategy, the 2022 10-K stated, in
7 relevant part:
8

9 We seek to become the leading global immunological
10 therapeutics company by creating the next generation of
11 immunotherapies to address serious unmet needs within oncology and
12 infectious diseases. To achieve this goal, the key elements of our
strategy include:

- 13 • advancing the approval and commercialization of our lead
14 antibody cytokine fusion protein, N-803, as an integral
15 component of immunotherapy combinations, including those
with checkpoint inhibitors;
- 16 • continuously scrutinizing our clinical pipeline and assessing our
17 strategic priorities to maximize opportunities for regulatory
18 approval and to meet unmet medical needs;
- 19 • accelerating our immunotherapy platform and product
20 candidates with registrational intent to address difficult-to-treat
21 oncological and infectious disease indications;
- 22 • continuing to prospect, license, and acquire technologies to
23 complement and strengthen our platforms and product
24 candidates, both as single agent and combination therapies, in
25 order to activate and coordinate the innate and adaptive immune
26 system to generate cellular memory against multiple tumor types
and infectious diseases;
- 27 • optimizing investment in our discovery, development, and
28 manufacturing capabilities for our next-generation targeted

1 antibody cytokine fusion and recombinant proteins and vaccine
2 candidates, as well as for cell therapies;

- 3 • advancing our formulations and delivery mechanisms to make
4 our promising biotechnology product candidates available to the
5 broadest population possible; and
- 6 • cultivating new and expanding existing collaborations for our
7 multi-stage pipeline to efficiently scale globally.

8 29. Finally, in providing an overview of the Company's GMP
9 manufacturing capabilities, the 2022 10-K stated, in relevant part:

10 ***Overview of our Manufacturing Model***

11
12 Our manufacturing capabilities include advanced technology
13 facilities to produce and test various drug substances and drug products.
14 Our experienced operations and quality team focuses on internal
15 manufacturing and testing with a constant endeavor to create robust,
16 high quality, efficient and consistent supply that meets target product
17 profiles. Our Phase 1 manufacturing process is designed to seamlessly
18 scale-up through all phases of clinical development to commercial
19 manufacturing to drive successful commercialization.

20 ***Commercial cGMP Production***

21 For our N-803 product candidate, we have contracted with a
22 multi-national biologics manufacturer with multiple cGMP-compliant
23 facilities in the U.S., Europe and Asia for our current clinical trials and
24 future commercial sales, if approved. The facilities have robust process
25 development and validation and quality oversight with high-capacity
26 production suites operating multiple 2,000-20,000L production
27 bioreactors.

28 ***Clinical Trial GMP Antibody and Fusion Protein Production***

We are establishing a cGMP-compliant multi-platform facility in
California, which includes a large space for the production of antibodies
and fusion proteins (including N-803) to treat cancers and infectious

1 diseases. This facility will include fully integrated biologic upstream
2 and downstream production suites and a quality assurance/quality
3 control release laboratory for high-capacity antibody and fusion protein
4 production.

5 *Clinical Trial GMP saRNA, Adenovirus, and Yeast Production*

6 We have established other cGMP-compliant facilities for
7 saRNA, adenovirus, and yeast production in multiple sites in California
8 and a site in Colorado for oncology and infectious diseases. One of our
9 sites in California is dedicated to adenovirus product candidates for the
10 production of vaccine candidates to treat infectious diseases and
11 oncology TAAs. These facilities generally have fully-integrated
12 biologic upstream and downstream production suites and quality
13 assurance/quality control release laboratories for high capacity,
14 continuous, or personalized just-in-time vaccine production.

15 *Clinical Trial GMP NK Cell Therapy Production*

16 We have established other cGMP-compliant facilities for NK cell
17 therapy product production in multiple sites in California for oncology.
18 One of our sites in California is dedicated to our off-the-shelf product
19 candidates (including PD-L1 t-haNK), while another is primarily
20 focused on our M-ceNK product candidates, including a training lab for
21 our second-generation offerings.

22 *cGMP ISO Class 5 Manufacturing Facility*

23 On February 14, 2022, we acquired a leasehold interest in
24 approximately 409,000 rentable square feet of cGMP ISO Class 5
25 pharmaceutical manufacturing space in western New York (the
26 Dunkirk Facility). In September 2022, we initiated a workforce
27 reduction at the Dunkirk Facility as a result of upcoming construction
28 at the project, which we believe may take approximately 12 to 18
months. We believe this facility will provide us with a state-of-the-art
biotech production center that will substantially expand and diversify
our existing manufacturing capacity in the U.S. and the ability to scale
production across all of our key platforms.

Manufacture of Platform Product Candidates

1 ImmunityBio’s diverse product candidate portfolio and pipeline
2 requires a broad knowledge of various manufacturing and quality
3 assurance methods. We have invested heavily in the processes, systems
4 and technology to build an extensive range of manufacturing programs
5 spanning various levels of development from IND-enablement through
6 BLA preparation of our first commercial product.

7 We believe our plan to selectively use CMOs for certain of our
8 assets at various stages, coupled with internal development, will give
9 us assurance that any products will have backup manufacturing options.

10 30. Appended to the 2022 10-K as exhibits were signed certifications
11 pursuant to SOX by Defendants Adcock and Sachs, attesting that “the information
12 contained in the [2022 10-K] fairly presents, in all material respects, the financial
13 condition and results of operations of the Company.”

14 31. The statements referenced in ¶¶ 21-30 were materially false and
15 misleading because Defendants made false and/or misleading statements, as well as
16 failed to disclose material adverse facts about the Company’s business, operations,
17 and prospects. Specifically, Defendants made false and/or misleading statements
18 and/or failed to disclose that: (i) ImmunityBio conducted insufficient due diligence
19 to discover, or else did discover and ignored, GMP deficiencies at its third-party
20 CMOs for Anktiva; (ii) one or more of the Company’s third-party CMOs for Anktiva
21 did in fact suffer from GMP deficiencies; (iii) the foregoing deficiencies was likely
22 to cause the FDA to reject the Anktiva BLA in its present form; (iv) accordingly, the
23 Company overstated the regulatory approval prospects for the Anktiva BLA; and (v)
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1 as a result, the Company’s public statements were materially false and misleading at
2 all relevant times.

3 **The Truth Emerges**

4
5 32. On May 11, 2023, ImmunityBio announced that the FDA had rejected
6 the BLA for Anktiva in its present form. Specifically, in a Form 8-K filed with the
7 SEC, ImmunityBio stated, in relevant part:

8 ***BLA Update***

9
10 ImmunityBio, Inc. (the “Company”) announces that it has received a
11 complete response letter from the U.S. Food and Drug Administration
12 (“FDA”) on May 9, 2023 regarding its Biologics License Application
13 (“BLA”) for its product candidate, Anktiva™ (N-803) in combination
14 with Bacillus Calmette-Guérin (“BCG”) for the treatment of patients
15 with BCG-unresponsive non-muscle invasive bladder cancer
16 (“NMIBC”) with carcinoma in situ (“CIS”) with or without Ta or T1
17 disease. The letter indicates that the FDA has determined that it cannot
18 approve the BLA in its present form, and the FDA has made
19 recommendations to address the issues raised.

20 The deficiencies relate to the FDA’s pre-license inspection of the
21 Company’s third-party contract manufacturing organizations.
22 Satisfactory resolution of the observations noted at the pre-license
23 inspection is required before the BLA may be approved. The FDA
24 further provided recommendations specific to additional Chemistry,
25 Manufacturing and Controls (“CMC”) issues and assays to be resolved.

26 No new preclinical studies or Phase 3 clinical trials to evaluate safety
27 or efficacy were requested by the FDA. The FDA requested that the
28 Company provide updated duration of response data of the efficacy
population as identified by the FDA in the Company’s resubmission, as
well as a safety update.

The Company plans to request a meeting with the FDA as soon as
possible to address the subject matter of the letter and a response

1 timeline, and plans to diligently address and resolve the issues
2 identified and seek approval as expeditiously as possible.

3 33. On this news, ImmunityBio's stock price fell \$3.43 per share, or
4 55.14%, to close at \$2.79 per share on May 11, 2023.

5
6 34. As a result of Defendants' wrongful acts and omissions, and the
7 precipitous decline in the market value of the Company's securities, Plaintiff and
8 other Class members have suffered significant losses and damages.

9
10 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

11 35. Plaintiff brings this action as a class action pursuant to Federal Rule of
12 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
13 purchased or otherwise acquired ImmunityBio securities during the Class Period (the
14 "Class"); and were damaged upon the revelation of the alleged corrective
15 disclosures. Excluded from the Class are Defendants herein, the officers and
16 directors of the Company, at all relevant times, members of their immediate families
17 and their legal representatives, heirs, successors or assigns and any entity in which
18 Defendants have or had a controlling interest.

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22 36. The members of the Class are so numerous that joinder of all members
23 is impracticable. Throughout the Class Period, ImmunityBio securities were
24 actively traded on the NASDAQ. While the exact number of Class members is
25 unknown to Plaintiff at this time and can be ascertained only through appropriate
26 discovery, Plaintiff believes that there are hundreds or thousands of members in the
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1 proposed Class. Record owners and other members of the Class may be identified
2 from records maintained by ImmunityBio or its transfer agent and may be notified
3 of the pendency of this action by mail, using the form of notice similar to that
4 customarily used in securities class actions.

6 37. Plaintiff's claims are typical of the claims of the members of the Class
7 as all members of the Class are similarly affected by Defendants' wrongful conduct
8 in violation of federal law that is complained of herein.

10 38. Plaintiff will fairly and adequately protect the interests of the members
11 of the Class and has retained counsel competent and experienced in class and
12 securities litigation. Plaintiff has no interests antagonistic to or in conflict with those
13 of the Class.

16 39. Common questions of law and fact exist as to all members of the Class
17 and predominate over any questions solely affecting individual members of the
18 Class. Among the questions of law and fact common to the Class are:

- 20 • whether the federal securities laws were violated by Defendants' acts
21 as alleged herein;
- 22 • whether statements made by Defendants to the investing public
23 during the Class Period misrepresented material facts about the
24 business, operations and management of ImmunityBio;
- 25 • whether the Individual Defendants caused ImmunityBio to issue false
26 and misleading financial statements during the Class Period;
- 27 • whether Defendants acted knowingly or recklessly in issuing false
28 and misleading financial statements;

- whether the prices of ImmunityBio securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

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

41. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- ImmunityBio securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

- Plaintiff and members of the Class purchased, acquired and/or sold ImmunityBio 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.

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

43. Alternatively, Plaintiff 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 Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

44. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

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

46. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a

1 fraud and deceit upon Plaintiff and the other members of the Class; made various
2 untrue statements of material facts and omitted to state material facts necessary in
3 order to make the statements made, in light of the circumstances under which they
4 were made, not misleading; and employed devices, schemes and artifices to defraud
5 in connection with the purchase and sale of securities. Such scheme was intended
6 to, and, throughout the Class Period, did: (i) deceive the investing public, including
7 Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and
8 maintain the market price of ImmunityBio securities; and (iii) cause Plaintiff and
9 other members of the Class to purchase or otherwise acquire ImmunityBio securities
10 and options at artificially inflated prices. In furtherance of this unlawful scheme,
11 plan and course of conduct, Defendants, and each of them, took the actions set forth
12 herein.

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17 47. Pursuant to the above plan, scheme, conspiracy and course of conduct,
18 each of the Defendants participated directly or indirectly in the preparation and/or
19 issuance of the quarterly and annual reports, SEC filings, press releases and other
20 statements and documents described above, including statements made to securities
21 analysts and the media that were designed to influence the market for ImmunityBio
22 securities. Such reports, filings, releases and statements were materially false and
23 misleading in that they failed to disclose material adverse information and
24 misrepresented the truth about ImmunityBio's finances and business prospects.
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1 48. By virtue of their positions at ImmunityBio, Defendants had actual
2 knowledge of the materially false and misleading statements and material omissions
3 alleged herein and intended thereby to deceive Plaintiff and the other members of
4 the Class, or, in the alternative, Defendants acted with reckless disregard for the truth
5 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
7 were readily available to Defendants. Said acts and omissions of Defendants were
8 committed willfully or with reckless disregard for the truth. In addition, each
9 Defendant knew or recklessly disregarded that material facts were being
10 misrepresented or omitted as described above.

14 49. Information showing that Defendants acted knowingly or with reckless
15 disregard for the truth is peculiarly within Defendants' knowledge and control. As
16 the senior managers and/or directors of ImmunityBio, the Individual Defendants had
17 knowledge of the details of ImmunityBio's internal affairs.

20 50. The Individual Defendants are liable both directly and indirectly for the
21 wrongs complained of herein. Because of their positions of control and authority,
22 the Individual Defendants were able to and did, directly or indirectly, control the
23 content of the statements of ImmunityBio. As officers and/or directors of a publicly-
24 held company, the Individual Defendants had a duty to disseminate timely, accurate,
25 and truthful information with respect to ImmunityBio's businesses, operations,
26
27

1 future financial condition and future prospects. As a result of the dissemination of
2 the aforementioned false and misleading reports, releases and public statements, the
3 market price of ImmunityBio securities was artificially inflated throughout the Class
4 Period. In ignorance of the adverse facts concerning ImmunityBio's business and
5 financial condition which were concealed by Defendants, Plaintiff and the other
6 members of the Class purchased or otherwise acquired ImmunityBio securities at
7 artificially inflated prices and relied upon the price of the securities, the integrity of
8 the market for the securities and/or upon statements disseminated by Defendants,
9 and were damaged thereby.

13 51. During the Class Period, ImmunityBio securities were traded on an
14 active and efficient market. Plaintiff and the other members of the Class, relying on
15 the materially false and misleading statements described herein, which the
16 Defendants made, issued or caused to be disseminated, or relying upon the integrity
17 of the market, purchased or otherwise acquired shares of ImmunityBio securities at
18 prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the
19 other members of the Class known the truth, they would not have purchased or
20 otherwise acquired said securities, or would not have purchased or otherwise
21 acquired them at the inflated prices that were paid. At the time of the purchases
22 and/or acquisitions by Plaintiff and the Class, the true value of ImmunityBio
23 securities was substantially lower than the prices paid by Plaintiff and the other
24
25
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27

1 members of the Class. The market price of ImmunityBio securities declined sharply
2 upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class
3 members.
4

5 52. By reason of the conduct alleged herein, Defendants knowingly or
6 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act
7 and Rule 10b-5 promulgated thereunder.
8

9 53. As a direct and proximate result of Defendants' wrongful conduct,
10 Plaintiff and the other members of the Class suffered damages in connection with
11 their respective purchases, acquisitions and sales of the Company's securities during
12 the Class Period, upon the disclosure that the Company had been disseminating
13 misrepresented financial statements to the investing public.
14
15

16 **COUNT II**

17 **(Violations of Section 20(a) of the Exchange Act Against the Individual**
18 **Defendants)**

19 54. Plaintiff repeats and re-alleges each and every allegation contained in
20 the foregoing paragraphs as if fully set forth herein.
21

22 55. During the Class Period, the Individual Defendants participated in the
23 operation and management of ImmunityBio, and conducted and participated,
24 directly and indirectly, in the conduct of ImmunityBio's business affairs. Because
25 of their senior positions, they knew the adverse non-public information about
26 ImmunityBio's misstatement of income and expenses and false financial statements.
27
28

1 56. As officers and/or directors of a publicly owned company, the
2 Individual Defendants had a duty to disseminate accurate and truthful information
3 with respect to ImmunityBio’s financial condition and results of operations, and to
4 correct promptly any public statements issued by ImmunityBio which had become
5 materially false or misleading.
6

7
8 57. Because of their positions of control and authority as senior officers,
9 the Individual Defendants were able to, and did, control the contents of the various
10 reports, press releases and public filings which ImmunityBio disseminated in the
11 marketplace during the Class Period concerning ImmunityBio’s results of
12 operations. Throughout the Class Period, the Individual Defendants exercised their
13 power and authority to cause ImmunityBio to engage in the wrongful acts
14 complained of herein. The Individual Defendants, therefore, were “controlling
15 persons” of ImmunityBio within the meaning of Section 20(a) of the Exchange Act.
16 In this capacity, they participated in the unlawful conduct alleged which artificially
17 inflated the market price of ImmunityBio securities.
18
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21 58. Each of the Individual Defendants, therefore, acted as a controlling
22 person of ImmunityBio. By reason of their senior management positions and/or
23 being directors of ImmunityBio, each of the Individual Defendants had the power to
24 direct the actions of, and exercised the same to cause, ImmunityBio to engage in the
25 unlawful acts and conduct complained of herein. Each of the Individual Defendants
26
27
28

1 exercised control over the general operations of ImmunityBio and possessed the
2 power to control the specific activities which comprise the primary violations about
3 which Plaintiff and the other members of the Class complain.
4

5 59. By reason of the above conduct, the Individual Defendants are liable
6 pursuant to Section 20(a) of the Exchange Act for the violations committed by
7 ImmunityBio.
8

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:
11

12 A. Determining that the instant action may be maintained as a class action
13 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the
14 Class representative;
15

16 B. Requiring Defendants to pay damages sustained by Plaintiff and the
17 Class by reason of the acts and transactions alleged herein;
18

19 C. Awarding Plaintiff and the other members of the Class prejudgment and
20 post-judgment interest, as well as their reasonable attorneys' fees, expert fees and
21 other costs; and
22

23 D. Awarding such other and further relief as this Court may deem just and
24 proper.
25

26 **DEMAND FOR TRIAL BY JURY**

27 Plaintiff hereby demands a trial by jury.
28