

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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IRA GAINES, On Behalf of Himself And All	)	<b>CIVIL ACTION NO.</b> _____
Others Similarly Situated,	)	
Plaintiff,	)	<b>CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAWS</b>
vs.	)	
VIROPHARMA INC., CLAUDE H. NASH,	)	
MICHEL DE ROSEN, GEORGE SOROS AND	)	<b>JURY TRIAL DEMANDED</b>
FRANK H. PEARL,	)	
Defendants.	)	
-----X	)	

Plaintiff, individually and on behalf of all other persons similarly situated, by plaintiff's undersigned attorneys, for plaintiff's Complaint, alleges as follows upon the investigation made by and through plaintiff's counsel, which included, inter alia, a review of relevant filings made by ViroPharma, Inc., ("ViroPharma" or the "Company") with the Securities and Exchange Commission ("SEC"), as well as, tele-conferences, press releases, news articles, analyst reports, and media reports concerning the Company. Furthermore, this complaint is based upon plaintiff's personal knowledge as to plaintiff and plaintiff's own acts, and upon information and belief as to all other matters, based upon the aforementioned investigation.

**NATURE OF THE ACTION**

1. This is a federal class action on behalf of purchasers of the common stock of ViroPharma between July 13, 1999 and March 19, 2002, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

**JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U. S. C. §§ 78j(b) and 78t(a)] and Rule 10b-5 [17 C. F. R. §

240.10b-5] promulgated thereunder by the SEC.

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U. S. C. §§ 1331 and 1337, and Section 27 of the Exchange Act [15 U. S. C. § 78aa].
4. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U. S. C. § 1391(b). ViroPharma maintains its principal place of business in this District and many of the acts and practices complained of herein occurred in substantial part in this District.
5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

#### **PARTIES**

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased the common stock of ViroPharma at artificially inflated prices during the Class Period and has been damaged thereby.
7. Defendant ViroPharma is incorporated in Delaware with its principal place of business at 405 Eagleview Boulevard, Exton, Pennsylvania. ViroPharma Inc. is a pharmaceutical company dedicated to the commercialization, development and discovery of new antiviral medicines. The Company has focused its current product development and discovery activities on a number of ribonucleic acid, or RNA, virus diseases. These include viral respiratory infection (VRI), often referred to as the common cold; hepatitis C; and respiratory syncytial virus disease, or RSV disease.
8. Defendant Claude H. Nash (“Nash”) served at times relevant to this action as Chairman of ViroPharma.
9. Defendant Michel de Rosen (“de Rosen”) served at times relevant to this action as

the Company's President, Chief Executive Officer.

10. Defendant George R. Soros ("Soros") served at times relevant to this action on the Company's Board of Directors.
11. Defendant Frank H. Pearl ("Pearl") served at times relevant to this action on the Company's Board of Directors.
12. Nash, de Rosen, Soros and Pearl collectively are referred to herein as the "Individual Defendants".
13. Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about its business, operations, products, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.
14. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers of ViroPharma, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said

defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

15. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the NASDAQ National Market (the "NASDAQ"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to promptly disseminate accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.
16. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with ViroPharma, each of the Individual Defendants had access to the adverse undisclosed information about ViroPharma's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that

these adverse facts rendered the positive representations made by or about ViroPharma and its business issued or adopted by the Company materially false and misleading.

17. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.
18. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of ViroPharma common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding ViroPharma's business, operations, management and the intrinsic value of ViroPharma common stock; (ii) enabled ViroPharma insiders to sell more than \$20 million worth of ViroPharma common stock in two three-day periods to the unsuspecting public; and (iii) caused plaintiff and other members of the Class to purchase ViroPharma securities at artificially inflated prices.

**PLAINTIFF'S CLASS ACTION ALLEGATIONS**

19. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the securities of ViroPharma between July 13,

1999 and March 19, 2002, inclusive (the "Class Period") and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

20. The members of the Class are so numerous that joinder of all members is impractical. Throughout the Class Period, ViroPharma common shares were actively traded on the NASDAQ. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by ViroPharma or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.
21. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.
22. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.
23. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:
  - (a) whether the federal securities laws were violated by defendants' acts as alleged herein;
  - (b) whether statements made by defendants to the investing public during the

Class Period misrepresented material facts about the business, operations and management of ViroPharma; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

24. 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.

#### **SUBSTANTIVE ALLEGATIONS**

25. ViroPharma, Inc. is a pharmaceutical company dedicated to the commercialization, development and discovery of new antiviral medicines. The Company has focused its current product development and discovery activities on a number of ribonucleic acid, or RNA, virus diseases. These include viral respiratory infection (VRI), often referred to as the common cold; hepatitis C; and respiratory syncytial virus disease, or RSV disease.
26. During the Class Period, ViroPharma represented that its growth was contingent on U.S. Food and Drug Administration (“FDA”) approval of its’ Picovir (pleconaril) drug as a cure for the common cold. ViroPharma informed the investing public of every positive part of the Picovir studies. The Company sent numerous press releases praising the effectiveness of Picovir. The Company minimized or concealed potential obstacles to FDA approval.
27. In a July 13, 1999, press release ViroPharma announced results from its Phase 2 program with pleconaril to treat patients with viral respiratory infection (VRI), a

severe form of the common cold. Defendants represented that trial results indicated that pleconaril-treated patients experienced a clinically and statistically significant reduction in time to complete resolution of all disease symptoms, as well as a reduction in the patient-reported time to return to feeling normal, as measured by a global assessment score.

28. In the press release, Claude Nash, then ViroPharma's Chief Executive Officer added, "We've seen excellent results with pleconaril in patients with viral respiratory infection, a disease for which there are no available antiviral treatments. Our plan is to continue to pursue the path toward regulatory approval of this important new therapy."
29. In addition, the press release gave specifics about the positive results of the VRI study:

ViroPharma's VRI Phase 2 program consists of three double-blinded, placebo-controlled trials. The first two studies involved 1245 otherwise healthy adult patients suffering with severe colds. In the larger of these two studies (n=1024), patients received either 400 mg of pleconaril or placebo two times daily and three times daily. A dose response was observed. All randomized patients who received 400 mg of pleconaril three times daily experienced a greater than three day reduction in the median time to complete elimination of disease symptoms (11 days versus more than 14 days, p=0.01) and a 3 day reduction in the median time to a global assessment score of zero (11 days versus 14 days, p=0.002).
30. The Company concluded the announcement by stating unequivocally, "In all studies, there were no overall differences in adverse event profiles between pleconaril and placebo-treated patients."
31. These statements fueled an initial 100% rise in the stock price of ViroPharma. On July 12, 1999, the stock closed at \$9.25 per share. On July 14, 1999, the stock closed at \$19.13 per share.
32. In a February 16, 2000 press release, ViroPharma announced that it intended, subject to market and other conditions, to make a private offering of \$100 million

of Convertible Subordinated Notes due 2007, with an option to issue an additional \$20 million of notes, and that the notes would be convertible into shares of ViroPharma common stock and would be subordinated in right of payment to all senior indebtedness of ViroPharma.

33. After a \$200 million dollar deficit and 13 years of research, the company had a cure for which there was no disease. In a February 23, 2000, press release the Company stated, "In the fourth quarter of 1999, ViroPharma was conducting three phase 3 clinical trials, two in viral meningitis and one in viral respiratory infection, while in the fourth quarter of 1998, the company was conducting phase 2 clinical trials for both viral meningitis and viral respiratory infection, with fewer patients enrolled in each study compared to Phase 3 clinical trials." This press release helped push the stock price over \$100 per share for the first time, with a closing price of \$106 per share.
34. On April 11, 2000, in another press release the Company announced results from its three Phase 3 clinical studies of pleconaril in two disease indications: viral respiratory infection (VRI) in adults and viral meningitis in adults and children. As expected, clinical benefits were generally greater in patients with confirmed picornavirus infection. The adult patients in both indications purportedly showed improved time to resolution of disease based on various objective and subjective assessments of illness when compared to placebo-treated patients.
35. In the same announcement, the Company revealed the lack of Picovir success in treating meningitis.

Pleconaril also was evaluated for the treatment of viral meningitis in two studies, one in adult patients and a second in pediatric patients. The time to complete resolution of headache was the primary endpoint in the study. While a significant effect of pleconaril was not observed in this endpoint for all randomized patients with confirmed picornavirus infection, significant effects were seen in adult patients with the most severe disease. As observed in the last adult viral meningitis study, the treatment effect was most pronounced in adult

patients who presented with severe headache and vomiting. In these patients, the time to complete resolution of headache, the primary endpoint in the study, was reduced by 3 days (10 days in the placebo group to 7 days in the pleconaril-treated group,  $p = 0.039$ ).

36. The press release continued to minimize pleconaril's side effects:

In all studies, adverse events were reported at a similar rate in pleconaril and placebo-treated patients, except mild nausea which was slightly higher in the pleconaril-treated patients. The frequency of nausea in the pleconaril-treated group compared to the placebo group in VRI was 7% versus 3%, in adult meningitis was 27% versus 20% and in pediatric meningitis was 1% in both groups.

37. A short time thereafter, the Company aborted pursuit of FDA approval for a meningitis cure through Picovir. However, the Company allowed the fantasy of FDA approval for the drug to treat VRI to survive. Once again, the company reported that adverse effects were similar between Picovir and a placebo. This finding would be strongly refuted by the FDA.

38. This April 11, 2000 press release announcing the abandonment of the meningitis "cure", caused the stock price to plummet more than 65 percent. The stock careened from \$71.75 per share to \$23.25 ViroPharma stock nevertheless continued to neglect the expectation, caused by defendants' representations, that Picovir had a reasonable possibility of being approved by the FDA as a cure for the common cold.

39. On July 31, 2001, ViroPharma announced that it had submitted a new drug application to the FDA for clearance to market Picovir.

"This is a tremendous accomplishment to have filed ViroPharma's first NDA ahead of our targeted submission date. We look forward to productive interactions with the FDA," said Michel de Rosen, ViroPharma's president and chief executive officer. "This effort underscores our commitment to advancing Picovir toward

commercialization. We are fervently working toward achieving the next set of milestones for the company, which includes securing a co promotion and co development partner for Picovir™.”

40. On September 10, 2001, ViroPharma issued a press release touting a U.S. co-promotion and co-development collaboration for Picovir.

Aventis Pharmaceuticals, the U.S. pharmaceutical company of Aventis Pharma AG, and ViroPharma Incorporated (Nasdaq: VPHM) today announced that they have formed a collaboration to co-develop and co-promote ViroPharma’s Picovir™ (pleconaril) in the United States. Picovir™ is a first-of-a-kind oral antiviral product being studied for the treatment of viral respiratory infection (VRI), otherwise known as the common cold.

41. While the Company’s stock remained falsely inflated by these expectations, defendants sold almost \$20 million worth of their ViroPharma common stock to the unsuspecting public. In fact, the two defendants sold the majority of their shares in secondary offerings during two periods October 10-31, 2001 and December 17-19, 2001.

42. On October 10, 2001, Soros and Pearl started dumping shares of ViroPharma on the unsuspecting public. From October 10, 2001, to October 31, 2001 these two investors were responsible for selling 560,000 shares of ViroPharma common stock, hardly normal for directors believing their Company’s wonder drug would obtain FDA approval.

43. On November 15, 2001, ViroPharma issued a press release announcing that the Company had entered into an underwriting agreement to sell additional common stock.

“ViroPharma Incorporated (Nasdaq: VPHM) today reported that it has entered into an underwriting agreement for the sale by the company of 4,000,000 shares of its common stock under its shelf registration statement. Proceeds to the company from the sale are expected to be approximately \$82.8 million before offering expenses. ViroPharma intends to use the net proceeds for the anticipated commercialization

of Picovir™, including pre-marketing activities; manufacturing of inventory for initial product launch; hiring a sales force and expanding it over time to maximize the company's return in its co-promotion partnership with Aventis Pharmaceuticals, Inc., the North American Pharmaceutical subsidiary of Aventis, S.A., and building the requisite infrastructure; the conduct of clinical trials for Picovir™ and advancing its hepatitis C and RSV disease programs; capital expenditures; debt service; potential acquisitions; and general working capital.”

44. ViroPharma presented its Picovir research at an infectious disease conference in Chicago. At this conference, ViroPharma stated that the drug reduced the duration of symptoms such as runny nose by one day on average. On December 18, 2001, the Chicago Tribune reported from the infectious disease conference that there could be problems with Picovir.
45. Dr. Frederick Hayden, study leader and professor of clinical virology at the University of Virginia Health Sciences Center said, “I hesitate to use the word ‘cure’, because this doesn’t stop the illness immediately. But in that [pleconaril] directly attacks the cause of the illness, it is the first effective antiviral therapy”. In addition the article stated, “Experts said pleconaril, which is under review by the U.S. Food and Drug Administration, could face tough safety hurdles because of a reluctance to prescribe potent antiviral medication for such a mild infection.
46. On March 13, 2002, ViroPharma shares fell 18 percent on concerns that study results for Picovir would not impress the FDA and on the sell recommendation from Darren Mac, an analyst at Fulcrum Global Partners. Mac continued, “We believe that the upcoming Antiviral Drugs Advisory Committee meeting for Picovir will result in a recommendation against approval. Our expectations are supported by what we view as a very weak co-promotion partnership and recent selling and a hedging arrangement by a director.
47. On March 19, 2002, trading was halted as the Company revealed that an FDA advisory committee decided the fate of ViroPharma’s cold treatment Picovir. The

panel voted 15-0 against approval.

48. The Company also revealed that Picovir had been studied in nearly 3,900 patients in 5-7 day clinical trials. Although the Company insisted that treatment was well tolerated and that adverse events were comparable to placebo in the trials, the Company admitted that patients had experienced headache, diarrhea and nausea.
49. On March 20, 2002, after the resumption of trading, shares of ViroPharma plummeted 60 percent.
50. The 15-member FDA committee had questions about the safety of the drug in women taking oral contraceptives and in the elderly. In addition, the committee asked for broader studies on the drug's benefits with minorities, the elderly, patients with asthma and chronic bronchitis, children, and more about the drug's interaction with other medications. They also expressed concern that the drug may develop drug-resistant cold germs.
51. The FDA pointed out that the drug had several significant side effects, with headache the most frequently cited. Seven patients out of 4,500 who took the drug reported rapid heart palpitations and four patients withdrew from the study for that reason. The side effect that most concerned the panel was abnormal bleeding by 3 percent of women taking birth control pills, compared with less than 1 percent of women not using hormone birth control. This indicated a potential risk of unintended pregnancy. Because Picovir needs to be taken within the first 24 hours of getting a cold and after eating, several panelists worried that doctors would dole out prescriptions before the cold season began, without discussing safety considerations. Moreover, getting an appointment and a prescription for Picovir within 24 hours of initially sensing a cold would be impractical.
52. On the same day, the company removed six years of press releases from its website.

53. There were and are tremendous obstacles for ViroPharma to overcome before it could receive regulatory approval for Picovir. These obstacles, as enumerated by the FDA as set forth above, were undisclosed during the Class Period, but were well known to defendants by virtue of their testing and trials of this drug on thousands of people for several years. Basically, Picovir was known by defendants to be riskier and no more useful than over-the-counter and far less expensive cold remedies already on the market.
54. The market for ViroPharma's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, ViroPharma's common stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired ViroPharma securities relying upon the integrity of the market price of ViroPharma's securities and market information relating to ViroPharma, and have been damaged thereby.
55. During the Class Period, defendants materially misled the investing public, thereby inflating the price of ViroPharma's common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.
56. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about ViroPharma's business,

prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of ViroPharma and its business, prospects and operations, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein.

#### **ADDITIONAL SCIENTER ALLEGATIONS**

57. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding ViroPharma, their control over, and/or receipt and/or modification of ViroPharma's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning ViroPharma, participated in the fraudulent scheme alleged herein.

#### **Applicability Of Presumption Of Reliance: Fraud-On-The-Market Doctrine**

58. At all relevant times, the market for ViroPharma's securities was an efficient market for the following reasons, among others:
- (a) ViroPharma's stock met the requirements for listing, and was listed and

actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, ViroPharma filed periodic public reports with the SEC and the NASD;

(c) ViroPharma regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) ViroPharma was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

59. As a result of the foregoing, the market for ViroPharma's securities promptly digested current information regarding ViroPharma from all publicly available sources and reflected such information in ViroPharma's stock price. Under these circumstances, all purchasers of ViroPharma's securities during the Class Period suffered similar injury through their purchase of ViroPharma's securities at artificially inflated prices and a presumption of reliance applies.

**NO SAFE HARBOR**

60. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. 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. Alternatively, to the

extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of ViroPharma who knew that those statements were false when made.

**FIRST CLAIM**

**Violation Of Section 10(b) Of  
The Exchange Act And Rule 10b-5  
Promulgated Thereunder Against All Defendants**

61. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.
62. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceived the investing public regarding ViroPharma's business, operations, management and the intrinsic value of ViroPharma common stock; (ii) enabled ViroPharma insiders to sell more than \$20 million worth of ViroPharma common stock in two three-day periods to the unsuspecting public; and (iii) caused plaintiff and other members of the Class to purchase ViroPharma securities at artificially inflated prices.. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.
63. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for

ViroPharma's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

64. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of ViroPharma as specified herein.
65. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of ViroPharma's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about ViroPharma and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of ViroPharma securities during the Class Period.
66. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections

and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

67. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing ViroPharma's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's business, operations and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.
68. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of ViroPharma's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of ViroPharma's publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in

which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired ViroPharma securities during the Class Period at artificially high prices and were damaged thereby.

69. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that ViroPharma was experiencing, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their ViroPharma securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.
70. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.
71. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

## **SECOND CLAIM**

### **Violation Of Section 20(a) Of The Exchange Act Against Individual Defendants**

72. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.
73. The Individual Defendants acted as controlling persons of ViroPharma within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the

false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

74. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.
75. As set forth above, ViroPharma and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;
- (b) Awarding compensatory damages in favor of plaintiff and the other Class

members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: March 26, 2002

**SCHRIFFIN & BARROWAY**

By: \_\_\_\_\_  
Richard Schriffin, Esq.  
Andy Barroway, Esq.  
Mark Topaz, Esq.  
3 Bala Place, Suite 400  
Bala Cynwyd, PA 19004  
(610) 667-7706

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

Fred Taylor Isquith, Esq.  
Gustavo Bruckner, Esq.  
270 Madison Avenue  
New York, NY 10016  
(212) 545-4600

**LAW OFFICES OF MARC S. HENZEL**

Marc S. Henzel, Esq.  
273 Montgomery Avenue, Suite 202  
Bala Cynwyd, PA 19106  
(610) 660-8000

