

NATURE OF THE ACTION

1. This is a federal Class Action brought by the Plaintiff on behalf of himself and a Class consisting of all other persons who purchased the publicly traded securities of Biovail (NYSE: BVF) (TORONTO STOCK EXCHANGE: BVF.TO), between May 17, 2002 and October 30, 2003, inclusive (the "Class Period"), seeking to recover damages caused by Defendants' violations of federal securities laws and 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 promulgated thereunder (17 C.F.R. §240.10b-5).

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

4. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District.

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.

THE PARTIES

6. Plaintiff, Brian Felgoise, purchased Biovail securities, as set forth in the accompanying certification attached hereto and incorporated herein by reference, and has suffered damages as a result of the wrongful acts of defendants as alleged herein.

7. Defendant Biovail Corp. is a corporation organized and existing under the laws of Ontario, Canada with its principal place of business located at 7150 Mississauga Road, Mississauga, Ontario, Canada L5N 8M5.

8. Defendant Eugene N. Melnyk ("Melnyk") was, at all relevant times during the Class Period, the Company's Chairman of the Board of Directors and Chief Executive Officer.

9. Defendant Brian H. Crombie ("Crombie") was, at all relevant times during the Class Period, the Company's Chief Financial Officer and a Vice-President.

10. Defendant Rolf K. Reininghaus ("Reininghaus") was, at all relevant times during the Class Period, the Company's Vice-President and a director.

11. Defendants Melnyk, Crombie, and Reininghaus are collectively referred to hereafter as the "Individual Defendants." During the Class Period, each of the Individual Defendants, as senior executive officers and/or directors of Biovail, were privy to non-public information concerning its business, finances, products, markets and present and future business prospects via access to internal corporate documents, 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. Because of their possession of such information, the Individual Defendants knew or recklessly disregarded the fact that adverse facts specified herein had not been disclosed to, and were being concealed from, the

investing public.

12. Each of the Individual Defendants are liable as a direct participant with respect to a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Biovail publicly traded securities by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme deceived the investing public regarding Biovail's business, operations, management, and the intrinsic value of Biovail publicly traded securities and caused Plaintiff and other members of the Class to purchase Biovail securities at artificially inflated prices.

13. In addition, the Individual Defendants, by reason of their status as senior executive officers and directors were each a "controlling person" within the meaning of Section 20 of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their position of control, the Individual Defendants were able to and did, directly or indirectly, control the content of various SEC filings, press releases, and other public statements pertaining to the Company during the Class Period.

14. The Individual Defendants, because of their positions with Biovail were provided with copies of Biovail's reports and press releases alleged herein to be misleading, prior to or shortly after their issuance and had both the ability and opportunity to prevent their issuance or cause them to be corrected. The Individual Defendants had the opportunity to commit the fraudulent acts alleged herein. 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.

15. The Individual Defendants are liable, jointly and severally, as direct participants in

and co-conspirators of, the wrongs complained of herein.

CLASS ACTION ALLEGATIONS

16. Plaintiff brings this action as a federal class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class (the "Class"), consisting of all those who purchased the securities of Biovail between May 17, 2002 and October 30, 2003, 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.

17. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Biovail securities were actively traded on the New York Stock Exchange ("NYSE") and the Toronto Stock Exchange. 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 hundreds or thousands of members in the proposed Class.

18. Plaintiff's claims are typical of the claims of the members of the Class, because plaintiffs and all of the Class members sustained damages arising out of defendants' wrongful conduct complained of herein.

19. Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel who are experienced and competent in class actions and securities litigation.

20. 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 members of the Class may be relatively small, the expense and burden of individual litigation make it impossible for the 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.

21. Questions of law and fact common to the members of the Class predominate over any questions that may affect only individual members, in that defendants have acted on grounds generally applicable to the entire 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 the Company's publicly disseminated press releases and statements during the Class Period omitted and/or misrepresented material facts;
- (c) Whether defendants breached any duty to convey material facts or to correct material acts previously disseminated;
- (d) Whether the defendants acted willfully, with knowledge or recklessly, in omitting and/or misrepresenting material facts; and
- (e) Whether the members of the Class have sustained damages and, if so, what is the appropriate measure of damages.

SUBSTANTIVE ALLEGATIONS

Background

22. Biovail Corp. is a pharmaceutical company engaged in the development, manufacture and marketing of medications utilizing advanced drug delivery technologies for the treatment of chronic medical conditions.

23. This Class Action concerns defendants' materially false and misleading statements

during the Class Period. More specifically, Defendants misrepresented the following: (1) that Biovail was aware that its aggressive growth projections could not be maintained due to a rise in internal expenses and competition; (2) that Biovail was aware that it could not achieve its forecasted growth projections due to an increase in production and sales costs; (3) that Biovail was aware that it could not achieve its forecasted growth projections because of slow internal growth and added expenses associated with its recent acquisitions; and (4) as a result of the foregoing, defendants lacked a reasonable basis for their earnings projections for the Company, which were therefore materially false and misleading.

Materially False and Misleading Statements Made During the Class Period

24. The Class Period begins on May 17, 2002. On that date, the Company issued a press which increased its "total revenue guidance" for fiscal year 2002. For the second quarter of 2002, Biovail had previously projected revenue from \$165 to \$185 million. Biovail increased that projection to \$170 to \$200 million. For the third quarter of 2002, Biovail had previously projected revenue from \$185 to \$210 million. Biovail increased that projection to \$190 to \$225 million. For the fourth quarter of 2002, Biovail had previously projected revenue from \$200 to \$230 million. Biovail increased that projection to \$215 to \$250 million. For the full year 2002, Biovail had previously projected revenue from \$720 to \$775 million. Biovail increased that projection to \$745 to \$825 million.

25. On July 25, 2002, the Company issued a press release reporting its second quarter 2002 results. The Company stated, in pertinent part, the following:

Biovail Corporation today reported record financial results for the three-month and six-month periods ending June 30, 2002. Total revenues for the second quarter of 2002 increased 39% to

\$185.1 million, compared with \$133.5 million reported for the second quarter of 2001. Total revenues for the six months ended June 30, 2002 were \$340.4 million reflecting an increase of \$87.7 million or 35% over the six months ended June 30, 2001.

Net income increased 42% and was \$62.6 million for the second quarter 2002 versus second quarter 2001 net income of \$44.1 million. **Net income for the six months ended June 30, 2002 of \$115.6 million increased 58%** versus \$73.3 million for the prior year equivalent period. Second quarter 2002 diluted earnings per share increased 30% to \$0.39 per share versus \$0.30 per share for the second quarter 2001. For the six months ended June 30, diluted earnings per share increased 40% to \$0.70 per share for 2002 versus \$0.50 per share for 2001.

"In addition to strong financial results, Biovail's second quarter performance again reflect significant advancements in the execution of the Company's growth and strategic initiatives," commented Eugene Melnyk, Chairman of the Board and CEO. Biovail's successful sales force expansion program continues resulting in an increase of more than 300 personnel in Biovail's U.S. sales organization since the beginning of 2002, bringing the total U.S. sales organization to over 600. Also during the quarter, the favorable Phase III clinical results for Cardizem(R) XL were presented at a leading medical conference and, after a ten-month review, Biovail received an Approvable Letter from the Food and Drug Administration (FDA) for this product, indicating acknowledgement that the FDA has reviewed the application and that Cardizem(R) XL is approvable.

"We expect to continue building upon existing pipeline and commercial opportunities through strategic licensing, development and acquisition initiatives," stated Mr. Melnyk. "These initiatives are expected to be complimentary to the organic growth derived from our base business driven by our expanding sales and marketing capabilities."

Product sales revenue of \$157.8 million increased 29% during the second quarter 2002 versus second quarter 2001 and increased 25%

to \$287.6 million for the first half of 2002 versus first half 2001 primarily due to a strong sales performance by Biovail Pharmaceuticals USA and the recently acquired Zovirax(R), Teveten(R) and Vasotec(R) product lines. Gross margins were 73.8% for the second quarter ended June 30, 2002 and improved approximately 130 basis points versus the prior quarter primarily due to sales mix. (Emphasis added).

26. On October 29, 2002, the Company issued a press release reporting its third quarter 2002 results. The Company stated, in pertinent part, the following:

Biovail Corporation today reported record financial results for the three-month and nine-month periods ending September 30, 2002. Total revenues for the third quarter of 2002 increased 37% to \$208.9 million, compared with \$152.2 million reported for the third quarter of 2001. Total revenues for the nine months ended September 30, 2002 were \$549.3 million reflecting an increase of \$144.4 million or 36% over the nine months ended September 30, 2001.

Net income increased 127% and was \$75.0 million for the third quarter 2002 versus third quarter 2001 net income of \$33.1 million. Net income for the nine months ended September 30, 2002 of \$190.6 million increased 79% versus \$106.4 million for the prior year equivalent period. Third quarter 2002 diluted earnings per share increased 123% to \$0.49 per share versus \$0.22 per share for the third quarter 2001. For the nine months ended September 30, diluted earnings per share increased 66% to \$1.18 per share for 2002 versus \$0.71 per share for 2001.

Eugene Melnyk, Chairman and Chief Executive Officer, commented, "In addition to Biovail's strong financial performance, the Company achieved another significant developmental milestone with the August filing of a New Drug Application by GlaxoSmithKline for our once-daily formulation of Wellbutrin. As well, the Company anticipates receiving final marketing approval and launch to the trade of Cardizem[®] XL later this quarter. Our U.S. sales force is achieving success in establishing relationships with high prescribing doctors through the co-promotion of Wellbutrin SR and have demonstrated their effectiveness given the

recent increases in prescription trends for Teveten® and Zovirax®."

Product sales revenue of \$174.5 million increased 32% during the third quarter 2002 versus third quarter 2001 and increased 27% to \$462.2 million for the first nine months of 2002 versus the first nine months of 2001 primarily due to strong sales of generic products including the recent launch of generic Adalat CC 90mg, Cardizem® CD sales and the recently acquired Zovirax, Teveten® and Vasotec® product lines. Gross margins were 74.8% for the third quarter ended September 30, 2002 reflecting an improvement of approximately 100 basis points versus the prior quarter and 240 basis points versus third quarter 2001 primarily due to sales mix. (Emphasis added).

27. On December 11, 2002, Biovail issued a press release reporting its acquisition of Pharma PASS, LLC and Pharma PASS, SA for \$190 million.

28. On March 4, 2003, the Company issued a press release reporting its fourth quarter and year ended 2002 results. The Company stated, in pertinent part, the following:

Biovail Corporation today reported record financial results for the fourth quarter and year ended December 31, 2002. Total revenues for the fourth quarter of 2002 increased 34% to \$238.7 million, compared to \$178.3 million reported for the fourth quarter of 2001. Total revenues for the year ended December 31, 2002 were \$788.0 million reflecting an increase of \$204.7 million or 35% over the year ended December 31, 2001 sales of \$583.3 million.

Fourth quarter 2002 net losses of \$102.8 million compared to a net loss of \$18.9 million for the fourth quarter of 2001. Excluding certain charges, **2002 fourth quarter net income of \$95.4 million increased 29%** over 2001 fourth quarter net income of \$73.8 million. Net income for full year 2002 of \$87.8 million compared to net income of \$87.4 million for the prior year equivalent period. Excluding certain charges, **net income for full year 2002 increased 40%** to

\$284.1 million versus full year 2001 net income of \$202.9 million.

Eugene Melnyk, Chairman of the Board and Chief Executive Officer, commented, "Biovail continues to achieve earnings growth in excess of 30% however, very importantly, Biovail continues to execute on its operational mandate. Biovail's U.S. sales organization more than doubled during 2002 and this sales force has already demonstrated its effectiveness by **increasing monthly Teveten prescriptions over 90% from June to December 2002.** As well, the Company has fully integrated the operational aspects of Zovirax, Teveten, Vasotec, Vaseretic and has begun developmental programs that will allow Biovail to further exploit these brands. During 2002, the Company has had numerous significant product development successes including the approval of Cardizem LA, the filing of Wellbutrin XL and numerous other clinical advancements. These clinical successes include favorable results from clinical programs related to once-daily versions of tramadol and metformin and successful Phase IV clinical programs related to Cardizem LA. The combination of Biovail's clinical successes, sales force expansion programs and investments in early stage pipelines will continue to create a high level of future growth for Biovail and its shareholders."

Product sales revenue of \$183.8 million increased \$26.2 million for the fourth quarter 2002 versus fourth quarter 2001 and increased 24% to \$646.0 million for the full year 2002 versus full year 2001. The increase in product sales revenue is primarily attributable to the sales of Zovirax, Vasotec and Teveten in the U.S. marketplace. Additionally, incremental 2002 product sales revenues versus 2001 have been favorably impacted by the launch of a bioequivalent version of Adalat CC 90mg and strong sales via the Company's Canadian sales and marketing organization. Product sales revenue represents almost 80% of the Company's revenue base. (Emphasis added).

29. On April 29, 2003, the Company issued a press release reporting its first quarter 2003 results. The Company stated, in pertinent part, the following:

Biovail Corporation today announced record financial results for

the three-month period ended March 31, 2003 and first month performance for Cardizem(R)LA, which is in excess of 20,000 prescriptions. Total revenues for the first quarter of 2003 increased 23% to \$191.4 million, compared to \$155.2 million reported for the first quarter of 2002.

Net income increased 19% and was \$63.0 million for the first quarter 2003 versus first quarter 2002 net income of \$53.1 million. First quarter 2003 diluted earnings per share increased 22% to \$0.39 per share versus \$0.32 per share for the first quarter 2002. Operating income for the quarter increased 29% to \$74.0 million.

Total revenues for the first quarter 2003 of \$191.4 increased 23% versus the first quarter 2002 primarily due to the continued strong in-market performances of Zovirax and Teveten(R) products, as well as the Company's interest in the gross profit on the sales of a generic version of Prilosec acquired in the 2002 fourth quarter. The favorable first quarter 2003 revenue results were partially offset by lower product sales revenues primarily related to lower Cardizem(R)CD and generic product sales versus the first quarter 2002.

"The successful relaunch of Teveten(R), the launch of Teveten(R) HCT and the performance of Cardizem(R)LA since its launch earlier this month demonstrates the effectiveness of our sales and marketing and product launch capabilities," commented Eugene Melnyk, Chief Executive Officer and Chairman of the Board. "Operationally, our management team has been strengthened, our pipeline programs are on track including the expected launch of Wellbutrin XL in the second half of 2003 and we continue to explore numerous opportunities. These and other activities give us confidence that we will meet or exceed our objective of 30% earnings per share growth for 2003." (Emphasis added).

30. On May 21, 2003, Biovail filed its Form 20-F for the year ended 2002 with the SEC, which confirmed the previously announced financial results. The Company's Form 20-F, signed by defendants Melynck and Crombie, stated, in pertinent part:

The Company's management is responsible for preparing the accompanying consolidated financial statements in conformity with

United States generally accepted accounting principles ("GAAP"). In preparing these consolidated financial statements, management selects appropriate accounting policies and uses its judgment and best estimates to report events and transactions as they occur. Management has determined such amounts on a reasonable basis in order to ensure that the consolidated financial statements are presented fairly, in all material respects. Financial data included throughout this Annual Report is prepared on a basis consistent with that of the consolidated financial statements.

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chapter 63, Title 18 U.S.C. §1350(a) and (b)), the undersigned hereby certifies that the Annual Report on Form 20-F for the fiscal year ended December 31, 2002 of Biovail Corporation (the "Company") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) and that the information contained in such Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Additionally, Defendants Melynk and Crombie each certified the Company's financial results:

Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report.

31. On July 29, 2003, the Company issued a press release reporting its second quarter 2003 results. The Company stated, in pertinent part, the following:

Biovail Corporation announced today record financial results for the three month and six month periods ending June 30, 2003. Total revenues for the three months ended June 30, 2003 increased 17% to \$217.3 million, compared with \$185.1 million for the second quarter 2002. Total revenues for the six months ended June 30, 2003 increased 20% to \$408.7 million versus \$340.4 million for the first six months of 2002.

"The dramatic increase in market share for Biovail's Cardizem franchise from 7% to over 11% in the 16 weeks since the launch of Cardizem LA has surpassed our expectations," commented Eugene Melnyk, Chairman of the Board and Chief Executive Officer. "The recent confirmation of September 3, 2003 as the Food and Drug Administration's target date for the approval of Wellbutrin XL, the first and only once-daily anti-depressant with a low incidence of sexual dysfunction and weight gain, should contribute to strong organic growth for Biovail in the coming quarters. These two highlights, in combination with other approaching milestones including the release of top line clinical data in the next 90 days for Tramadol XL, our once-daily pain medication currently completing two Phase III clinical trials, confirms the focus and successful execution of our strategic initiatives." (Emphasis added).

32. On October 3, 2003, the Company issued a press release reporting that its third quarter 2003 results would be "below previously issued guidance" mainly because of a lost shipment of Wellbutrin XL. The Company stated, in pertinent part, the following:

Biovail Corporation announced today that while it has not completed a final compilation and analysis of its 2003 third quarter, preliminary results indicate that revenues will be below previously issued guidance and will be in the range of \$215 million to \$235 million and earnings per share of \$0.35 to \$0.45 for the three months ended September 30, 2003. Contributing significantly to this unfavorable variance was the loss of revenue and income associated with a significant in-transit shipment loss of Wellbutrin XL as a result of a traffic accident.

After leaving Biovail's Steinbach, Manitoba manufacturing facility on September 30, 2003, a truck carrying a material shipment of Wellbutrin XL was involved in a multi-vehicle traffic accident at approximately 4 p.m. eastern standard time October 1, 2003 near Chicago, Illinois. While this product may still be salable in the future, it must first be returned for inspection to Biovail's manufacturing facility in Manitoba to ensure it is still within acceptable specifications. Revenue associated with this shipment is in the range of \$10 to \$20 million. The manufacturing cost value of this shipment

was fully insured.

As a result of numerous recent inquiries, Biovail also comments on two additional items associated with third quarter income.

Biovail has an economic interest in the gross profits derived from the sales of a generic version of omeprazole. The distributor of this generic omeprazole product has announced that it will provide significant price reductions on a retroactive basis to wholesalers. This distributor has also indicated that it will be lowering its financial guidance for this product given lower pricing and for competitive reasons. Biovail's second half 2003 financial guidance assumed that additional competition for generic omeprazole would seriously erode the financial benefit to the Company's interest in the gross profits of this product. However, since Biovail shares in a percentage of the gross profit of this product, significant credits issued by the distributor during the third quarter 2003 could have a negative effect on Biovail's participating interest of up to \$15 million in net income. As well, it can be anticipated that there could be a fourth quarter 2003 negative income impact of \$15 to \$20 million.

33. The statements referenced above in ¶¶ 24-26, 28-32 were each materially false and misleading because they failed to disclose and misrepresented the following material adverse facts which were known to defendants or recklessly disregarded by them: (1) that Biovail was aware that its aggressive growth projections could not be maintained due to a rise in internal expenses and competition; (2) that Biovail was aware that it could not achieve its forecasted growth projections due to an increase in production and sales costs; (3) that Biovail was aware that it could not achieve its forecasted growth projections because of slow internal growth and added expenses associated with its recent acquisitions; and (4) as a result of the foregoing, defendants lacked a reasonable basis for their earnings projections for the Company, which were therefore materially false and misleading.

The Truth Begins To Emerge

34. On October 30, 2003, before the markets opened, Biovail issued several press releases.

In one press release the Company revealed a decrease in net income from \$75 million a year prior to \$13 million for the third quarter of 2003. The Company stated, in pertinent part, the following:

Biovail Corporation announced today its financial results for the three month and nine month periods ending September 30, 2003. Total revenues for the three months ended September 30, 2003 increased 3% to \$215.3 million versus the prior year comparable period. Total revenues for the nine months ended September 30, 2003 were \$624.0 million reflecting an increase of 14% versus the prior year comparable period.

"Third quarter results reflect a series of decisions we made to remain consistent with our conservative approach to our financial reporting", commented Eugene Melnyk, Chairman and CEO of Biovail.

In accordance with U.S. GAAP, third quarter 2003 net income was \$13.0 million and diluted earnings per share of \$0.08 compared to net income was \$75.0 million and diluted earnings per share of \$0.49 for third quarter 2002. In accordance with U.S. GAAP for the nine month period ended September 30, 2003, net income was \$75.0 million and diluted earnings per share was \$0.47 compared to net income of \$190.6 million and earnings per share of \$1.18 for the nine-month period ended September 30, 2002.

Excluding certain items, third quarter 2003 net income of \$34.6 million and diluted earnings per share of \$0.22 both declined by 53% versus third quarter 2002 net income and earnings per share of \$73.0 million and \$0.47 per share excluding the expense related to the ineffective portion of interest rate swaps. Excluding certain items, net income of \$180.8 million and diluted earnings per share of \$1.13 for the nine months ended September 30, 2003 and decreased 4% and 3% respectively compared to net income of \$188.7 million and earnings per share of \$1.17 for the comparable 2002 excluding the ineffective portion of interest rate swaps and a write-down of assets related to a decline in the value of the Company's investment in Hemispherx Biopharma Inc. (Emphasis added).

35. In another press release the Company revealed revenue growth of 10% although it had previously predicted greater than 30%. The Company stated, in pertinent part, the following:

Biovail's annual product sales revenue by major category, research and development revenue, royalty and co-promote revenue and total revenue for 2004 is expected to grow approximately 10% . . .

36. The market reacted swiftly to this news, with the Company's stock falling 15%, or \$4.25 per share from a high of \$27.65 per share on October 29, 2003 to close at \$23.40 per share on October 30, 2003.

37. On October 30, 2003, Reuters news service reported on Biovail's stock drop. Reuters indicated that Biovail earned \$13 million in the third quarter of 2003. This was down from \$75 million a year earlier. Profit decreased from 47 cents a year prior to 22 cents in the third quarter of 2003. Eighteen analysts polled by Reuters had estimated profits from 35 to 45 cents for the third quarter of 2003. Analysts were further disappointed because Biovail did not release its financial results until it was already in a conference call with analysts.

Reuters further reported that Biovail's third quarter 2003 results "showed a rise in expenses for research and development, selling, general and administration and amortization from the year-earlier quarter." Biovail reported that "its third quarter net income included the write-off of acquired research and development reorganization costs associated with its U.S. operation, a \$6 million noncash loss on an interest rate swap and the write-down of assets."

Undisclosed Adverse Facts

38. The market for Biovail's publicly traded 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, Biovail's publicly traded securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Biovail publicly traded securities relying upon the integrity of the market price of Biovail's publicly traded

securities and market information relating to Biovail, and have been damaged thereby.

39. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Biovail's publicly traded securities, 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.

40. 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 Biovail'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 Biovail and its business, prospects and operations, thus causing the Company's publicly traded 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 publicly traded securities at artificially inflated prices, thus causing the damages complained of herein.

ADDITIONAL SCIENTER ALLEGATIONS

41. 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 Biovail, their control over, and/or receipt and/or modification of Biovail's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Biovail, participated in the fraudulent scheme alleged herein.

42. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants.

43. In addition, prior to the Class Period, in November of 2001, the Company received proceeds of \$587,500,000 from a common stock offering.

44. Further, during the Class Period Defendant Melnyk secured two lines of credit by pledging his Biovail securities. The lines of credit were worth \$55 million and \$17 million respectively.

45. Moreover, in 2002 Defendant Melnyk reaped over \$40 million in performance-based stock options and grants.

46. Also, as of 2003, Defendants Melnyk, Crombie, and three additional officers/directors each have over \$2 million in loans from Biovail that are secured by Biovail stock.

**Applicability of Presumption of Reliance:
Fraud-On-The Market Doctrine**

47. At all relevant times, the market for Biovail's publicly traded securities was an efficient market for the following reasons, among others:

(a) Biovail's stock met the requirements for listing, and was listed and actively traded on the NYSE and Toronto Stock Exchange, a highly efficient and automated market;

(b) As a regulated issuer, Biovail filed periodic public reports with the SEC and the NYSE and Toronto Stock Exchange;

(c) Biovail 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) Biovail 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.

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

NO SAFE HARBOR

49. 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 Biovail who knew that those statements were false when made.

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

50. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein. This claim is asserted against all defendants.

51. During the Class Period, defendant Biovail and the Individual Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: a) deceive the investing public, including plaintiff and other Class members, as alleged herein; b) artificially inflate and maintain the market price of Biovail’s publicly traded securities; and c) cause plaintiff and other members of the Class to purchase Biovail’s publicly

traded securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants Biovail and the Individual Defendants, and each of them, took the actions set forth herein.

52. These 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 Biovail's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. These defendants are sued either as primary participants in the wrongful and illegal conduct charged herein. The Individual Defendants are also sued as controlling persons of Biovail, as alleged below.

53. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, they each had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. § 210.01 et seq.) and S-K (17 C.F.R. § 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and performance so that the market prices of the Company's publicly traded securities would be based on truthful, complete and accurate information.

54. Biovail and the Individual 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, business practices, performance, operations and future prospects of Biovail as specified herein.

55. 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 Biovail'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 Biovail 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 Biovail's securities during the Class Period.

56. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: a) each of the Individual Defendants was a high-level executive and/or director at the Company during the Class Period; b) each of the Individual Defendants, by virtue of his responsibilities and activities as a senior executive 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; c) the Individual Defendants enjoyed significant personal contact and familiarity with each other and were 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 financial condition and performance at all relevant times; and d) the Individual Defendants were aware of the Company's dissemination of information to the investing public which

they knew or recklessly disregarded was materially false and misleading.

57. These 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 Biovail's operating condition, business practices 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 financial condition and performance throughout the Class Period, the Individual 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.

58. 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 Biovail's securities were artificially inflated during the Class Period. In ignorance of the fact that market prices of Biovail'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 Biovail securities during the Class Period at artificially high prices and were damaged thereby.

59. 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 of the true performance, business practices, future prospects and intrinsic value of Biovail, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their Biovail publicly traded securities during the Class Period, 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.

60. By virtue of the foregoing, Biovail and the Individual Defendants have each violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

61. 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 The Individual Defendants

62. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein. This claim is asserted against the Individual Defendants.

63. Each of the Individual Defendants acted as a controlling person of Biovail within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions with the Company, participation in and/or awareness of the Company's operations and/or intimate knowledge of the Company's actual performance, 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. Each of the Individual Defendants was 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.

64. In addition, each of the Individual Defendants had direct 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.

65. As set forth above, Biovail 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 controlling positions, 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:

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