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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

INCHEN HUANG, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

DEPOMED, INC., ARTHUR JOSEPH
HIGGINS, JAMES A. SCHOENECK, and
AUGUST J. MORETTI,

Defendants

Case No.:

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff Inchen Huang (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, inter alia, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the defendants’ public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Depomed, Inc. (“Depomed” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1
2 1. This is a federal securities class action on behalf of a class consisting of all persons other
3 than defendants who purchased or otherwise acquired Depomed securities between February 26, 2015
4 and August 7, 2017, both dates inclusive (the “Class Period”), seeking to recover damages caused by
5 defendants’ violations of the Securities Exchange Act of 1934 (the “Exchange Act”).
6

7 2. Depomed, a specialty pharmaceutical company, engages in the development, sale, and
8 licensing of products for pain and other central nervous system conditions in the United States.

9 3. Founded in 1995, the Company is headquartered in Newark, California. Depomed’s
10 stock trades on the NASDAQ under the ticker symbol “DEPO.”

11 4. Throughout the Class Period, Defendants made materially false and misleading
12 statements regarding the Company’s business, operational and compliance policies. Specifically,
13 Defendants made false and/or misleading statements and/or failed to disclose that: (i) Depomed
14 engaged in questionable practices in connection with the sales and marketing of the Company’s opioid
15 products; (ii) the foregoing conduct, when it became known, would likely subject the Company to
16 heightened legal and regulatory scrutiny; and (iii) as a result, Depomed’s public statements were
17 materially false and misleading at all relevant times.
18

19 5. On August 7, 2017, post-market, Depomed disclosed that the Company “recently
20 received a request for information from the ranking minority member of the United States Senate
21 Committee on Homeland Security and Governmental Affairs related to the promotion of opioids” and
22 that Depomed had also received “subpoenas related to opioid sales and marketing from the Office of
23 the Attorney General of Maryland and the United States Department of Justice.”
24

25 6. On this news, Depomed’s share price fell \$3.09, or 33.42%, to close at \$6.15 on August
26 8, 2017.
27

JURISDICTION AND VENUE

1 7. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the
2 Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17
3 C.F.R. § 240.10b-5).
4

5 8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
6 §1331 and Section 27 of the Exchange Act (15 U.S.C. §78aa).

7 9. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act (15 U.S.C.
8 §78aa) and 28 U.S.C. §1391(b) as Defendants conduct business and operate facilities in this district,
9 and a significant portion of the Defendants’ actions, and the subsequent damages, took place within this
10 Judicial District.
11

12 10. In connection with the acts, conduct and other wrongs alleged in this Complaint,
13 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
14 including but not limited to, the United States mail, interstate telephone communications and the
15 facilities of the national securities exchange.
16

17 **PARTIES**

18 11. Plaintiff, as set forth in the accompanying Certification, purchased Depomed securities
19 at artificially inflated prices during the Class Period and was damaged upon the revelation of the
20 alleged corrective disclosure.
21

22 12. Defendant Depomed is incorporated in Delaware and its principal executive offices are
23 located at 7999 Gateway Boulevard, Suite 300, Newark, California 94560. Depomed’s securities are
24 traded on the NASDAQ under the ticker symbol “DEPO.”

25 13. Defendant Arthur Joseph Higgins (“Higgins”) has served as the Company’s Chief
26 Executive Officer (“CEO”) and President since March 2017.
27
28

1 14. Defendant James A. Schoeneck (“Schoeneck”) served as the Company’s CEO and
2 President from April 2011 until March 2017.

3 15. Defendant August J. Moretti (“Moretti”) has served at all relevant times as the
4 Company’s Chief Financial Officer (“CFO”) and Senior Vice President.

5 16. Defendants Higgins and Moretti are sometimes collectively referred to herein as the
6 “Individual Defendants.”

7 17. The Company and the Individual Defendants are referred to herein, collectively, as the
8 “Defendants.”
9

10 **SUBSTANTIVE ALLEGATIONS**

11 **Background**

12 18. Depomed, a specialty pharmaceutical company, engages in the development, sale, and
13 licensing of products for pain and other central nervous system conditions in the United States.
14

15 19. Among other drugs, Depomed’s portfolio includes the opioids Nucynta (tapentadol) and
16 Lazanda (fentanyl).
17

18 **Materially False and Misleading Statements Issued During the Class Period**

19 20. The Class Period begins on February 26, 2015, when Depomed filed an Annual Report
20 on Form 10-K with the SEC, announcing the Company’s financial and operating results for the quarter
21 and year ended December 31, 2014 (the “2014 10-K”). For the quarter, Depomed reported net income
22 of \$94.62 million, or \$1.23 per diluted share, on revenue of \$194.6 million, compared to net income of
23 \$41.8 million, or \$0.72 per diluted share, on revenue of \$40.61 million for the same period in the prior
24 year. For 2014, Depomed reported net income of \$131.76 million, or \$2.05 per diluted share, on
25 revenue of \$390.36 million, compared to net income of \$43.31 million, or \$0.75 per diluted share, on
26 revenue of \$134.21 million for 2013.
27

28 21. In the 2014 10-K, Depomed stated, in relevant part:

MARKETING AND SALES

1
2 We have developed capabilities in various aspects of our commercial organization
3 through our commercialization of Gralise®, CAMBIA®, Zipsor® and Lazanda®,
4 including sales, marketing, manufacturing, quality assurance, wholesale distribution,
5 medical affairs, managed market contracting, government price reporting, compliance,
6 maintenance of the product NDA and review, and submission of promotional materials.
7 Members of our commercial organization are also engaged in the commercial and
8 marketing assessments of other potential product candidates.

9 Our sales organization includes 188 full-time sales representatives. If we
10 consummate the NUCYNTA® Acquisition, we expect to significantly increase the
11 number of sales representatives. Our sales force primarily calls on pain specialists,
12 neurologists and primary care physicians throughout most of the United States. Our
13 marketing organization is comprised of professionals who have developed a variety of
14 marketing techniques and programs to promote our products, including promotional
15 materials, speaker programs, industry publications, advertising and other media.

16 ...

We may incur significant liability if it is determined that we are promoting or have in the past promoted the "off-label" use of drugs.

17 Companies may not promote drugs for "off-label" use—that is, uses that are not
18 described in the product's labeling and that differ from those approved by the FDA.
19 Physicians may prescribe drug products for off-label uses, and such off-label uses are
20 common across some medical specialties. Although the FDA and other regulatory
21 agencies do not regulate a physician's choice of treatments, the FDCA and FDA
22 regulations restrict communications on the subject of off-label uses of drug products by
23 pharmaceutical companies. The Office of Inspector General of the Department of Health
24 and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively
25 enforce laws and regulations prohibiting promotion of off-label use and the promotion of
26 products for which marketing clearance has not been obtained. If the OIG or the FDA
27 takes the position that we are or may be out of compliance with the requirements and
28 restrictions described above, and we are investigated for or found to have improperly
promoted off-label use, we may be subject to significant liability, including civil and
administrative remedies as well as criminal sanctions. In addition, management's
attention could be diverted from our business operations and our reputation could be
damaged.

Pharmaceutical marketing is subject to substantial regulation in the United States and any failure by us or our collaborative partners to comply with applicable statutes or regulations could adversely affect our business.

All marketing activities associated with Gralise®, Zipsor®, Lazanda® and
CAMBIA®, as well as marketing activities related to any other products which we may
acquire, such as NUCYNTA® , or for which we obtain regulatory approval, will be
subject to numerous federal and state laws governing the marketing and promotion of

1 pharmaceutical products. The FDA regulates post-approval promotional labeling and
2 advertising to ensure that they conform to statutory and regulatory requirements. In
3 addition to FDA restrictions, the marketing of prescription drugs is subject to laws and
4 regulations prohibiting fraud and abuse under government healthcare programs. For
5 example, the federal healthcare program anti-kickback statute prohibits giving things of
6 value to induce the prescribing or purchase of products that are reimbursed by federal
7 healthcare programs, such as Medicare and Medicaid. In addition, federal false claims
8 laws prohibit any person from knowingly presenting, or causing to be presented, a false
9 claim for payment to the federal government. Under this law, in recent years, the federal
10 government has brought claims against drug manufacturers alleging that certain
11 marketing activities caused false claims for prescription drugs to be submitted to federal
12 programs. Many states have similar statutes or regulations that apply to items and
13 services reimbursed under Medicaid and other state programs, and, in some states, such
14 statutes or regulations apply regardless of the payer. If we, or our collaborative partners,
15 fail to comply with applicable FDA regulations or other laws or regulations relating to the
16 marketing of our products, we could be subject to criminal prosecution, civil penalties,
17 seizure of products, injunctions, and exclusion of our products from reimbursement under
18 government programs, as well as other regulatory actions against our product candidates,
19 our collaborative partners or us.

20 ...

21 *Changes in laws and regulations may adversely affect our business*

22 The manufacture, marketing, sale, promotion and distribution of our products are
23 subject to comprehensive government regulation. Changes in laws and regulations
24 applicable to the pharmaceutical industry could potentially affect our business. For
25 example, federal, state and local governments have recently given increased attention to
26 the public health issue of opioid abuse. At the federal level, the White House Office of
27 National Drug Control Policy continues to coordinate efforts between the FDA, United
28 States Drug Enforcement Agency (DEA) and other agencies to address this issue. The
DEA continues to increase its efforts to hold manufacturers, distributors, prescribers and
pharmacies accountable through various enforcement actions as well as the
implementation of compliance practices for controlled substances. In addition, many state
legislatures are considering various bills intended to reduce opioid abuse, for example by
establishing prescription drug monitoring programs and mandating prescriber education.
These and other changes in laws and regulations could adversely affect our business,
financial condition and results of operations.

22. The 2014 10-K contained signed certifications pursuant to the Sarbanes-Oxley Act of
2002 (“SOX”) by Defendants Schoeneck and Moretti, stating, in relevant part, that “[t]he information
contained in the Report fairly presents, in all material respects, the financial condition and results of
operations of the Company.”

1 23. On May 11, 2015, Depomed filed a Quarterly Report on Form 10-Q with the SEC,
2 announcing the Company's financial and operating results for the quarter ended March 31, 2015 (the
3 "Q1 2015 10-Q"). For the quarter, Depomed reported a net loss of \$11.63 million, or \$0.20 per diluted
4 share, on revenue of \$32.2 million, compared to net income of \$17.94 million, or \$0.30 per diluted
5 share, on revenue of \$76.54 million for the same period in the prior year.

6 24. In the Q1 2015 10-Q, Depomed stated, in relevant part:

7
8 ***We may incur significant liability if it is determined that we are promoting or have in
the past promoted the "off-label" use of drugs.***

9
10 Companies may not promote drugs for "off-label" use—that is, uses that are not
11 described in the product's labeling and that differ from those approved by the FDA.
12 Physicians may prescribe drug products for off-label uses, and such off-label uses are
13 common across some medical specialties. Although the FDA and other regulatory
14 agencies do not regulate a physician's choice of treatments, the FDCA and FDA
15 regulations restrict communications on the subject of off-label uses of drug products by
16 pharmaceutical companies. The Office of Inspector General of the Department of Health
17 and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively
18 enforce laws and regulations prohibiting promotion of off-label use and the promotion of
19 products for which marketing clearance has not been obtained. If the OIG or the FDA
20 takes the position that we are or may be out of compliance with the requirements and
21 restrictions described above, and we are investigated for or found to have improperly
22 promoted off-label use, we may be subject to significant liability, including civil and
23 administrative remedies as well as criminal sanctions. In addition, management's
24 attention could be diverted from our business operations and our reputation could be
25 damaged.

26 ***Pharmaceutical marketing is subject to substantial regulation in the U.S. and any
27 failure by us or our collaborative partners to comply with applicable statutes or
28 regulations could adversely affect our business.***

29 All marketing activities associated with NUCYNTA® ER, NUCYNTA®, Gralise®,
30 CAMBIA®, Zipsor® and Lazanda®, as well as marketing activities related to any other
31 products which we may acquire, or for which we obtain regulatory approval, will be
32 subject to numerous federal and state laws governing the marketing and promotion of
33 pharmaceutical products. The FDA regulates post-approval promotional labeling and
34 advertising to ensure that they conform to statutory and regulatory requirements. In
35 addition to FDA restrictions, the marketing of prescription drugs is subject to laws and
36 regulations prohibiting fraud and abuse under government healthcare programs. For
37 example, the federal healthcare program anti-kickback statute prohibits giving things of
38 value to induce the prescribing or purchase of products that are reimbursed by federal
healthcare programs, such as Medicare and Medicaid. In addition, federal false claims

1 laws prohibit any person from knowingly presenting, or causing to be presented, a false
2 claim for payment to the federal government. Under this law, in recent years, the federal
3 government has brought claims against drug manufacturers alleging that certain
4 marketing activities caused false claims for prescription drugs to be submitted to federal
5 programs. Many states have similar statutes or regulations that apply to items and
6 services reimbursed under Medicaid and other state programs, and, in some states, such
7 statutes or regulations apply regardless of the payer. If we, or our collaborative partners,
8 fail to comply with applicable FDA regulations or other laws or regulations relating to the
9 marketing of our products, we could be subject to criminal prosecution, civil penalties,
10 seizure of products, injunctions, and exclusion of our products from reimbursement under
11 government programs, as well as other regulatory actions against our product candidates,
12 our collaborative partners or us.

13 ...

14 ***Changes in laws and regulations may adversely affect our business.***

15 The manufacture, marketing, sale, promotion and distribution of our products are
16 subject to comprehensive government regulation. Changes in laws and regulations
17 applicable to the pharmaceutical industry could potentially affect our business. For
18 example, federal, state and local governments have recently given increased attention to
19 the public health issue of opioid abuse. At the federal level, the White House Office of
20 National Drug Control Policy continues to coordinate efforts between the FDA, U.S.
21 Drug Enforcement Agency (DEA) and other agencies to address this issue. The DEA
22 continues to increase its efforts to hold manufacturers, distributors, prescribers and
23 pharmacies accountable through various enforcement actions as well as the
24 implementation of compliance practices for controlled substances. In addition, many state
25 legislatures are considering various bills intended to reduce opioid abuse, for example by
26 establishing prescription drug monitoring programs and mandating prescriber education.
27 These and other changes in laws and regulations could adversely affect our business,
28 financial condition and results of operations.

25. The Q1 2015 10-Q contained signed certifications pursuant to SOX by Defendants
Schoeneck and Moretti, stating, in relevant part, that “[t]he information contained in the Report fairly
presents, in all material respects, the financial condition and results of operations of the Company.”

26. On August 3, 2015, Depomed filed a Quarterly Report on Form 10-Q with the SEC,
announcing the Company’s financial and operating results for the quarter ended June 30, 2015 (the “Q2
2015 10-Q”). For the quarter, Depomed reported a net loss of \$21.65 million, or \$0.36 per diluted

1 share, on revenue of \$94.5 million, compared to net income of \$12.75 million, or \$0.21 per diluted
2 share, on revenue of \$67.73 million for the same period in the prior year.

3 27. In the Q2 2015 10-Q, Depomed stated, in part:

4 ***We may incur significant liability if it is determined that we are promoting or have in***
5 ***the past promoted the “off-label” use of drugs.***

6 Companies may not promote drugs for “off-label” use—that is, uses that are not
7 described in the product’s labeling and that differ from those approved by the FDA.
8 Physicians may prescribe drug products for off-label uses, and such off-label uses are
9 common across some medical specialties. Although the FDA and other regulatory
10 agencies do not regulate a physician’s choice of treatments, the FDCA and FDA
11 regulations restrict communications on the subject of off-label uses of drug products by
12 pharmaceutical companies. The Office of Inspector General of the Department of Health
13 and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively
14 enforce laws and regulations prohibiting promotion of off-label use and the promotion of
15 products for which marketing clearance has not been obtained. If the OIG or the FDA
16 takes the position that we are or may be out of compliance with the requirements and
17 restrictions described above, and we are investigated for or found to have improperly
18 promoted off-label use, we may be subject to significant liability, including civil and
19 administrative remedies as well as criminal sanctions. In addition, management’s
20 attention could be diverted from our business operations and our reputation could be
21 damaged.

22 ***Pharmaceutical marketing is subject to substantial regulation in the U.S. and any***
23 ***failure by us or our collaborative partners to comply with applicable statutes or***
24 ***regulations could adversely affect our business.***

25 All marketing activities associated with NUCYNTA® ER, NUCYNTA®, Gralise®,
26 CAMBIA®, Zipsor® and Lazanda®, as well as marketing activities related to any other
27 products which we may acquire, or for which we obtain regulatory approval, will be
28 subject to numerous federal and state laws governing the marketing and promotion of
pharmaceutical products. The FDA regulates post-approval promotional labeling and
advertising to ensure that they conform to statutory and regulatory requirements. In
addition to FDA restrictions, the marketing of prescription drugs is subject to laws and
regulations prohibiting fraud and abuse under government healthcare programs. For
example, the federal healthcare program anti-kickback statute prohibits giving things of
value to induce the prescribing or purchase of products that are reimbursed by federal
healthcare programs, such as Medicare and Medicaid. In addition, federal false claims
laws prohibit any person from knowingly presenting, or causing to be presented, a false
claim for payment to the federal government. Under this law, in recent years, the federal
government has brought claims against drug manufacturers alleging that certain
marketing activities caused false claims for prescription drugs to be submitted to federal
programs. Many states have similar statutes or regulations that apply to items and
services reimbursed under Medicaid and other state programs, and, in some states, such

1 statutes or regulations apply regardless of the payer. If we, or our collaborative partners,
2 fail to comply with applicable FDA regulations or other laws or regulations relating to the
3 marketing of our products, we could be subject to criminal prosecution, civil penalties,
4 seizure of products, injunctions, and exclusion of our products from reimbursement under
5 government programs, as well as other regulatory actions against our product candidates,
6 our collaborative partners or us.

7 ...

8 ***Changes in laws and regulations may adversely affect our business.***

9 The manufacture, marketing, sale, promotion and distribution of our products are
10 subject to comprehensive government regulation. Changes in laws and regulations
11 applicable to the pharmaceutical industry could potentially affect our business. For
12 example, federal, state and local governments have recently given increased attention to
13 the public health issue of opioid abuse. At the federal level, the White House Office of
14 National Drug Control Policy continues to coordinate efforts between the FDA, U.S.
15 Drug Enforcement Agency (DEA) and other agencies to address this issue. The DEA
16 continues to increase its efforts to hold manufacturers, distributors, prescribers and
17 pharmacies accountable through various enforcement actions as well as the
18 implementation of compliance practices for controlled substances. In addition, many state
19 legislatures are considering various bills intended to reduce opioid abuse, for example by
20 establishing prescription drug monitoring programs and mandating prescriber education.
21 These and other changes in laws and regulations could adversely affect our business,
22 financial condition and results of operations.

23 28. The Q2 2015 10-Q contained signed certifications pursuant to SOX by Defendants
24 Schoeneck and Moretti, stating, in relevant part, that “[t]he information contained in the Report fairly
25 presents, in all material respects, the financial condition and results of operations of the Company.”

26 29. On November 9, 2015, Depomed filed a Quarterly Report on Form 10-Q with the SEC,
27 announcing the Company’s financial and operating results for the quarter ended September 30, 2015
28 (the “Q3 2015 10-Q”). For the quarter, Depomed reported a net loss of \$11.79 million, or \$0.20 per
diluted share, on revenue of \$104.86 million, compared to net income of \$6.45 million, or \$0.11 per
diluted share, on revenue of \$51.49 million for the same period in the prior year.

30. In the Q3 2015 10-Q, Depomed stated, in relevant part:

***We may incur significant liability if it is determined that we are promoting or have in
the past promoted the “off-label” use of drugs.***

1 Companies may not promote drugs for “off-label” use—that is, uses that are not
2 described in the product’s labeling and that differ from those approved by the FDA.
3 Physicians may prescribe drug products for off-label uses, and such off-label uses are
4 common across some medical specialties. Although the FDA and other regulatory
5 agencies do not regulate a physician’s choice of treatments, the FDCA and FDA
6 regulations restrict communications on the subject of off-label uses of drug products by
7 pharmaceutical companies. The Office of Inspector General of the Department of Health
8 and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively
9 enforce laws and regulations prohibiting promotion of off-label use and the promotion of
10 products for which marketing clearance has not been obtained. If the OIG or the FDA
11 takes the position that we are or may be out of compliance with the requirements and
12 restrictions described above, and we are investigated for or found to have improperly
13 promoted off-label use, we may be subject to significant liability, including civil and
14 administrative remedies as well as criminal sanctions. In addition, management’s
15 attention could be diverted from our business operations and our reputation could be
16 damaged.

***Pharmaceutical marketing is subject to substantial regulation in the U.S. and any
failure by us or our collaborative partners to comply with applicable statutes or
regulations could adversely affect our business.***

13 All marketing activities associated with NUCYNTA® ER, NUCYNTA®, Gralise®,
14 CAMBIA®, Zipsor® and Lazanda®, as well as marketing activities related to any other
15 products which we may acquire, or for which we obtain regulatory approval, will be
16 subject to numerous federal and state laws governing the marketing and promotion of
17 pharmaceutical products. The FDA regulates post-approval promotional labeling and
18 advertising to ensure that they conform to statutory and regulatory requirements. In
19 addition to FDA restrictions, the marketing of prescription drugs is subject to laws and
20 regulations prohibiting fraud and abuse under government healthcare programs. For
21 example, the federal healthcare program anti-kickback statute prohibits giving things of
22 value to induce the prescribing or purchase of products that are reimbursed by federal
23 healthcare programs, such as Medicare and Medicaid. In addition, federal false claims
24 laws prohibit any person from knowingly presenting, or causing to be presented, a false
25 claim for payment to the federal government. Under this law, in recent years, the federal
26 government has brought claims against drug manufacturers alleging that certain
27 marketing activities caused false claims for prescription drugs to be submitted to federal
28 programs. Many states have similar statutes or regulations that apply to items and
services reimbursed under Medicaid and other state programs, and, in some states, such
statutes or regulations apply regardless of the payer. If we, or our collaborative partners,
fail to comply with applicable FDA regulations or other laws or regulations relating to the
marketing of our products, we could be subject to criminal prosecution, civil penalties,
seizure of products, injunctions, and exclusion of our products from reimbursement under
government programs, as well as other regulatory actions against our product candidates,
our collaborative partners or us.

...

Changes in laws and regulations may adversely affect our business.

The manufacture, marketing, sale, promotion and distribution of our products are subject to comprehensive government regulation. Changes in laws and regulations applicable to the pharmaceutical industry could potentially affect our business. For instance, federal, state and local governments have recently given increased attention to the public health issue of opioid abuse. As an example, we were named as a defendant in a case brought by the City of Chicago against a number of Pharmaceutical Companies marketing and selling opioid based pain medications, alleging misleading or otherwise improper promotion of opioid drugs to physicians and consumers. At the federal level, the White House Office of National Drug Control Policy continues to coordinate efforts between the FDA, U.S. Drug Enforcement Agency (DEA) and other agencies to address this issue. The DEA continues to increase its efforts to hold manufacturers, distributors, prescribers and pharmacies accountable through various enforcement actions as well as the implementation of compliance practices for controlled substances. In addition, many state legislatures are considering various bills intended to reduce opioid abuse, for example by establishing prescription drug monitoring programs and mandating prescriber education. These and other changes in laws and regulations could adversely affect our business, financial condition and results of operations.

31. The Q3 2015 10-Q contained signed certifications pursuant to SOX by Defendants Schoeneck and Moretti, stating, in relevant part, that “[t]he information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.”

32. On February 26, 2016, Depomed filed an Annual Report on Form 10-K with the SEC, announcing the Company’s financial and operating results for the quarter and year ended December 31, 2015 (the “2015 10-K”). For the quarter, Depomed reported a net loss of \$30.67 million, or \$0.51 per diluted share, on revenue of \$111.17 million, compared to net income of \$94.62 million, or \$1.23 per diluted share, on revenue of \$194.6 million for the same period in the prior year. For 2015, Depomed reported a net loss of \$75.74 million, or \$1.26 per diluted share, on revenue of \$342.74 million, compared to net income of \$131.76 million, or \$2.05 per diluted share, on revenue of \$390.36 million for 2014.

33. In the 2015 10-K, Depomed stated, in relevant part:

MARKETING AND SALES

1 We have developed capabilities in various aspects relating to the
2 commercialization of our marketed products, including sales, marketing, manufacturing,
3 quality assurance, wholesale distribution, managed market contracting, government price
4 reporting, medical affairs, compliance, and regulatory. Members of our commercial
5 organization are also engaged in the commercial and marketing assessments of other
6 potential product candidates.

7 Our sales organization includes approximately 300 full-time sales representatives.
8 Our sales force primarily calls on pain specialists, neurologists and primary care
9 physicians throughout most of the United States. Our marketing organization is
10 comprised of professionals who have developed a variety of marketing techniques and
11 programs to promote our products, including promotional materials, speaker programs,
12 industry publications, advertising and other media.

13 ...

14 ***We may incur significant liability if it is determined that we are promoting or have in
15 the past promoted the "off-label" use of drugs.***

16 Companies may not promote drugs for "off-label" use—that is, uses that are not
17 described in the product's labeling and that differ from those approved by the FDA.
18 Physicians may prescribe drug products for off-label uses, and such off-label uses are
19 common across some medical specialties. Although the FDA and other regulatory
20 agencies do not regulate a physician's choice of treatments, the FDCA and FDA
21 regulations restrict communications on the subject of off-label uses of drug products by
22 pharmaceutical companies. The Office of Inspector General of the Department of Health
23 and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively
24 enforce laws and regulations prohibiting promotion of off-label use and the promotion of
25 products for which marketing clearance has not been obtained. If the OIG or the FDA
26 takes the position that we are or may be out of compliance with the requirements and
27 restrictions described above, and we are investigated for or found to have improperly
28 promoted off-label use, we may be subject to significant liability, including civil and
administrative remedies as well as criminal sanctions. In addition, management's
attention could be diverted from our business operations and our reputation could be
damaged.

29 ***Pharmaceutical marketing is subject to substantial regulation in the U.S. and any
30 failure by us or our collaborative partners to comply with applicable statutes or
31 regulations could adversely affect our business.***

32 All marketing activities associated with NUCYNTA® ER, NUCYNTA®,
33 Gralise®, CAMBIA®, Zipsor® and Lazanda®, as well as marketing activities related to
34 any other products which we may acquire, or for which we obtain regulatory approval,
35 will be subject to numerous federal and state laws governing the marketing and
36 promotion of pharmaceutical products. The FDA regulates post-approval promotional
37 labeling and advertising to ensure that they conform to statutory and regulatory
38 requirements. In addition to FDA restrictions, the marketing of prescription drugs is

1 subject to laws and regulations prohibiting fraud and abuse under government healthcare
2 programs. For example, the federal healthcare program anti-kickback statute prohibits
3 giving things of value to induce the prescribing or purchase of products that are
4 reimbursed by federal healthcare programs, such as Medicare and Medicaid. In addition,
5 federal false claims laws prohibit any person from knowingly presenting, or causing to be
6 presented, a false claim for payment to the federal government. Under this law, in recent
7 years, the federal government has brought claims against drug manufacturers alleging
8 that certain marketing activities caused false claims for prescription drugs to be submitted
9 to federal programs. Many states have similar statutes or regulations that apply to items
10 and services reimbursed under Medicaid and other state programs, and, in some states,
11 such statutes or regulations apply regardless of the payer. If we, or our collaborative
12 partners, fail to comply with applicable FDA regulations or other laws or regulations
13 relating to the marketing of our products, we could be subject to criminal prosecution,
14 civil penalties, seizure of products, injunctions, and exclusion of our products from
15 reimbursement under government programs, as well as other regulatory actions against
16 our product candidates, our collaborative partners or us.

17 ...

18 ***Changes in laws and regulations may adversely affect our business.***

19 The manufacture, marketing, sale, promotion and distribution of our products are
20 subject to comprehensive government regulation. Changes in laws and regulations
21 applicable to the pharmaceutical industry could potentially affect our business. For
22 instance, federal, state and local governments have recently given increased attention to
23 the public health issue of opioid abuse. As an example, we were named as a defendant in
24 a case brought by the City of Chicago against a number of Pharmaceutical Companies
25 marketing and selling opioid based pain medications, alleging misleading or otherwise
26 improper promotion of opioid drugs to physicians and consumers. This case against the
27 Company was recently dismissed. At the federal level, the White House Office of
28 National Drug Control Policy continues to coordinate efforts between the FDA, U.S.
Drug Enforcement Agency (DEA) and other agencies to address this issue. The DEA
continues to increase its efforts to hold manufacturers, distributors, prescribers and
pharmacies accountable through various enforcement actions as well as the
implementation of compliance practices for controlled substances. In addition, many state
legislatures are considering various bills intended to reduce opioid abuse, for example by
establishing prescription drug monitoring programs and mandating prescriber education.
These and other changes in laws and regulations could adversely affect our business,
financial condition and results of operations.

34. The 2015 10-K contained signed certifications pursuant to SOX by Defendants
Schoeneck and Moretti, stating, in relevant part, that “[t]he information contained in the Report fairly
presents, in all material respects, the financial condition and results of operations of the Company.”

1 35. On May 6, 2016, Depomed filed a Quarterly Report on Form 10-Q with the SEC,
2 announcing the Company's financial and operating results for the quarter ended March 31, 2016 (the
3 "Q1 2016 10-Q"). For the quarter, Depomed reported a net loss of \$20.92 million, or \$0.34 per diluted
4 share, on revenue of \$104.78 million, compared to a net loss of \$11.63 million, or \$0.20 per diluted
5 share, on revenue of \$32.2 million for the same period in the prior year.

6
7 36. In the Q1 2016 10-Q, Depomed stated, in part:

8 ***We may incur significant liability if it is determined that we are promoting or have in***
9 ***the past promoted the "off-label" use of drugs.***

10 Companies may not promote drugs for "off-label" use—that is, uses that are not
11 described in the product's labeling and that differ from those approved by the FDA.
12 Physicians may prescribe drug products for off-label uses, and such off-label uses are
13 common across some medical specialties. Although the FDA and other regulatory
14 agencies do not regulate a physician's choice of treatments, the FDCA and FDA
15 regulations restrict communications on the subject of off-label uses of drug products by
16 pharmaceutical companies. The Office of Inspector General of the Department of Health
17 and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively
18 enforce laws and regulations prohibiting promotion of off-label use and the promotion of
19 products for which marketing clearance has not been obtained. If the OIG or the FDA
20 takes the position that we are or may be out of compliance with the requirements and
21 restrictions described above, and we are investigated for or found to have improperly
22 promoted off-label use, we may be subject to significant liability, including civil and
23 administrative remedies as well as criminal sanctions. In addition, management's
24 attention could be diverted from our business operations and our reputation could be
25 damaged.

26 ***Pharmaceutical marketing is subject to substantial regulation in the U.S. and any***
27 ***failure by us or our collaborative partners to comply with applicable statutes or***
28 ***regulations could adversely affect our business.***

29 All marketing activities associated with NUCYNTA® ER, NUCYNTA®,
30 Gralise®, CAMBIA®, Zipsor® and Lazanda®, as well as marketing activities related to
31 any other products which we may acquire, or for which we obtain regulatory approval,
32 will be subject to numerous federal and state laws governing the marketing and
33 promotion of pharmaceutical products. The FDA regulates post-approval promotional
34 labeling and advertising to ensure that they conform to statutory and regulatory
35 requirements. In addition to FDA restrictions, the marketing of prescription drugs is
36 subject to laws and regulations prohibiting fraud and abuse under government healthcare
37 programs. For example, the federal healthcare program anti-kickback statute prohibits
38 giving things of value to induce the prescribing or purchase of products that are
reimbursed by federal healthcare programs, such as Medicare and Medicaid. In addition,

1 federal false claims laws prohibit any person from knowingly presenting, or causing to be
2 presented, a false claim for payment to the federal government. Under this law, in recent
3 years, the federal government has brought claims against drug manufacturers alleging
4 that certain marketing activities caused false claims for prescription drugs to be submitted
5 to federal programs. Many states have similar statutes or regulations that apply to items
6 and services reimbursed under Medicaid and other state programs, and, in some states,
7 such statutes or regulations apply regardless of the payer. If we, or our collaborative
8 partners, fail to comply with applicable FDA regulations or other laws or regulations
9 relating to the marketing of our products, we could be subject to criminal prosecution,
10 civil penalties, seizure of products, injunctions, and exclusion of our products from
11 reimbursement under government programs, as well as other regulatory actions against
12 our product candidates, our collaborative partners or us.

13 ...

14 ***Changes in laws and regulations may adversely affect our business.***

15 The manufacture, marketing, sale, promotion and distribution of our products are
16 subject to comprehensive government regulation. Changes in laws and regulations
17 applicable to the pharmaceutical industry could potentially affect our business. For
18 instance, federal, state and local governments have recently given increased attention to
19 the public health issue of opioid abuse. As an example, we were named as a defendant in
20 a case brought by the City of Chicago against a number of Pharmaceutical Companies
21 marketing and selling opioid based pain medications, alleging misleading or otherwise
22 improper promotion of opioid drugs to physicians and consumers. This case against the
23 Company was dismissed. At the federal level, the White House Office of National Drug
24 Control Policy continues to coordinate efforts between the FDA, U.S. Drug Enforcement
25 Agency (DEA) and other agencies to address this issue. The DEA continues to increase
26 its efforts to hold manufacturers, distributors, prescribers and pharmacies accountable
27 through various enforcement actions as well as the implementation of compliance
28 practices for controlled substances. In addition, many state legislatures are considering
various bills intended to reduce opioid abuse, for example by establishing prescription
drug monitoring programs and mandating prescriber education. Further the FDA has
recently announced that it will require “black-box” warnings on immediate release
opioids highlighting the risk of misuse, abuse, addiction, overdose and death. These and
other changes in laws and regulations could adversely affect our business, financial
condition and results of operations.

37. The Q1 2016 10-Q contained signed certifications pursuant to SOX by Defendants
Schoeneck and Moretti, stating, in relevant part, that “[t]he information contained in the Report fairly
presents, in all material respects, the financial condition and results of operations of the Company.”

1 38. On August 3, 2016, Depomed filed a Quarterly Report on Form 10-Q with the SEC,
2 announcing the Company's financial and operating results for the quarter ended June 30, 2016 (the "Q2
3 2016 10-Q"). For the quarter, Depomed reported a net loss of \$10.54 million, or \$0.17 per diluted
4 share, on revenue of \$116.68 million, compared to a net loss of \$21.65 million, or \$0.36 per diluted
5 share, on revenue of \$94.5 million for the same period in the prior year.

6
7 39. In the Q2 2016 10-Q, Depomed stated, in part:

8 ***We may incur significant liability if it is determined that we are promoting or have in
9 the past promoted the "off-label" use of drugs.***

10 Companies may not promote drugs for "off-label" use—that is, uses that are not
11 described in the product's labeling and that differ from those approved by the FDA.
12 Physicians may prescribe drug products for off-label uses, and such off-label uses are
13 common across some medical specialties. Although the FDA and other regulatory
14 agencies do not regulate a physician's choice of treatments, the FDCA and FDA
15 regulations restrict communications on the subject of off-label uses of drug products by
16 pharmaceutical companies. The Office of Inspector General of the Department of Health
17 and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively
18 enforce laws and regulations prohibiting promotion of off-label use and the promotion of
19 products for which marketing clearance has not been obtained. If the OIG or the FDA
20 takes the position that we are or may be out of compliance with the requirements and
21 restrictions described above, and we are investigated for or found to have improperly
22 promoted off-label use, we may be subject to significant liability, including civil and
23 administrative remedies as well as criminal sanctions. In addition, management's
24 attention could be diverted from our business operations and our reputation could be
25 damaged.

26 ***Pharmaceutical marketing is subject to substantial regulation in the U.S. and any
27 failure by us or our collaborative partners to comply with applicable statutes or
28 regulations could adversely affect our business.***

29 All marketing activities associated with NUCYNTA ER, NUCYNTA, Gralise,
30 CAMBIA, Zipsor and Lazanda, as well as marketing activities related to any other
31 products which we may acquire, or for which we obtain regulatory approval, will be
32 subject to numerous federal and state laws governing the marketing and promotion of
33 pharmaceutical products. The FDA regulates post-approval promotional labeling and
34 advertising to ensure that they conform to statutory and regulatory requirements. In
35 addition to FDA restrictions, the marketing of prescription drugs is subject to laws and
36 regulations prohibiting fraud and abuse under government healthcare programs. For
37 example, the federal healthcare program anti-kickback statute prohibits giving things of
38 value to induce the prescribing or purchase of products that are reimbursed by federal
39 healthcare programs, such as Medicare and Medicaid. In addition, federal false claims

1 laws prohibit any person from knowingly presenting, or causing to be presented, a false
2 claim for payment to the federal government. Under this law, in recent years, the federal
3 government has brought claims against drug manufacturers alleging that certain
4 marketing activities caused false claims for prescription drugs to be submitted to federal
5 programs. Many states have similar statutes or regulations that apply to items and
6 services reimbursed under Medicaid and other state programs, and, in some states, such
7 statutes or regulations apply regardless of the payer. If we, or our collaborative partners,
8 fail to comply with applicable FDA regulations or other laws or regulations relating to the
9 marketing of our products, we could be subject to criminal prosecution, civil penalties,
10 seizure of products, injunctions, and exclusion of our products from reimbursement under
11 government programs, as well as other regulatory actions against our product candidates,
12 our collaborative partners or us.

13 ...

14 ***Changes in laws and regulations may adversely affect our business.***

15 The manufacture, marketing, sale, promotion and distribution of our products are
16 subject to comprehensive government regulation. Changes in laws and regulations
17 applicable to the pharmaceutical industry could potentially affect our business. For
18 instance, federal, state and local governments have recently given increased attention to
19 the public health issue of opioid abuse. The Centers for Disease Control (CDC) recently
20 issued national, non-binding guidelines on the prescribing of opioids. In addition states,
21 including the Commonwealth of Massachusetts and the State of New York, have either
22 recently enacted or have pending legislation designed to limit the duration and quantity of
23 initial prescriptions of immediate release form of opiates. We were named as a defendant
24 in a case brought by the City of Chicago against a number of pharmaceutical companies
25 marketing and selling opioid based pain medications, alleging misleading or otherwise
26 improper promotion of opioid drugs to physicians and consumers. This case against the
27 Company was dismissed. At the federal level, the White House Office of National Drug
28 Control Policy continues to coordinate efforts between the FDA, U.S. Drug Enforcement
Agency (DEA) and other agencies to address this issue. The DEA continues to increase
its efforts to hold manufacturers, distributors, prescribers and pharmacies accountable
through various enforcement actions as well as the implementation of compliance
practices for controlled substances. In addition, many state legislatures are considering
various bills intended to reduce opioid abuse, for example by establishing prescription
drug monitoring programs and mandating prescriber education. Further, the FDA has
recently announced that it will require “black-box” warnings on immediate release
opioids highlighting the risk of misuse, abuse, addiction, overdose and death. These and
other changes in laws and regulations could adversely affect our business, financial
condition and results of operations.

1 40. The Q2 2016 10-Q contained signed certifications pursuant to SOX by Defendants
2 Schoeneck and Moretti, stating, in relevant part, that “[t]he information contained in the Report fairly
3 presents, in all material respects, the financial condition and results of operations of the Company.”

4 41. On November 7, 2016, Depomed filed a Quarterly Report on Form 10-Q with the SEC,
5 announcing the Company’s financial and operating results for the quarter ended September 30, 2016
6 (the “Q3 2016 10-Q”). For the quarter, Depomed reported a net loss of \$12.89 million, or \$0.21 per
7 diluted share, on revenue of \$110.52 million, compared to a net loss of \$11.79 million, or \$0.20 per
8 diluted share, on revenue of \$104.86 million for the same period in the prior year.
9

10 42. In the Q3 2016 10-Q, Depomed stated, in relevant part:

11 ***We may incur significant liability if it is determined that we are promoting or have in***
12 ***the past promoted the “off-label” use of drugs.***

13 Companies may not promote drugs for “off-label” use—that is, uses that are not
14 described in the product’s labeling and that differ from those approved by the FDA.
15 Physicians may prescribe drug products for off-label uses, and such off-label uses are
16 common across some medical specialties. Although the FDA and other regulatory
17 agencies do not regulate a physician’s choice of treatments, the FDCA and FDA
18 regulations restrict communications on the subject of off-label uses of drug products by
19 pharmaceutical companies. The Office of Inspector General of the Department of Health
20 and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively
21 enforce laws and regulations prohibiting promotion of off-label use and the promotion of
22 products for which marketing clearance has not been obtained. If the OIG or the FDA
23 takes the position that we are or may be out of compliance with the requirements and
24 restrictions described above, and we are investigated for or found to have improperly
25 promoted off-label use, we may be subject to significant liability, including civil and
26 administrative remedies as well as criminal sanctions. In addition, management’s
27 attention could be diverted from our business operations and our reputation could be
28 damaged.

23 ***Pharmaceutical marketing is subject to substantial regulation in the U.S. and any***
24 ***failure by us or our collaborative partners to comply with applicable statutes or***
25 ***regulations could adversely affect our business.***

26 All marketing activities associated with NUCYNTA ER, NUCYNTA, Gralise,
27 CAMBIA, Zipsor and Lazanda, as well as marketing activities related to any other
28 products which we may acquire, or for which we obtain regulatory approval, will be
subject to numerous federal and state laws governing the marketing and promotion of
pharmaceutical products. The FDA regulates post-approval promotional labeling and

1 advertising to ensure that they conform to statutory and regulatory requirements. In
2 addition to FDA restrictions, the marketing of prescription drugs is subject to laws and
3 regulations prohibiting fraud and abuse under government healthcare programs. For
4 example, the federal healthcare program anti-kickback statute prohibits giving things of
5 value to induce the prescribing or purchase of products that are reimbursed by federal
6 healthcare programs, such as Medicare and Medicaid. In addition, federal false claims
7 laws prohibit any person from knowingly presenting, or causing to be presented, a false
8 claim for payment to the federal government. Under this law, in recent years, the federal
9 government has brought claims against drug manufacturers alleging that certain
10 marketing activities caused false claims for prescription drugs to be submitted to federal
11 programs. Many states have similar statutes or regulations that apply to items and
12 services reimbursed under Medicaid and other state programs, and, in some states, such
13 statutes or regulations apply regardless of the payer. If we, or our collaborative partners,
14 fail to comply with applicable FDA regulations or other laws or regulations relating to the
15 marketing of our products, we could be subject to criminal prosecution, civil penalties,
16 seizure of products, injunctions, and exclusion of our products from reimbursement under
17 government programs, as well as other regulatory actions against our product candidates,
18 our collaborative partners or us.

***Changes in laws and regulations applicable to the pharmaceutical industry, including
the opioid market, may adversely affect our business, financial condition and results of
operations.***

14 The manufacture, marketing, sale, promotion and distribution of our products are
15 subject to comprehensive government regulation. Changes in laws and regulations
16 applicable to the pharmaceutical industry could potentially affect our business. For
17 instance, federal, state and local governments have recently given increased attention to
18 the public health issue of opioid abuse. The Centers for Disease Control (CDC) recently
19 issued national, non-binding guidelines on the prescribing of opioids. In addition states,
20 including the Commonwealth of Massachusetts and the State of New York, have either
21 recently enacted or have pending legislation designed to among other things, limit the
22 duration and quantity of initial prescriptions of immediate release form of opiates and
23 mandate the use by prescribers of prescription drug databases. These and other initiatives
24 may result in the reduced prescribing and use of opioids, including NUCYNTA and
25 NUCYNTA ER, which could adversely affect our business, financial condition and
26 results of operations. We were named as a defendant in a case brought by the City of
27 Chicago against a number of pharmaceutical companies marketing and selling opioid
28 based pain medications, alleging misleading or otherwise improper promotion of opioid
drugs to physicians and consumers. This case against the Company was dismissed. At the
federal level, the White House Office of National Drug Control Policy continues to
coordinate efforts between the FDA, U.S. Drug Enforcement Agency (DEA) and other
agencies to address this issue. The DEA continues to increase its efforts to hold
manufacturers, distributors, prescribers and pharmacies accountable through various
enforcement actions as well as the implementation of compliance practices for controlled
substances. In addition, many state legislatures are considering various bills intended to
reduce opioid abuse, for example by establishing prescription drug monitoring programs
and mandating prescriber education. Further, the FDA has recently announced that it will

1 require “black-box” warnings on immediate release opioids highlighting the risk of
2 misuse, abuse, addiction, overdose and death. These and other changes in laws and
3 regulations could adversely affect our business, financial condition and results of
4 operations.

5 43. The Q3 2016 10-Q contained signed certifications pursuant to SOX by Defendants
6 Schoeneck and Moretti, stating, in relevant part, that “[t]he information contained in the Report fairly
7 presents, in all material respects, the financial condition and results of operations of the Company.”

8 44. On February 24, 2017, Depomed filed an Annual Report on Form 10-K with the SEC,
9 announcing the Company’s financial and operating results for the quarter and year ended December 31,
10 2016 (the “2016 10-K”). For the quarter, Depomed reported a net loss of \$44.37 million, or \$0.72 per
11 diluted share, on revenue of \$123.91 million, compared to a net loss of \$30.67 million, or \$0.51 per
12 diluted share, on revenue of \$111.17 million for the same period in the prior year. For 2016, Depomed
13 reported a net loss of \$88.72 million, or \$1.45 per diluted share, on revenue of \$455.9 million,
14 compared to a net loss of \$75.74 million, or \$1.26 per diluted share, on revenue of \$342.74 million for
15 2015.

16
17 45. In the 2016 10-K, Depomed stated, in part:

18 **MARKETING AND SALES**

19 We have developed capabilities in various aspects relating to the
20 commercialization of our marketed products, including sales, marketing, manufacturing,
21 quality assurance, wholesale distribution, managed market contracting, government price
22 reporting, medical affairs, compliance, and regulatory. Members of our commercial
23 organization are also engaged in the commercial and marketing assessments of other
24 potential product candidates.

25 Our sales organization includes approximately 300 full time sales representatives.
26 Our sales force primarily calls on pain specialists, neurologists and primary care
27 physicians throughout most of the United States. Our marketing organization is
28 comprised of professionals who have developed a variety of marketing techniques and
programs to promote our products, including promotional materials, speaker programs,
industry publications, advertising and other media.

...

1 ***Pharmaceutical marketing is subject to substantial regulation in the U.S. and any***
2 ***failure by us or our collaborative partners to comply with applicable statutes or***
3 ***regulations could adversely affect our business .***

4 All marketing activities associated with NUCYNTA ER, NUCYNTA, Gralise,
5 CAMBIA, Zipsor and Lazanda, as well as marketing activities related to any other
6 products that we may acquire, or for which we obtain regulatory approval, will be subject
7 to numerous federal and state laws governing the marketing and promotion of
8 pharmaceutical products. The FDA regulates post-approval promotional labeling and
9 advertising to ensure that they conform to statutory and regulatory requirements. In
10 addition to FDA restrictions, the marketing of prescription drugs is subject to laws and
11 regulations prohibiting fraud and abuse under government healthcare programs. For
12 example, the federal healthcare program anti-kickback statute prohibits giving things of
13 value to induce the prescribing or purchase of products that are reimbursed by federal
14 healthcare programs, such as Medicare and Medicaid. In addition, federal false claims
15 laws prohibit any person from knowingly presenting, or causing to be presented, a false
16 claim for payment to the federal government. Under this law, in recent years, the federal
17 government has brought claims against drug manufacturers alleging that certain
18 marketing activities caused false claims for prescription drugs to be submitted to federal
19 programs. Many states have similar statutes or regulations that apply to items and
20 services reimbursed under Medicaid and other state programs, and, in some states, such
21 statutes or regulations apply regardless of the payer. If we, or our collaborative partners,
22 fail to comply with applicable FDA regulations or other laws or regulations relating to the
23 marketing of our products, we could be subject to criminal prosecution, civil penalties,
24 seizure of products, injunctions, and exclusion of our products from reimbursement under
25 government programs, as well as other regulatory actions against our product candidates,
26 our collaborative partners or us.

17 ***We may incur significant liability if it is determined that we are promoting or have in***
18 ***the past promoted the “off-label” use of drugs.***

19 Companies may not promote drugs for “off-label” use—that is, uses that are not
20 described in the product’s labeling and that differ from those approved by the FDA.
21 Physicians may prescribe drug products for off-label uses, and such off-label uses are
22 common across some medical specialties. Although the FDA and other regulatory
23 agencies do not regulate a physician’s choice of treatments, the FDCA and FDA
24 regulations restrict communications on the subject of off-label uses of drug products by
25 pharmaceutical companies. The Office of Inspector General of the Department of Health
26 and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively
27 enforce laws and regulations prohibiting promotion of off-label use and the promotion of
28 products for which marketing clearance has not been obtained. Such liabilities would
harm our business, financial condition and results of operations as well as divert
management’s attention from our business operations and damage our reputation.

...

1 ***Changes in laws and regulations applicable to the pharmaceutical industry, including***
2 ***the opioid market, may adversely affect our business, financial condition and results of***
3 ***operations.***

4 The manufacture, marketing, sale, promotion and distribution of our products are
5 subject to comprehensive government regulation. Changes in laws and regulations
6 applicable to the pharmaceutical industry could potentially affect our business. For
7 instance, federal, state and local governments have recently given increased attention to
8 the public health issue of opioid abuse. The Centers for Disease Control (CDC) recently
9 issued national, non-binding guidelines on the prescribing of opioids. In addition states,
10 including the Commonwealth of Massachusetts and the State of New York, have either
11 recently enacted or have pending legislation designed to among other things, limit the
12 duration and quantity of initial prescriptions of immediate release form of opiates and
13 mandate the use by prescribers of prescription drug databases. These and other initiatives
14 may result in the reduced prescribing and use of opioids, including NUCYNTA and
15 NUCYNTA ER, which could adversely affect our business, financial condition and
16 results of operations. We were named as a defendant in a case brought by the City of
17 Chicago against a number of pharmaceutical companies marketing and selling opioid
18 based pain medications, alleging misleading or otherwise improper promotion of opioid
19 drugs to physicians and consumers. This case against the Company was dismissed. At the
20 federal level, the White House Office of National Drug Control Policy continues to
21 coordinate efforts between the FDA, U.S. Drug Enforcement Agency (DEA) and other
22 agencies to address this issue. The DEA continues to increase its efforts to hold
23 manufacturers, distributors, prescribers and pharmacies accountable through various
24 enforcement actions as well as the implementation of compliance practices for controlled
25 substances. In addition, many state legislatures are considering various bills intended to
26 reduce opioid abuse, for example by establishing prescription drug monitoring programs
27 and mandating prescriber education. Further, the FDA is requiring “black-box” warnings
28 on immediate release opioids highlighting the risk of misuse, abuse, addiction, overdose
and death. In addition, during the 2016 presidential campaign, President Trump called for
the DEA to restrict the amount of opioids that can be manufactured in the U.S. These and
other changes, and potential changes in laws and regulations, including those that have
the effect of reducing the overall market for opioids or reducing the prescribing of
opioids, could adversely affect our business, financial condition and results of operations.

46. The 2016 10-K contained signed certifications pursuant to SOX by Defendants
Schoeneck and Moretti, stating, in relevant part, that “[t]he information contained in the Report fairly
presents, in all material respects, the financial condition and results of operations of the Company.”

47. On May 10, 2017, Depomed filed a Quarterly Report on Form 10-Q with the SEC,
announcing the Company’s financial and operating results for the quarter ended March 31, 2017 (the
“Q1 2017 10-Q”). For the quarter, Depomed reported a net loss of \$26.74 million, or \$0.28 per diluted

1 share, on revenue of \$90.45 million, compared to a net loss of \$20.92 million, or \$0.34 per diluted
2 share, on revenue of \$104.78 million for the same period in the prior year.

3 48. In the Q1 2017 10-Q, Depomed stated, in relevant part:

4 ***Changes in laws and regulations applicable to and investigations of, the***
5 ***pharmaceutical industry, including the opioid market, may adversely affect our***
6 ***business, financial condition and results of operations.***

7 The manufacture, marketing, sale, promotion and distribution of our products are subject
8 to comprehensive government regulation. Changes in laws and regulations applicable to
9 the pharmaceutical industry could potentially affect our business. For instance, federal,
10 state and local governments have recently given increased attention to the public health
11 issue of opioid abuse. The Centers for Disease Control (CDC) recently issued national,
12 non-binding guidelines on the prescribing of opioids, providing recommended
13 considerations for primary care providers when prescribing opioids, including specific
14 considerations and cautionary information about opioid dosage increases and morphine
15 milligram equivalents (MME). Certain third-party payers are, or are considering,
16 adopting these CDC guidelines. In July 2017, the Pharmaceutical Care Management
17 Association, a trade association representing pharmacy benefit managers, wrote a letter to
18 the commissioner of FDA in which it expressed support for, among other things, the
19 CDC guidelines and a seven-day limit on the supply of opioids for acute pain. In
20 addition, states, including the Commonwealth of Massachusetts and the States of New
21 York, Ohio and New Jersey, have either recently enacted or have pending legislation or
22 regulations designed to among other things, limit the duration and quantity of initial
23 prescriptions of immediate release form of opiates and mandate the use by prescribers of
24 prescription drug databases. Also, at the state and local level, a number of states and
25 major cities have brought separate lawsuits against various pharmaceutical companies
26 marketing and selling opioid pain medications, alleging misleading or otherwise
27 improper promotion of opioid drugs to physicians and consumers. In addition, the
28 attorneys general from several states have announced the launch of a joint investigation
into the marketing and sales practices of drug companies that market opioid pain
medications. These and other similar initiatives and actions, whether taken by
governmental authorities or other industry stakeholders, may result in the reduced
prescribing and use of opioids, including NUCYNTA and NUCYNTA ER, which could
adversely affect our business, financial condition and results of operations.

23 49. The Q1 2017 10-Q contained signed certifications pursuant to SOX by Defendants
24 Higgins and Moretti, stating, in relevant part, that “[t]he information contained in the Report fairly
25 presents, in all material respects, the financial condition and results of operations of the Company.”
26

27 50. The statements referenced in ¶¶ 20-49 above were materially false and/or misleading
28 because they misrepresented and failed to disclose the following adverse facts pertaining to the

1 Company's business, operational and financial results, which were known to Defendants or recklessly
2 disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to
3 disclose that: (i) Depomed engaged in questionable practices in connection with the sales and marketing
4 of the Company's opioid products; (ii) the foregoing conduct, when it became known, would likely
5 subject the Company to heightened legal and regulatory scrutiny; and (iii) as a result, Depomed's public
6 statements were materially false and misleading at all relevant times.
7

8 **The Truth Emerges**

9 51. On August 7, 2017, post-market, Depomed filed a Quarterly Report on Form 10-Q with
10 the SEC, announcing the Company's financial and operating results for the quarter ended June 30, 2017
11 (the "Q2 2017 10-Q"). In the Q1 2017 10-Q, Depomed stated, in relevant part:
12

13 ***Opioid-Related Request and Subpoenas***

14 The Company and a number of other pharmaceutical companies recently received
15 a request for information from the ranking minority member of the United States Senate
16 Committee on Homeland Security and Governmental Affairs related to the promotion of
opioids. The Company has voluntarily furnished information responsive to such request.

17 The Company and a number of other pharmaceutical companies recently received
18 subpoenas related to opioid sales and marketing from the Office of the Attorney General
19 of Maryland and the United States Department of Justice. The Company is currently
cooperating with the State of Maryland and the Department of Justice in their respective
investigations.

20 52. On this news, Depomed's share price fell \$3.09, or 33.42%, to close at \$6.15 on August
21 8, 2017.
22

23 53. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in
24 the market value of the Company's securities, Plaintiff and other Class members have suffered
25 significant losses and damages.

26 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

1 54. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure
2 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired
3 Depomed securities publicly traded on the NASDAQ during the Class Period (the “Class”); and were
4 damaged upon the revelation of the alleged corrective disclosure. Excluded from the Class are
5 Defendants herein, the officers and directors of the Company, at all relevant times, members of their
6 immediate families and their legal representatives, heirs, successors or assigns and any entity in which
7 Defendants have or had a controlling interest.
8

9 55. The members of the Class are so numerous that joinder of all members is impracticable.
10 Throughout the Class Period, Depomed securities were actively traded on the NASDAQ. While the
11 exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through
12 appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the
13 proposed Class. Record owners and other members of the Class may be identified from records
14 maintained by the Company or its transfer agent and may be notified of the pendency of this action by
15 mail, using the form of notice similar to that customarily used in securities class actions.
16

17 56. Plaintiff’s claims are typical of the claims of the members of the Class as all members of
18 the Class are similarly affected by Defendants’ wrongful conduct in violation of federal law that is
19 complained of herein.
20

21 57. Plaintiff will fairly and adequately protect the interests of the members of the Class and
22 has retained counsel competent and experienced in class and securities litigation. Plaintiff has no
23 interests antagonistic to or in conflict with those of the Class.
24

25 58. Common questions of law and fact exist as to all members of the Class and predominate
26 over any questions solely affecting individual members of the Class. Among the questions of law and
27 fact common to the Class are:
28

- 1 • whether the federal securities laws were violated by Defendants' acts as alleged
2 herein;
- 3 • whether statements made by Defendants to the investing public during the Class
4 Period misrepresented material facts about the financial condition, business,
5 operations, and management of the Company;
- 6 • whether Defendants' public statements to the investing public during the Class
7 Period omitted material facts necessary to make the statements made, in light of the
8 circumstances under which they were made, not misleading;
- 9 • whether the Individual Defendants caused the Company to issue false and misleading
10 SEC filings and public statements during the Class Period;
- 11 • whether Defendants acted knowingly or recklessly in issuing false and misleading
12 SEC filings and public statements during the Class Period;
- 13 • whether the prices of Depomed securities during the Class Period were artificially
14 inflated because of the Defendants' conduct complained of herein; and
- 15 • whether the members of the Class have sustained damages and, if so, what is the
16 proper measure of damages.
17
18
19

20 59. A class action is superior to all other available methods for the fair and efficient
21 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
22 damages suffered by individual Class members may be relatively small, the expense and burden of
23 individual litigation make it impossible for members of the Class to individually redress the wrongs
24 done to them. There will be no difficulty in the management of this action as a class action.
25

26 60. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-
27 the-market doctrine in that:
28

- 1 • Defendants made public misrepresentations or failed to disclose material facts during
- 2 the Class Period;
- 3 • the omissions and misrepresentations were material;
- 4 • Depomed securities are traded in efficient markets;
- 5 • the Company's securities were liquid and traded with moderate to heavy volume
- 6 during the Class Period;
- 7 • the Company traded on the NASDAQ, and was covered by multiple analysts;
- 8 • the misrepresentations and omissions alleged would tend to induce a reasonable
- 9 investor to misjudge the value of the Company's securities; and
- 10 • Plaintiff and members of the Class purchased and/or sold Depomed securities
- 11 between the time the Defendants failed to disclose or misrepresented material facts
- 12 and the time the true facts were disclosed, without knowledge of the omitted or
- 13 misrepresented facts.

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

16 62. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of
17 reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United*
18 *States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class
19 Period statements in violation of a duty to disclose such information, as detailed above.

20
21 **COUNT I**
22 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**
23 **Against All Defendants**

24 63. Plaintiff repeats and realleges each and every allegation contained above as if fully set
25 forth herein.

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

4 65. During the Class Period, the Company and the Individual Defendants, individually and
5 in concert, directly or indirectly, disseminated or approved the false statements specified above, which
6 they knew or deliberately disregarded were misleading in that they contained misrepresentations and
7 failed to disclose material facts necessary in order to make the statements made, in light of the
8 circumstances under which they were made, not misleading.

9 66. The Company and the Individual Defendants violated §10(b) of the 1934 Act and Rule
10 10b-5 in that they:

- 11 • employed devices, schemes and artifices to defraud;
- 12 • made untrue statements of material facts or omitted to state material facts necessary
13 in order to make the statements made, in light of the circumstances under which they
14 were made, not misleading; or
- 15 • engaged in acts, practices and a course of business that operated as a fraud or deceit
16 upon plaintiff and others similarly situated in connection with their purchases of
17 Depomed securities during the Class Period.

18 67. The Company and the Individual Defendants acted with scienter in that they knew that
19 the public documents and statements issued or disseminated in the name of the Company were
20 materially false and misleading; knew that such statements or documents would be issued or
21 disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the
22 issuance or dissemination of such statements or documents as primary violations of the securities laws.
23 These defendants by virtue of their receipt of information reflecting the true facts of the Company, their
24

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

4 68. Individual Defendants, who are the senior officers and/or directors of the Company, had
5 actual knowledge of the material omissions and/or the falsity of the material statements set forth above,
6 and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with
7 reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements
8 made by them or other personnel of the Company to members of the investing public, including
9 Plaintiff and the Class.
10

11 69. As a result of the foregoing, the market price of Depomed securities was artificially
12 inflated during the Class Period. In ignorance of the falsity of the Company's and the Individual
13 Defendants' statements, Plaintiff and the other members of the Class relied on the statements described
14 above and/or the integrity of the market price of Depomed securities during the Class Period in
15 purchasing Depomed securities at prices that were artificially inflated as a result of the Company's and
16 the Individual Defendants' false and misleading statements.
17

18 70. Had Plaintiff and the other members of the Class been aware that the market price of
19 Depomed securities had been artificially and falsely inflated by the Company's and the Individual
20 Defendants' misleading statements and by the material adverse information which the Company's and
21 the Individual Defendants did not disclose, they would not have purchased Depomed securities at the
22 artificially inflated prices that they did, or at all.
23

24 71. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the
25 Class have suffered damages in an amount to be established at trial.
26

27 72. By reason of the foregoing, the Company and the Individual Defendants have violated
28 Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the Plaintiff and

1 the other members of the Class for substantial damages which they suffered in connection with their
2 purchases of Depomed securities during the Class Period.

3 **COUNT II**

4 **(Violation of Section 20(a) of The Exchange Act Against The Individual Defendants)**

5 73. Plaintiff repeats and realleges each and every allegation contained in the foregoing
6 paragraphs as if fully set forth herein.

7
8 74. During the Class Period, the Individual Defendants participated in the operation and
9 management of the Company, and conducted and participated, directly and indirectly, in the conduct of
10 the Company's business affairs. Because of their senior positions, they knew the adverse non-public
11 information regarding the Company's business practices.

12
13 75. As officers and/or directors of a publicly owned company, the Individual Defendants had
14 a duty to disseminate accurate and truthful information with respect to the Company's financial
15 condition and results of operations, and to correct promptly any public statements issued by the
16 Company which had become materially false or misleading.

17
18 76. Because of their positions of control and authority as senior officers, the Individual
19 Defendants were able to, and did, control the contents of the various reports, press releases and public
20 filings which the Company disseminated in the marketplace during the Class Period. Throughout the
21 Class Period, the Individual Defendants exercised their power and authority to cause the Company to
22 engage in the wrongful acts complained of herein. The Individual Defendants therefore, were
23 "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. In this
24 capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of
25 Depomed securities.
26

27 77. Each of the Individual Defendants, therefore, acted as a controlling person of the
28 Company. By reason of their senior management positions and/or being directors of the Company, each

1 of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, the
2 Company to engage in the unlawful acts and conduct complained of herein. Each of the Individual
3 Defendants exercised control over the general operations of the Company and possessed the power to
4 control the specific activities which comprise the primary violations about which Plaintiff and the other
5 members of the Class complain.

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

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

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

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

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

18 D. Awarding such other and further relief as this Court may deem just and proper.
19

20 **DEMAND FOR TRIAL BY JURY**

21 Plaintiff hereby demands a trial by jury.

22 Dated: August 18, 2017

23 Respectfully submitted,

24 **POMERANTZ LLP**

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