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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Case No.

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

Plaintiff,

v.

DERMTECH, INC., JOHN DOBAK,
and KEVIN SUN,

Defendants.

1 Plaintiff individually and on behalf of all others
2 similarly situated, by and through his attorneys, alleges the following upon
3 information and belief, except as to those allegations concerning Plaintiff, which are
4 alleged upon personal knowledge. Plaintiff's information and belief is based upon,
5 among other things, his counsel's investigation, which includes without limitation:
6 (a) review and analysis of regulatory filings made by DermTech, Inc. ("DermTech"
7 or the "Company") with the United States ("U.S.") Securities and Exchange
8 Commission ("SEC"); (b) review and analysis of press releases and media reports
9 issued by and disseminated by DermTech; and (c) review of other publicly available
10 information concerning DermTech.

11 **NATURE OF THE ACTION AND OVERVIEW**

12 1. This is a class action on behalf of persons and entities that purchased or
13 otherwise acquired DermTech securities between May 3, 2022 and November 3,
14 2022, inclusive (the "Class Period"). Plaintiff pursues claims against the Defendants
15 under the Securities Exchange Act of 1934 (the "Exchange Act").

16 2. DermTech is a molecular diagnostic company that develops and markets
17 non-invasive genomics test to aid the diagnosis and management of skin cancer,
18 inflammatory skin diseases, and aging-related skin conditions. The DermTech
19 Melanoma Test ("DMT") is a commercial test offered to assess pigmented skin
20 lesions for melanoma.

21 3. On August 8, 2022, after the market closed, DermTech announced its
22 second quarter 2022 financial results and revealed that the Company expected "a
23 lower average selling price (ASP) for [its] DMT," due to "Medicare billing code edits
24 . . . as well as less favorable collection patterns from commercial payors." On this
25 news, the Company's stock price fell \$2.87, or 34%, to close at \$5.56 per share on
26 August 9, 2022, on unusually heavy trading volume.

27 4. Then, on November 3, 2022, after the market closed, DermTech
28 announced its third quarter 2022 financial results, reporting that billable sample

1 volume “sequential growth was flat due to headwinds caused by limited commercial
2 payer coverage.” The Company attributed the disappointing growth to “commercial
3 payer collection challenges [have] affect[ed] estimating ASP [average selling price].”
4 As a result, DermTech expected “at least \$13 million in assay revenue for the full-
5 year 2022,” which is “below [its] previous guidance range.”

6 5. On this news, the Company’s stock price fell \$1.34, or 44.7%, to close
7 at \$1.66 per share on November 4, 2022, on unusually heavy trading volume.

8 6. Throughout the Class Period, Defendants made materially false and/or
9 misleading statements, as well as failed to disclose material adverse facts about the
10 Company’s business, operations, and prospects. Specifically, Defendants failed to
11 disclose to investors: (1) that the Company experienced challenges with collections
12 from commercial payors; (2) that, as a result, there was a lower average selling price
13 for DermTech’s DMT; (3) that, as a result of the foregoing, the Company’s revenue
14 growth would be adversely impacted; and (4) that, as a result of the foregoing,
15 Defendants’ positive statements about the Company’s business, operations, and
16 prospects were materially misleading and/or lacked a reasonable basis.

17 7. As a result of Defendants’ wrongful acts and omissions, and the
18 precipitous decline in the market value of the Company’s securities, Plaintiff and
19 other Class members have suffered significant losses and damages.

20 **JURISDICTION AND VENUE**

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

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

26 10. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)
27 and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in
28 furtherance of the alleged fraud or the effects of the fraud have occurred in this

1 Judicial District. Many of the acts charged herein, including the dissemination of
2 materially false and/or misleading information, occurred in substantial part in this
3 Judicial District. In addition, the Company's principal executive offices are in this
4 District.

5 11. In connection with the acts, transactions, and conduct alleged herein,
6 Defendants directly and indirectly used the means and instrumentalities of interstate
7 commerce, including the United States mail, interstate telephone communications,
8 and the facilities of a national securities exchange.

9 **PARTIES**

10 12. Plaintiff Mika Bagheri, as set forth in the accompanying certification,
11 incorporated by reference herein, purchased DermTech securities during the Class
12 Period, and suffered damages as a result of the federal securities law violations and
13 false and/or misleading statements and/or material omissions alleged herein.

14 13. Defendant DermTech is incorporated under the laws of Delaware with
15 its principal executive offices located in La Jolla, California. DermTech's common
16 stock trades on the NASDAQ exchange under the symbol "DMTK."

17 14. Defendant John Dobak ("Dobak") was the Chief Executive Officer
18 ("CEO") of DermTech at all relevant times.

19 15. Defendant Kevin Sun ("Sun") was the Chief Financial Officer ("CFO")
20 at DermTech at all relevant times.

21 16. Defendants Dobak and Sun (collectively the "Individual Defendants"),
22 because of their positions with the Company, possessed the power and authority to
23 control the contents of the Company's reports to the SEC, press releases and
24 presentations to securities analysts, money and portfolio managers and institutional
25 investors, i.e., the market. The Individual Defendants were provided with copies of
26 the Company's reports and press releases alleged herein to be misleading prior to, or
27 shortly after, their issuance and had the ability and opportunity to prevent their
28 issuance or cause them to be corrected. Because of their positions and access to

1 material non-public information available to them, the Individual Defendants knew
2 that the adverse facts specified herein had not been disclosed to, and were being
3 concealed from, the public, and that the positive representations which were being
4 made were then materially false and/or misleading. The Individual Defendants are
5 liable for the false statements pleaded herein.

6 **SUBSTANTIVE ALLEGATIONS**

7 **Background**

8 17. DermTech is a molecular diagnostic company that develops and markets
9 non-invasive genomics test to aid the diagnosis and management of skin cancer,
10 inflammatory skin diseases, and aging-related skin conditions. The DermTech
11 Melanoma Test (“DMT”) is a commercial test offered to assess pigmented skin
12 lesions for melanoma.

13 **Materially False and Misleading**

14 **Statements Issued During the Class Period**

15 18. The Class Period begins on May 3, 2022. On that day, DermTech
16 announced its first quarter 2022 financial results in a press release that stated, in
17 relevant part:

18 First-Quarter 2022 Financial Results

- 19 • Billable sample volume grew 53 percent from the first quarter of
20 2021 to approximately 14,370.
- 21 • Assay revenue was \$3.5 million, up 61 percent from the first
22 quarter of 2021, primarily due to higher billable sample volume.
- 23 • Total revenue was \$3.7 million, a 47 percent increase from the
first quarter of 2021, driven by higher assay revenue.

24 * * *

25 2022 Outlook

26 The Company affirmed its full-year 2022 outlook for assay revenue
between \$22 million and \$26 million.

27 19. The above statements identified in ¶ 18 were materially false and/or
28 misleading, and failed to disclose material adverse facts about the Company’s

1 business, operations, and prospects. Specifically, Defendants failed to disclose to
2 investors: (1) that the Company experienced challenges with collections from
3 commercial payors; (2) that, as a result, there was a lower average selling price for
4 DermTech's DMT; (3) that, as a result of the foregoing, the Company's revenue
5 growth would be adversely impacted; and (4) that, as a result of the foregoing,
6 Defendants' positive statements about the Company's business, operations, and
7 prospects were materially misleading and/or lacked a reasonable basis.

8 20. The truth began to emerge on August 8, 2022, after the market closed,
9 when DermTech issued a press release announcing its second quarter 2022 financial
10 results and revealed that the Company expected "a lower average selling price (ASP)
11 for [its] DMT," due to "Medicare billing code edits . . . as well as less favorable
12 collection patterns from commercial payors." On this news, the Company's stock
13 price fell \$2.87, or 34%, to close at \$5.56 per share on August 9, 2022, on unusually
14 heavy trading volume.

15 21. The August 8, 2022 press release also stated that the "Company updated
16 its full-year 2022 outlook for assay revenue and now expects between \$16 million and
17 \$19 million." It also reported the following second quarter 2022 financial results:

- 18 • Billable sample volume grew 56 percent from the second quarter
19 of 2021 to approximately 18,320.
- 20 • Assay revenue was \$4.1 million, up 43 percent from the second
21 quarter of 2021, primarily due to higher billable sample volume.
- 22 • Total revenue was \$4.2 million, a 36 percent increase from the
23 second quarter of 2021, driven by higher assay revenue.
- 24 • Cost of assay revenue was \$3.2 million, a 24 percent increase from
25 the second quarter of 2021, yielding an assay gross margin of 22%,
26 compared to 11% for the second quarter of 2021.

27 22. The above statements identified in ¶ 21 were materially false and/or
28 misleading, and failed to disclose material adverse facts about the Company's
business, operations, and prospects. Specifically, Defendants failed to disclose to
investors: (1) that the Company experienced challenges with collections from

1 commercial payors; (2) that, as a result, there was a lower average selling price for
2 DermTech's DMT; (3) that, as a result of the foregoing, the Company's revenue
3 growth would be adversely impacted; and (4) that, as a result of the foregoing,
4 Defendants' positive statements about the Company's business, operations, and
5 prospects were materially misleading and/or lacked a reasonable basis.

6 Disclosures at the End of the Class Period

7 23. On November 3, 2022, after the market closed, DermTech issued a press
8 release announcing its third quarter 2022 financial results, in which the Company
9 reported that billable sample volume "sequential growth was flat due to headwinds
10 caused by limited commercial payer coverage." The press release continued that
11 "commercial payer collection challenges [have] affect[ed] estimating ASP [average
12 selling price]," and as a result, DermTech expected "at least \$13 million in assay
13 revenue for the full-year 2022," which is "below [its] previous guidance range."
14 Specifically, DermTech stated, in relevant part:

15 "We achieved meaningful year-over-year billable sample volume
16 growth, but *sequential growth was flat due to headwinds caused by
17 limited commercial payer coverage*," said John Dobak, M.D., CEO,
18 DermTech. "Despite these challenges, we have more positive activity
19 with payers now than we've ever had and are confident we're on the path
20 to meaningfully growing covered lives in the U.S. We remain closely
21 engaged with commercial payers and believe that we'll potentially add
22 30 to 40 million covered lives by the end of the first quarter of 2023.
23 We've recently executed an agreement with a large regional payer and
24 have received an excellent policy from a prominent laboratory benefits
25 manager. We've also completed price negotiations with a national
26 government payer that runs the largest integrated health care system in
27 the U.S. We've spent productive time with national payer medical
28 directors and have several scheduled comprehensive reviews with
29 medical policy teams in the upcoming months, which we see as
30 additional, important potential business catalysts."

31 Dr. Dobak continued, "We believe the value proposition of our
32 DermTech Melanoma Test (DMT) continues to be embraced by our
33 customers, but *growth in utilization with certain customers is tempered
34 because of typical payor tactics to impede our adoption momentum.
35 Due to these factors, we expect to finish 2022 below our previous
36 guidance range. It's difficult to provide a revised forecast due to
37 commercial payer collection challenges which affect estimating ASP
38 and the potential for additional changes in estimates for anticipated
39 cash collections, but we do expect to achieve at least \$13 million in
40 assay revenue for the full-year 2022.*"

Third-Quarter 2022 Financial Results

•Billable sample volume grew 54 percent from the third quarter of 2021 to approximately 18,080.

•Assay revenue was \$3.4 million, up 16 percent from the third quarter of 2021, primarily due to higher billable sample volume.

•Total revenue was \$3.6 million, an 18 percent increase from the third quarter of 2021, driven by higher assay revenue.

24. On this news, the Company's stock price fell \$1.34, or 44.7%, to close at \$1.66 per share on November 4, 2022, on unusually heavy trading volume.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired DermTech securities between May 3, 2022 and November 3, 2022, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, 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.

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

1 27. Plaintiff's claims are typical of the claims of the members of the Class
2 as all members of the Class are similarly affected by Defendants' wrongful conduct
3 in violation of federal law that is complained of herein.

4 28. Plaintiff will fairly and adequately protect the interests of the members
5 of the Class and has retained counsel competent and experienced in class and
6 securities litigation.

7 29. Common questions of law and fact exist as to all members of the Class
8 and predominate over any questions solely affecting individual members of the Class.
9 Among the questions of law and fact common to the Class are:

10 (a) whether the federal securities laws were violated by Defendants'
11 acts as alleged herein;

12 (b) whether statements made by Defendants to the investing public
13 during the Class Period omitted and/or misrepresented material facts about the
14 business, operations, and prospects of DermTech; and

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

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

23 **UNDISCLOSED ADVERSE FACTS**

24 31. The market for DermTech's securities was open, well-developed and
25 efficient at all relevant times. As a result of these materially false and/or misleading
26 statements, and/or failures to disclose, DermTech's securities traded at artificially
27 inflated prices during the Class Period. Plaintiff and other members of the Class
28 purchased or otherwise acquired DermTech's securities relying upon the integrity of

1 the market price of the Company's securities and market information relating to
2 DermTech, and have been damaged thereby.

3 32. During the Class Period, Defendants materially misled the investing
4 public, thereby inflating the price of DermTech's securities, by publicly issuing false
5 and/or misleading statements and/or omitting to disclose material facts necessary to
6 make Defendants' statements, as set forth herein, not false and/or misleading. The
7 statements and omissions were materially false and/or misleading because they failed
8 to disclose material adverse information and/or misrepresented the truth about
9 DermTech's business, operations, and prospects as alleged herein.

10 33. At all relevant times, the material misrepresentations and omissions
11 particularized in this Complaint directly or proximately caused or were a substantial
12 contributing cause of the damages sustained by Plaintiff and other members of the
13 Class. As described herein, during the Class Period, Defendants made or caused to
14 be made a series of materially false and/or misleading statements about DermTech's
15 financial well-being and prospects. These material misstatements and/or omissions
16 had the cause and effect of creating in the market an unrealistically positive
17 assessment of the Company and its financial well-being and prospects, thus causing
18 the Company's securities to be overvalued and artificially inflated at all relevant
19 times. Defendants' materially false and/or misleading statements during the Class
20 Period resulted in Plaintiff and other members of the Class purchasing the Company's
21 securities at artificially inflated prices, thus causing the damages complained of herein
22 when the truth was revealed.

23 **LOSS CAUSATION**

24 34. Defendants' wrongful conduct, as alleged herein, directly and
25 proximately caused the economic loss suffered by Plaintiff and the Class.

26 35. During the Class Period, Plaintiff and the Class purchased DermTech's
27 securities at artificially inflated prices and were damaged thereby. The price of the
28 Company's securities significantly declined when the misrepresentations made to the

1 market, and/or the information alleged herein to have been concealed from the market,
2 and/or the effects thereof, were revealed, causing investors' losses.

3 **SCIENTER ALLEGATIONS**

4 36. As alleged herein, Defendants acted with scienter since Defendants knew
5 that the public documents and statements issued or disseminated in the name of the
6 Company were materially false and/or misleading; knew that such statements or
7 documents would be issued or disseminated to the investing public; and knowingly
8 and substantially participated or acquiesced in the issuance or dissemination of such
9 statements or documents as primary violations of the federal securities laws. As set
10 forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt
11 of information reflecting the true facts regarding DermTech, their control over, and/or
12 receipt and/or modification of DermTech's allegedly materially misleading
13 misstatements and/or their associations with the Company which made them privy to
14 confidential proprietary information concerning DermTech, participated in the
15 fraudulent scheme alleged herein.

16 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

17 **(FRAUD-ON-THE-MARKET DOCTRINE)**

18 37. The market for DermTech's securities was open, well-developed and
19 efficient at all relevant times. As a result of the materially false and/or misleading
20 statements and/or failures to disclose, DermTech's securities traded at artificially
21 inflated prices during the Class Period. On May 3, 2022, the Company's share price
22 closed at a Class Period high of \$9.47 per share. Plaintiff and other members of the
23 Class purchased or otherwise acquired the Company's securities relying upon the
24 integrity of the market price of DermTech's securities and market information relating
25 to DermTech, and have been damaged thereby.

26 38. During the Class Period, the artificial inflation of DermTech's shares
27 was caused by the material misrepresentations and/or omissions particularized in this
28 Complaint causing the damages sustained by Plaintiff and other members of the Class.

1 As described herein, during the Class Period, Defendants made or caused to be made
2 a series of materially false and/or misleading statements about DermTech's business,
3 prospects, and operations. These material misstatements and/or omissions created an
4 unrealistically positive assessment of DermTech and its business, operations, and
5 prospects, thus causing the price of the Company's securities to be artificially inflated
6 at all relevant times, and when disclosed, negatively affected the value of the
7 Company shares. Defendants' materially false and/or misleading statements during
8 the Class Period resulted in Plaintiff and other members of the Class purchasing the
9 Company's securities at such artificially inflated prices, and each of them has been
10 damaged as a result.

11 39. At all relevant times, the market for DermTech's securities was an
12 efficient market for the following reasons, among others:

13 (a) DermTech shares met the requirements for listing, and was listed
14 and actively traded on the NASDAQ, a highly efficient and automated market;

15 (b) As a regulated issuer, DermTech filed periodic public reports with
16 the SEC and/or the NASDAQ;

17 (c) DermTech regularly communicated with public investors via
18 established market communication mechanisms, including through regular
19 dissemination of press releases on the national circuits of major newswire services
20 and through other wide-ranging public disclosures, such as communications with the
21 financial press and other similar reporting services; and/or

22 (d) DermTech was followed by securities analysts employed by
23 brokerage firms who wrote reports about the Company, and these reports were
24 distributed to the sales force and certain customers of their respective brokerage firms.
25 Each of these reports was publicly available and entered the public marketplace.

26 40. As a result of the foregoing, the market for DermTech's securities
27 promptly digested current information regarding DermTech from all publicly
28 available sources and reflected such information in DermTech's share price. Under

1 these circumstances, all purchasers of DermTech’s securities during the Class Period
2 suffered similar injury through their purchase of DermTech’s securities at artificially
3 inflated prices and a presumption of reliance applies.

4 41. A Class-wide presumption of reliance is also appropriate in this action
5 under the Supreme Court’s holding in *Affiliated Ute Citizens of Utah v. United States*,
6 406 U.S. 128 (1972), because the Class’s claims are, in large part, grounded on
7 Defendants’ material misstatements and/or omissions. Because this action involves
8 Defendants’ failure to disclose material adverse information regarding the Company’s
9 business operations and financial prospects—information that Defendants were
10 obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All
11 that is necessary is that the facts withheld be material in the sense that a reasonable
12 investor might have considered them important in making investment decisions.
13 Given the importance of the Class Period material misstatements and omissions set
14 forth above, that requirement is satisfied here.

15 **NO SAFE HARBOR**

16 42. The statutory safe harbor provided for forward-looking statements under
17 certain circumstances does not apply to any of the allegedly false statements pleaded
18 in this Complaint. The statements alleged to be false and misleading herein all relate
19 to then-existing facts and conditions. In addition, to the extent certain of the
20 statements alleged to be false may be characterized as forward looking, they were not
21 identified as “forward-looking statements” when made and there were no meaningful
22 cautionary statements identifying important factors that could cause actual results to
23 differ materially from those in the purportedly forward-looking statements. In the
24 alternative, to the extent that the statutory safe harbor is determined to apply to any
25 forward-looking statements pleaded herein, Defendants are liable for those false
26 forward-looking statements because at the time each of those forward-looking
27 statements was made, the speaker had actual knowledge that the forward-looking
28 statement was materially false or misleading, and/or the forward-looking statement

1 was authorized or approved by an executive officer of DermTech who knew that the
2 statement was false when made.

3 **FIRST CLAIM**

4 **Violation of Section 10(b) of The Exchange Act and**

5 **Rule 10b-5 Promulgated Thereunder**

6 **Against All Defendants**

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

9 44. During the Class Period, Defendants carried out a plan, scheme and
10 course of conduct which was intended to and, throughout the Class Period, did: (i)
11 deceive the investing public, including Plaintiff and other Class members, as alleged
12 herein; and (ii) cause Plaintiff and other members of the Class to purchase
13 DermTech's securities at artificially inflated prices. In furtherance of this unlawful
14 scheme, plan and course of conduct, Defendants, and each defendant, took the actions
15 set forth herein.

16 45. Defendants (i) employed devices, schemes, and artifices to defraud; (ii)
17 made untrue statements of material fact and/or omitted to state material facts
18 necessary to make the statements not misleading; and (iii) engaged in acts, practices,
19 and a course of business which operated as a fraud and deceit upon the purchasers of
20 the Company's securities in an effort to maintain artificially high market prices for
21 DermTech's securities in violation of Section 10(b) of the Exchange Act and Rule
22 10b-5. All Defendants are sued either as primary participants in the wrongful and
23 illegal conduct charged herein or as controlling persons as alleged below.

24 46. Defendants, individually and in concert, directly and indirectly, by the
25 use, means or instrumentalities of interstate commerce and/or of the mails, engaged
26 and participated in a continuous course of conduct to conceal adverse material
27 information about DermTech's financial well-being and prospects, as specified
28 herein.

1 47. Defendants employed devices, schemes and artifices to defraud, while in
2 possession of material adverse non-public information and engaged in acts, practices,
3 and a course of conduct as alleged herein in an effort to assure investors of
4 DermTech's value and performance and continued substantial growth, which
5 included the making of, or the participation in the making of, untrue statements of
6 material facts and/or omitting to state material facts necessary in order to make the
7 statements made about DermTech and its business operations and future prospects in
8 light of the circumstances under which they were made, not misleading, as set forth
9 more particularly herein, and engaged in transactions, practices and a course of
10 business which operated as a fraud and deceit upon the purchasers of the Company's
11 securities during the Class Period.

12 48. Each of the Individual Defendants' primary liability and controlling
13 person liability arises from the following facts: (i) the Individual Defendants were
14 high-level executives and/or directors at the Company during the Class Period and
15 members of the Company's management team or had control thereof; (ii) each of
16 these defendants, by virtue of their responsibilities and activities as a senior officer
17 and/or director of the Company, was privy to and participated in the creation,
18 development and reporting of the Company's internal budgets, plans, projections
19 and/or reports; (iii) each of these defendants enjoyed significant personal contact and
20 familiarity with the other defendants and was advised of, and had access to, other
21 members of the Company's management team, internal reports and other data and
22 information about the Company's finances, operations, and sales at all relevant times;
23 and (iv) each of these defendants was aware of the Company's dissemination of
24 information to the investing public which they knew and/or recklessly disregarded
25 was materially false and misleading.

26 49. Defendants had actual knowledge of the misrepresentations and/or
27 omissions of material facts set forth herein, or acted with reckless disregard for the
28 truth in that they failed to ascertain and to disclose such facts, even though such facts

1 were available to them. Such defendants' material misrepresentations and/or
2 omissions were done knowingly or recklessly and for the purpose and effect of
3 concealing DermTech's financial well-being and prospects from the investing public
4 and supporting the artificially inflated price of its securities. As demonstrated by
5 Defendants' overstatements and/or misstatements of the Company's business,
6 operations, financial well-being, and prospects throughout the Class Period,
7 Defendants, if they did not have actual knowledge of the misrepresentations and/or
8 omissions alleged, were reckless in failing to obtain such knowledge by deliberately
9 refraining from taking those steps necessary to discover whether those statements
10 were false or misleading.

11 50. As a result of the dissemination of the materially false and/or misleading
12 information and/or failure to disclose material facts, as set forth above, the market
13 price of DermTech's securities was artificially inflated during the Class Period. In
14 ignorance of the fact that market prices of the Company's securities were artificially
15 inflated, and relying directly or indirectly on the false and misleading statements made
16 by Defendants, or upon the integrity of the market in which the securities trades,
17 and/or in the absence of material adverse information that was known to or recklessly
18 disregarded by Defendants, but not disclosed in public statements by Defendants
19 during the Class Period, Plaintiff and the other members of the Class acquired
20 DermTech's securities during the Class Period at artificially high prices and were
21 damaged thereby.

22 51. At the time of said misrepresentations and/or omissions, Plaintiff and
23 other members of the Class were ignorant of their falsity, and believed them to be
24 true. Had Plaintiff and the other members of the Class and the marketplace known
25 the truth regarding the problems that DermTech was experiencing, which were not
26 disclosed by Defendants, Plaintiff and other members of the Class would not have
27 purchased or otherwise acquired their DermTech securities, or, if they had acquired
28

1 such securities during the Class Period, they would not have done so at the artificially
2 inflated prices which they paid.

3 52. By virtue of the foregoing, Defendants violated Section 10(b) of the
4 Exchange Act and Rule 10b-5 promulgated thereunder.

5 53. As a direct and proximate result of Defendants' wrongful conduct,
6 Plaintiff and the other members of the Class suffered damages in connection with
7 their respective purchases and sales of the Company's securities during the Class
8 Period.

9 **SECOND CLAIM**

10 **Violation of Section 20(a) of The Exchange Act**

11 **Against the Individual Defendants**

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

14 55. Individual Defendants acted as controlling persons of DermTech within
15 the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their
16 high-level positions and their ownership and contractual rights, participation in,
17 and/or awareness of the Company's operations and intimate knowledge of the false
18 financial statements filed by the Company with the SEC and disseminated to the
19 investing public, Individual Defendants had the power to influence and control and
20 did influence and control, directly or indirectly, the decision-making of the Company,
21 including the content and dissemination of the various statements which Plaintiff
22 contends are false and misleading. Individual Defendants were provided with or had
23 unlimited access to copies of the Company's reports, press releases, public filings,
24 and other statements alleged by Plaintiff to be misleading prior to and/or shortly after
25 these statements were issued and had the ability to prevent the issuance of the
26 statements or cause the statements to be corrected.

27 56. In particular, Individual Defendants had direct and supervisory
28 involvement in the day-to-day operations of the Company and, therefore, had the

1 power to control or influence the particular transactions giving rise to the securities
2 violations as alleged herein, and exercised the same.

3 57. As set forth above, DermTech and Individual Defendants each violated
4 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.
5 By virtue of their position as controlling persons, Individual Defendants are liable
6 pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of
7 Defendants' wrongful conduct, Plaintiff and other members of the Class suffered
8 damages in connection with their purchases of the Company's securities during the
9 Class Period.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

12 (a) Determining that this action is a proper class action under Rule 23 of the
13 Federal Rules of Civil Procedure;

14 (b) Awarding compensatory damages in favor of Plaintiff and the other
15 Class members against all defendants, jointly and severally, for all damages sustained
16 as a result of Defendants' wrongdoing, in an amount to be proven at trial, including
17 interest thereon;

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

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

21 **JURY TRIAL DEMANDED**

22 Plaintiff hereby demands a trial by jury.
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