

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **CENTRAL DISTRICT OF CALIFORNIA**

8 \_\_\_\_\_  
9 \_\_\_\_\_, Individually  
10 and On Behalf of All Others Similarly  
11 Situated,

11 Plaintiff,

12 v.

13  
14 NANTKWEST, INC., PATRICK SOON-  
15 SHIONG, RICHARD J. TAJAK,  
16 ANGELA WILSON, and RICHARD  
17 GOMBERG,

18 Defendants.

Case No.

**CLASS ACTION**

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

**DEMAND FOR JURY TRIAL**

19 Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all other  
20 persons similarly situated, by his undersigned attorneys, for his complaint against  
21 defendants, alleges the following based upon personal knowledge as to himself and his  
22 own acts, and information and belief as to all other matters, based upon, *inter alia*, the  
23 investigation conducted by and through his attorneys, which included, among other  
24 things, a review of the defendants’ public documents, conference calls and  
25 announcements made by defendants, United States Securities and Exchange Commission  
26  
27  
28

1 (“SEC”) filings, wire and press releases published by and regarding NantKwest, Inc.  
2 (“NantKwest” or the “Company”), analysts’ reports and advisories about the Company,  
3 and information readily obtainable on the Internet.  
4

### 5 **NATURE OF THE ACTION**

6 1. This is a federal securities class action on behalf of a class consisting of all  
7 persons other than defendants who purchased or otherwise acquired NantKwest  
8 securities between September 10, 2015 and March 10, 2016, both dates inclusive (the  
9 “Class Period”), seeking to recover damages caused by defendants’ violations of the  
10 federal securities laws and to pursue remedies under §§ 10(b) and 20(a) of the Securities  
11 Exchange Act of 1934 (the “Exchange Act”) and Rules 10b-5 promulgated thereunder  
12 against the Company and certain of its top officials and/or directors.  
13  
14  
15

16 2. NantKwest, a biotechnology company, develops immunotherapeutic agents  
17 for various clinical conditions. The Company also holds right to commercialize a range  
18 of genetically modified derivatives that kills cancer and virally infected cells.  
19

20 3. Formerly known as Conkwest, Inc., the Company was founded in 2002 and  
21 changed its name to NantKwest, Inc. in July 2015. NantKwest is headquartered in San  
22 Diego, California, and the Company’s stock trades on the NASDAQ under the ticker  
23 symbol “NK.”  
24  
25

26 4. Throughout the Class Period, defendants made materially false and  
27 misleading statements regarding the Company’s business, operational and compliance  
28

1 policies. Specifically, defendants made false and/or misleading statements and/or failed  
2 to disclose that: (i) NantKwest's financial statements contained errors related to stock-  
3 based awards to the Company's Chief Executive Officer ("CEO") and Executive  
4 Chairman defendant Patrick Soon-Shiong ("Soon-Shiong"); (ii) NantKwest's financial  
5 statements contained errors related to build-to-suit lease accounting related to one of the  
6 Company's research and development and good manufacturing practices ("GMP")  
7 facilities; (iii) the Company lacked effective internal financial controls; and (iv) as a  
8 result of the foregoing, NantKwest's public statements were materially false and  
9 misleading at all relevant times.  
10  
11  
12

13         5.     On March 11, 2016, NantKwest announced that the Company's interim  
14 financial statements for the quarters ended June 30, 2015 and September 30, 2015 should  
15 no longer be relied upon due, in part, to the combined effect of financial statement errors  
16 primarily attributable to certain stock-based awards to defendant Soon-Shiong and build-  
17 to-suit lease accounting related to one of its research and development and GMP  
18 facilities.  
19  
20

21         6.     On this news, NantKwest stock fell \$0.28, or 3.31%, to close at \$8.17 on  
22 March 11, 2016.  
23

24         7.     As a result of defendants' wrongful acts and omissions, and the precipitous  
25 decline in the market value of the Company's securities, Plaintiff and other Class  
26 members have suffered significant losses and damages.  
27  
28

**JURISDICTION AND VENUE**

1  
2 8. The claims asserted herein arise under and pursuant to Sections 10(b) and  
3 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b), 78n(a) and 78t(a)) and Rule 10b-5  
4 promulgated thereunder (17 C.F.R. § 240.10b-5, 17 C.F.R. § 240.14a-9).

5  
6 9. This Court has jurisdiction over the subject matter of this action pursuant to  
7 § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.  
8

9 10. Venue is proper in this District pursuant to §27 of the Exchange Act, 15  
10 U.S.C. §78aa and 28 U.S.C. §1391(b), as NantKwest is headquartered within this  
11 District.  
12

13 11. In connection with the acts, conduct and other wrongs alleged in this  
14 Complaint, defendants, directly or indirectly, used the means and instrumentalities of  
15 interstate commerce, including but not limited to, the United States mail, interstate  
16 telephone communications and the facilities of the national securities exchange.  
17  
18

**PARTIES**

19  
20 12. Plaintiff, as set forth in the attached Certification, acquired NantKwest  
21 securities at artificially inflated prices during the Class Period and was damaged upon  
22 revelation of the alleged corrective disclosures.  
23

24 13. Defendant NantKwest is a Delaware corporation with its principal executive  
25 offices located at 3530 John Hopkins Court, San Diego, California 92121.  
26

27 14. Defendant Soon-Shiong has served at all relevant times as the Company's  
28

1 Executive Chairman and CEO.

2 15. Defendant Richard J. Tajak (“Tajak”) has served as Company’s interim  
3 Chief Financial Officer (“CFO”) since January 20, 2016.  
4

5 16. Defendant Angela Wilson (“Wilson”) served as the Company’s CFO  
6 between November 2015 and January 20, 2016.  
7

8 17. Defendant Richard Gomberg (“Gomberg”) served as the Company’s CFO  
9 between January 2010 and November 2015.  
10

11 18. The defendants referenced above in ¶¶ 14-17 are sometimes referred to  
12 herein as the “Individual Defendants.”  
13

## 14 **SUBSTANTIVE ALLEGATIONS**

### 15 **Background**

16 19. NantKwest, a biotechnology company, develops immunotherapeutic agents  
17 for various clinical conditions. The Company also holds right to commercialize a range  
18 of genetically modified derivatives that kills cancer and virally infected cells.  
19

20 20. Formerly known as Conkwest, Inc., the Company was founded in 2002 and  
21 changed its name to NantKwest, Inc. in July 2015.  
22

### 23 **Materially False and Misleading Statements Issued During the Class Period**

24 21. The Class Period begins on September 10, 2015, when NantKwest filed a  
25 quarterly report on Form 10-Q with the SEC announcing the Company’s financial and  
26 operating results for the quarter ended June 30, 2015 (the “Q2 2015 10-Q”). For the  
27  
28

1 quarter, the Company reported a net loss of \$84.58 million, or \$1.29 per diluted share, on  
 2 revenue of approximately \$90,000.

3  
 4 22. With respect to stock-based compensation, the Company stated, in part:

5 ***Stock-Based Compensation***

6 The Company measures and recognizes compensation expense for all stock-  
 7 based payment awards made to employees, officers and directors based on  
 8 the estimated fair values of the awards as of the grant date. The Company  
 9 records the value of the portion of the award that is ultimately expected to  
 10 vest as expense over the requisite service period.

11 The Company also accounts for equity instruments issued to non-employees  
 12 using a fair value approach under ASC Subtopic 505-50, Equity-Based  
 13 Payments to Non-Employees. The Company values equity instruments and  
 14 stock options granted using the Black-Scholes option-pricing model. The  
 15 value of non-employee stock-based compensation is subject to periodic  
 16 adjustments as the underlying equity instruments vest and is recognized as  
 17 an expense over the term of the related financing or the period over which  
 18 services are received.

19 . . .

20 The following table presents all stock-based compensation as included in the  
 21 Company's condensed consolidated statement of operations:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2015	2014	2015	2014
Stock-based compensation expense:				
Warrants for Class A common stock to an officer and a director related to Inex Bio, Inc. acquisition (Note 3)	\$ —	\$ —	\$ 22,747	\$ —
Warrants for Class A common stock to an officer	75,918	—	75,918	—
Employee stock options	2,521	29	3,609	164
Non-employee stock options	1,602	3	2,290	3
	<u>\$ 80,041</u>	<u>\$ 32</u>	<u>\$ 104,564</u>	<u>\$ 167</u>
Stock-based compensation expense in operating expenses:				
Research and development	\$ 587	\$ —	\$ 776	\$ —
Selling, general and administrative	79,454	32	103,788	167
	<u>\$ 80,041</u>	<u>\$ 32</u>	<u>\$ 104,564</u>	<u>\$ 167</u>

22  
 23  
 24  
 25  
 26 23. The Q2 2015 10-Q contained signed certifications pursuant to the Sarbanes-  
 27 Oxley Act of 2002 ("SOX") by defendants Soon-Shiong and Gomberg, stating that the  
 28

1 financial information contained in the Q2 2015 10-Q was accurate and disclosed any  
2 material changes to the Company's internal control over financial reporting.

3  
4 24. On November 12, 2014, NantKwest filed a quarterly report on Form 10-Q  
5 with the SEC announcing the Company's financial and operating results for the quarter  
6 ended September 30, 2015 (the "Q3 2015 10-Q"). For the quarter, the Company  
7 reported a net loss of \$42.65 million, or \$0.55 per diluted share, on revenue of  
8 approximately \$10,000.  
9

10 25. With respect to stock-based compensation expense, the Company stated, in  
11 part:  
12

13 ***Stock-Based Compensation***

14  
15 The Company measures and recognizes compensation expense for all stock-  
16 based payment awards made to employees, officers and directors based on  
17 the estimated fair values of the awards as of the grant date. The Company  
18 records the value of the portion of the award that is ultimately expected to  
19 vest as expense over the requisite service period.

20 The Company also accounts for equity instruments issued to non-employees  
21 using a fair value approach under ASC Subtopic 505-50, Equity-Based  
22 Payments to Non-Employees. The Company values equity instruments and  
23 stock options granted using the Black-Scholes option-pricing model. The  
24 value of non-employee stock-based compensation is subject to periodic  
25 adjustments as the underlying equity instruments vest and is recognized as  
26 an expense over the term of the related financing or the period over which  
27 services are received.

28 ...

The following table presents all stock-based compensation included in the  
Company's condensed consolidated statements of operations:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Stock-based compensation expense:				
Warrants for Class A common stock to an officer and a director related to Inex Bio. Inc. acquisition (Note 3)	\$ —	\$ —	\$ 22,747	\$ —
Warrants for Class A common stock to an officer	4,745	—	80,663	—
Employee stock options	16,424	26	20,033	190
Non-employee stock options	784	3	3,074	6
Restricted stock units	14,150	—	14,150	—
	<u>\$ 36,103</u>	<u>\$ 29</u>	<u>\$ 140,667</u>	<u>\$ 196</u>
Stock-based compensation expense in operating expenses:				
Research and development	\$ 364	\$ —	\$ 1,140	\$ —
Selling, general and administrative	35,739	29	139,527	196
	<u>\$ 36,103</u>	<u>\$ 29</u>	<u>\$ 140,667</u>	<u>\$ 196</u>

26. The Q3 2015 10-Q contained signed certifications pursuant to SOX by defendants Soon-Shiong and Gomberg, stating that the financial information contained in the Q3 2015 10-Q was accurate and disclosed any material changes to the Company's internal control over financial reporting

27. On November 17, 2015, NantKwest announced the appointment of defendant Wilson as the Company's CFO, succeeding defendant Gomberg.

28. On January 25, 2016, post-market, NantKwest announced defendant Wilson's resignation as the Company's CFO and the appointment of defendant Tajak as interim CFO of NantKwest.

29. On this news, NantKwest stock fell \$0.25, or 2.04%, to close at \$11.99 on January 26, 2016.

30. The statements referenced in ¶¶ 21-26 were materially false and misleading because defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operational and compliance policies. Specifically, defendants made false and/or misleading statements and/or failed to disclose that: (i) NantKwest's financial statements contained errors related to stock-



1 based awards to the Company's CEO and Executive Chairman defendant Soon-Shiong;  
2 (ii) NantKwest's financial statements contained errors related to build-to-suit lease  
3 accounting related to one of the Company's research and development and GMP  
4 facilities; (iii) the Company lacked effective internal financial controls; and (iv) as a  
5 result of the foregoing, NantKwest's public statements were materially false and  
6 misleading at all relevant times.  
7  
8

### 9 **THE TRUTH EMERGES**

10 31. On March 11, 2016, NantKwest announced that the Company's interim  
11 financial statements for the quarters ended June 30, 2015 and September 30, 2015 should  
12 no longer be relied upon due, in part, to the combined effect of financial statement errors  
13 primarily attributable to certain stock-based awards to the Company's CEO and  
14 Executive Chairman defendant Soon-Shiong and build-to-suit lease accounting related to  
15 one of its research and development and GMP facilities. The Company stated, in part:  
16  
17

18  
19 On March 10, 2016, the Audit Committee of the Board of Directors (the  
20 "Audit Committee") of NantKwest, Inc. (the "Company") concluded, after  
21 discussion with management and Mayer Hoffman McCann P.C., the  
22 Company's independent registered public accounting firm, that the interim  
23 financial statements contained in the Company's quarterly reports on Form  
24 10-Q for the quarters ended June 30, 2015 and September 30, 2015 should  
25 no longer be relied upon due to the combined effect of financial statement  
26 errors primarily attributable to certain stock-based awards to the Company's  
27 Chief Executive Officer and Executive Chairman and build-to-suit lease  
28 accounting related to one of its research and development and Good  
Manufacturing Practices (GMP) facilities.

...

1 Management has determined that the errors described above were the result  
2 of a material weakness in the Company's internal control over financial  
3 reporting. Specifically, the material weakness, as disclosed in previous  
4 filings, is a result of inadequate staffing levels, resulting in insufficient time  
5 spent on review and approval of certain information used to prepare our  
6 financial statements and the maintenance of effective controls to adequately  
7 monitor and review significant transactions for financial statement  
8 completeness and accuracy. Management is continuing to assess the effect of  
9 the restatement on the Company's internal control over financial reporting  
10 and disclosure controls and procedures and expects to report its conclusions  
11 regarding these matters in the Company's Annual Report on Form 10-K for  
12 the year ended December 31, 2015 (the "2015 Form 10-K").

13 The Company intends to file restated interim financial statements for the  
14 quarters ended June 30, 2015 and September 30, 2015, previously filed by  
15 the Company in its Quarterly Reports on Form 10-Q for the same periods, in  
16 the Company's 2015 Form 10-K. The Company intends to restate the 2015  
17 interim financial statements noted above in its 2016 quarterly reports as  
18 necessary. Based on the information regarding the affected periods in 2015  
19 that the Company intends to include in its 2015 Form 10-K, the Company  
20 does not intend to file amendments to its quarterly reports on Form 10-Q for  
21 such periods at this time.

22 32. On this news, NantKwest stock fell \$0.28, or 3.31%, to close at \$8.17 on  
23 March 11, 2016.

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

### 27 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

28 34. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil  
Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or  
otherwise acquired NantKwest securities during the Class Period (the "Class"); and were

1 damaged upon the revelation of the corrective disclosures. Excluded from the Class are  
2 defendants herein, the officers and directors of the Company, at all relevant times,  
3 members of their immediate families and their legal representatives, heirs, successors or  
4 assigns and any entity in which defendants have or had a controlling interest.  
5

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

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

21 37. Plaintiff will fairly and adequately protect the interests of the members of  
22 the Class and has retained counsel competent and experienced in class and securities  
23 litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.  
24  
25  
26  
27  
28

1           38. Common questions of law and fact exist as to all members of the Class and  
2 predominate over any questions solely affecting individual members of the Class.

3 Among the questions of law and fact common to the Class are:  
4

- 5           • whether the federal securities laws were violated by defendants' acts as  
6           alleged herein;
- 7           • whether statements made by defendants to the investing public during  
8           the Class Period misrepresented material facts about the business,  
9           operations and management of NantKwest;
- 10          • whether the Individual Defendants caused NantKwest to issue false and  
11          misleading financial statements during the Class Period;
- 12          • whether defendants acted knowingly or recklessly in issuing false and  
13          misleading financial statements;
- 14          • whether the prices of NantKwest securities during the Class Period were  
15          artificially inflated because of the defendants' conduct complained of  
16          herein; and
- 17          • whether the members of the Class have sustained damages and, if so,  
18          what is the proper measure of damages.

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

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

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

15 41. Based upon the foregoing, Plaintiff and the members of the Class are  
16 entitled to a presumption of reliance upon the integrity of the market.  
17

18 42. Alternatively, Plaintiffs and the members of the Class are entitled to the  
19 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of*  
20 *the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants  
21 omitted material information in their Class Period statements in violation of a duty to  
22 disclose such information, as detailed above.  
23  
24  
25  
26  
27  
28

1 **COUNT I**

2 **(Against All Defendants For Violations of**  
3 **Section 10(b) and Rule 10b-5 Promulgated Thereunder)**

4 43. Plaintiff repeats and realleges each and every allegation contained above as  
5 if fully set forth herein.  
6

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

11 45. During the Class Period, defendants engaged in a plan, scheme, conspiracy  
12 and course of conduct, pursuant to which they knowingly or recklessly engaged in acts,  
13 transactions, practices and courses of business which operated as a fraud and deceit upon  
14 Plaintiff and the other members of the Class; made various untrue statements of material  
15 facts and omitted to state material facts necessary in order to make the statements made,  
16 in light of the circumstances under which they were made, not misleading; and employed  
17 devices, schemes and artifices to defraud in connection with the purchase and sale of  
18 securities. Such scheme was intended to, and, throughout the Class Period, did: (i)  
19 deceive the investing public, including Plaintiff and other Class members, as alleged  
20 herein; (ii) artificially inflate and maintain the market price of NantKwest securities; and  
21 (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire  
22 NantKwest securities and options at artificially inflated prices. In furtherance of this  
23 unlawful scheme, plan and course of conduct, defendants, and each of them, took the  
24  
25  
26  
27  
28

1 actions set forth herein.

2 46. Pursuant to the above plan, scheme, conspiracy and course of conduct, each  
3 of the defendants participated directly or indirectly in the preparation and/or issuance of  
4 the quarterly and annual reports, SEC filings, press releases and other statements and  
5 documents described above, including statements made to securities analysts and the  
6 media that were designed to influence the market for NantKwest securities. Such  
7 reports, filings, releases and statements were materially false and misleading in that they  
8 failed to disclose material adverse information and misrepresented the truth about  
9 NantKwest's finances and business prospects.  
10  
11  
12

13 47. By virtue of their positions at NantKwest, defendants had actual knowledge  
14 of the materially false and misleading statements and material omissions alleged herein  
15 and intended thereby to deceive Plaintiff and the other members of the Class, or, in the  
16 alternative, defendants acted with reckless disregard for the truth in that they failed or  
17 refused to ascertain and disclose such facts as would reveal the materially false and  
18 misleading nature of the statements made, although such facts were readily available to  
19 defendants. Said acts and omissions of defendants were committed willfully or with  
20 reckless disregard for the truth. In addition, each defendant knew or recklessly  
21 disregarded that material facts were being misrepresented or omitted as described above.  
22  
23  
24  
25

26 48. Information showing that defendants acted knowingly or with reckless  
27 disregard for the truth is peculiarly within defendants' knowledge and control. As the  
28

1 senior managers and/or directors of NantKwest, the Individual Defendants had  
2 knowledge of the details of NantKwest's internal affairs.

3         49. The Individual Defendants are liable both directly and indirectly for the  
4 wrongs complained of herein. Because of their positions of control and authority, the  
5 Individual Defendants were able to and did, directly or indirectly, control the content of  
6 the statements of NantKwest. As officers and/or directors of a publicly-held company,  
7 the Individual Defendants had a duty to disseminate timely, accurate, and truthful  
8 information with respect to NantKwest's businesses, operations, future financial  
9 condition and future prospects. As a result of the dissemination of the aforementioned  
10 false and misleading reports, releases and public statements, the market price of  
11 NantKwest securities was artificially inflated throughout the Class Period. In ignorance  
12 of the adverse facts concerning NantKwest's business and financial condition which  
13 were concealed by defendants, Plaintiff and the other members of the Class purchased or  
14 otherwise acquired NantKwest securities at artificially inflated prices and relied upon the  
15 price of the securities, the integrity of the market for the securities and/or upon  
16 statements disseminated by defendants, and were damaged thereby.

17         50. During the Class Period, NantKwest securities were traded on an active and  
18 efficient market. Plaintiff and the other members of the Class, relying on the materially  
19 false and misleading statements described herein, which the defendants made, issued or  
20 caused to be disseminated, or relying upon the integrity of the market, purchased or  
21



1 otherwise acquired shares of NantKwest securities at prices artificially inflated by  
2 defendants' wrongful conduct. Had Plaintiff and the other members of the Class known  
3 the truth, they would not have purchased or otherwise acquired said securities, or would  
4 not have purchased or otherwise acquired them at the inflated prices that were paid. At  
5 the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of  
6 NantKwest securities was substantially lower than the prices paid by Plaintiff and the  
7 other members of the Class. The market price of NantKwest securities declined sharply  
8 upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class  
9 members.  
10  
11

12  
13 51. By reason of the conduct alleged herein, defendants knowingly or  
14 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and  
15 Rule 10b-5 promulgated thereunder.  
16

17 52. As a direct and proximate result of defendants' wrongful conduct, Plaintiff  
18 and the other members of the Class suffered damages in connection with their respective  
19 purchases, acquisitions and sales of the Company's securities during the Class Period,  
20 upon the disclosure that the Company had been disseminating misrepresented financial  
21 statements to the investing public.  
22  
23

## 24 **COUNT II**

### 25 **(Violations of Section 20(a) of the** 26 **Exchange Act Against The Individual Defendants)**

27  
28 53. Plaintiff repeats and realleges each and every allegation contained in the

1 foregoing paragraphs as if fully set forth herein.

2 54. During the Class Period, the Individual Defendants participated in the  
3 operation and management of NantKwest, and conducted and participated, directly and  
4 indirectly, in the conduct of NantKwest's business affairs. Because of their senior  
5 positions, they knew the adverse non-public information about NantKwest's  
6 misstatement of income and expenses and false financial statements.  
7  
8

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

16 56. Because of their positions of control and authority as senior officers, the  
17 Individual Defendants were able to, and did, control the contents of the various reports,  
18 press releases and public filings which NantKwest disseminated in the marketplace  
19 during the Class Period concerning NantKwest's results of operations. Throughout the  
20 Class Period, the Individual Defendants exercised their power and authority to cause  
21 NantKwest to engage in the wrongful acts complained of herein. The Individual  
22 Defendants therefore, were "controlling persons" of NantKwest within the meaning of  
23 Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful  
24 conduct alleged which artificially inflated the market price of NantKwest securities.  
25  
26  
27  
28



1 C. Awarding Plaintiff and the other members of the Class prejudgment  
2 and post-judgment interest, as well as their reasonable attorneys' fees, expert  
3 fees and other costs; and  
4

5 D. Awarding such other and further relief as this Court may deem just  
6 and proper.  
7

8 **DEMAND FOR TRIAL BY JURY**

9 Plaintiff hereby demands a trial by jury.

10 Dated:

11  
12 Respectfully submitted,  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28