IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JACOB FULCHER, on behalf of himself and all similarly situated stockholders, Plaintiffs, v. RICHARD ACKERMAN, RICHARD BIRDOFF, MICHAEL FONG, STUART KOENIG, STEVEN LEVINE, DAVID NUSSBAUM, ALBERT G. REX, TROY T. TAYLOR, BRAC LENDING GROUP LLC, EARLYBIRDCAPITAL, INC., BIG ROCK PARTNERS SPONSOR, LLC, JONATHAN JAVITT, and ALESSANDRA DAIGNEAULT, Defendants.	Civil Action No. 2024-0345-PAF **PUBLIC VERSION** **Filed: November 14, 2024**

VERIFIED AMENDED STOCKHOLDER CLASS ACTION COMPLAINT

1. Jacob Fulcher ("Plaintiff"), owner of NRX Pharmaceuticals, Inc. ("NRXP" or the "Company") (f/k/a Big Rock Partners Acquisition Corp. ("BRPA")) common stock, on behalf of himself and all similarly situated current and former stockholders of NRXP, by and through the undersigned counsel, brings this Verified Amended Stockholder Class Action Complaint against the Company's current and

former directors, controllers, and sponsor, asserting breach of fiduciary duty claims and aiding and abetting claims challenging the Company's merger that was completed on May 24, 2021 to bring NeuroRx, Inc. ("NeuroRx") public (the "Merger).[1]

2. Plaintiff's allegations are based upon personal knowledge as to himself and his own actions, and otherwise upon information and belief based upon investigation conducted by his counsel, including without limitation: (i) review and analysis of NRXP's internal books and records produced in response to Plaintiff's Demand for Inspection of Books and Records of NRXP pursuant to 8 *Del. C.* § 220; (ii) review and analysis of information filed with the Securities and Exchange Commission (the "SEC"), including the Rule 424(b)(3) Prospectus filed with the SEC on May 21, 2021 (the "Proxy"); and (iii) review and analysis of publicly available press releases, news articles, reports and other information.

3. Plaintiff's claims relate to the Merger, which was consummated pursuant to a merger agreement entered into on December 13, 2020 (the "Merger Agreement") by and among BRPA, Big Rock Merger Corp., and NeuroRx.

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[1] This Verified Amended Stockholder Class Action Complaint refers to NRXP during the time before it completed the Merger as "BRPA."

PRELIMINARY STATEMENT

4. The Merger continued the trend of certain SPAC (an acronym for "special purpose acquisition corporation") transactions in which the financial conflicts of interest of controllers and directors overrode good corporate governance and the interests of SPAC stockholders.

5. A SPAC, also known as a "blank check company," is a publicly traded company without commercial operations that is formed strictly to raise capital through an initial public offering ("IPO") for the purpose of entering into a business combination with another company within a specified period of time. The proceeds of the SPAC's IPO are held in trust for the benefit of the stockholders. When the SPAC agrees to a business combination, the SPAC's public stockholders are presented with a decision: they can elect to redeem all or a portion of their SPAC shares—and receive a proportionate share of the funds held in trust—or they can invest those funds in the post-combination company. If a SPAC does not close a business combination within the time specified in its charter, it is required to liquidate, in which circumstances public stockholders would receive a proportionate share of liquidating distributions from the trust.

6. Because most SPACs are controlled by their sponsors, the sponsor causes the SPAC to extend the time specified in the charter in order to find a less

than-enticing merger target that still permits the sponsor to profit from their founding shares. That happened here to an unusual degree. After failing to find a suitable merger target within a year, the sponsor promised a significant quantity of so-called "Founder Shares" to the SPAC's underwriter in exchange for loans for further extensions of time.

7. For nominal consideration, BRPA's board of directors (the "Board") and Big Rock Partners Sponsor, LLC ("Sponsor") granted themselves financial interests in the SPAC that diverged from those of public stockholders, including Founder Shares issued before the BRPA IPO. These Founder Shares did not share the right to redemption held by the shares issued as part of the BRPA IPO, and thus would only have worth if BRPA consummated a merger.

8. In addition, Sponsor extracted private placement units at a price of $10.00 per unit simultaneously with the IPO. These units consisted of one share of BRPA common stock, one right, and one half of one warrant to purchase a share of BRPA common stock at an exercise price of $11.50 per share. If BRPA did not consummate a business combination and instead liquidated in accordance with BRPA's charter, these rights and warrants would expire worthless.

9. In November 2018, a year after the IPO, Sponsor transferred most of its Founders Shares to BRAC Lending Group, LLC ("BRAC"), an affiliate of

BRPA's IPO underwriter, EarlyBirdCapital, Inc. ("EBC", and along with BRAC, the Board, and Sponsor, the "Fiduciary Defendants").

10. BRAC and Defendant Ackerman had also lent millions of dollars to BRPA that could only be repaid in the event of a Merger.

11. BRPA's capital structure created an inherent conflict of interest between the Sponsor, BRAC and public stockholders. If BRPA succeeded in consummating a business combination, then the Defendants would hold shares in the combined company and reap a windfall and receive repayment of their loans to BRPA. But if BRPA did not merge with an operating business, then the Fiduciary Defendants would lose all Founder Shares and everything that they had put into the Company. Thus, the interests of the Fiduciary Defendants in getting any deal done—even a value-destructive one—to avoid liquidation provided them with a perverse incentive to merge regardless of whether the Merger was in the best interests of the Company's public stockholders.

12. Sponsor and BRAC failed to cleanse their conflicts. They refused to create a special committee consisting of independent and disinterested directors and failed to implement a majority-of-the-minority vote requirement.

13. On the other hand, BRPA's public stockholders had redemption rights for approximately $10.80 per share. In fact, stockholders owning millions of shares

of stock had redeemed their shares before the Merger.

14. Because of these redemptions, the Founder Shares held by the Fiduciary Defendants represented 70% of the outstanding shares of common stock by the time BRPA finally found its eventual merger partner in November 2020. BRAC, on its own, held 52.7% of BRPA common stock.

15. Roughly 600,000 shares of BRPA common stock remained in the hands of BRPA's public stockholders when Sponsor and BRAC announced the Merger.

16. Truthful and candid disclosures were crucial to the BRPA's public stockholders' decision whether to exercise their redemption rights. According to the Proxy, BRPA stockholders had to decide whether or not to redeem their shares by June 3, 2021.

17. On May 24, 2021, BRPA stockholders approved the Merger. Later that day, BRPA and NeuroRx consummated the Merger. As of the open of trading on May 25, 2021, the Class A common stock and warrants of NRX Pharmaceuticals, Inc., formerly those of BRPA, began trading on The Nasdaq Capital Market as "NRXP" and "NRXPW," respectively.

18. Unfortunately for BRPA's public stockholders, the Fiduciary Defendants and executives of NeuroRx had caused the Proxy and other BRPA SEC

filings to materially mislead the BRPA stockholders on key topics, thereby deceiving them out of exercising their redemption rights and voting against the Merger.

19. NeuroRx was purportedly developing a treatment for COVID-19 alongside a Swiss company, Relief Therapeutics Holding AG ("Relief"). The two entities shared a common stockholder who had introduced them, GEM Yield Bahamas Ltd. ("GEM").

20. With dubious rights to a patent that showed theoretical prospects in treating the most dangerous symptoms of COVID-19, Relief had begun working with Dr. Jonathan Javitt, the CEO of NeuroRx, in 2020 at the behest of GEM. At the same time, Relief had begun issuing dozens of press releases hyping this research, causing its stock price to rise precipitously.

21. By the time GEM introduced NeuroRx to BRPA in November 2020, Relief's market capitalization had risen to an irrational $1.5 billion. Relief and NeuroRx had entered into a collaboration agreement that required Relief to fund much of the research into this drug (the "Collaboration Agreement").

22. NeuroRx and its executives, as well as the Fiduciary Defendants, then represented to each other and the BRPA stockholders that NeuroRx should be valued in accordance with Relief's market capitalization, supposedly supporting a valuation of approximately $500 million.

23. By March 2021, however, Relief had refused to continue funding the necessary research, and had informed NeuroRx that the drug had “failed” and had “missed the pandemic.”

24. Despite Relief’s repudiation of the Collaboration Agreement and stated position that NeuroRx’s primary drug candidate no longer had any value, the Proxy concealed this information entirely.

25. The truth about NeuroRx and Relief did not become known until January 2022. On January 10, 2022, NRXP filed a complaint in the Supreme Court of the State of New York against Relief (the “NRXP v. Relief Complaint”). These pleadings made public for the first time not only that Relief had repudiated its collaboration, but that NeuroRx had always harbored serious misgivings about the character of Relief’s principals and agents, the truthfulness of Relief’s public statements, and therefore the valuation attributed to Relief by the public markets.

26. However, the Proxy concealed the misgivings of NeuroRx executives regarding the credibility of GEM, Relief and their agents, as well as the fact that GEM was the controlling stockholder of Relief at all relevant times.

27. The Proxy also misled BRPA stockholders as to the value of BRPA on a standalone basis, repeatedly stating that BRPA common stock had a reference price of $10.00 per share, and using that price to value the merger consideration (BRPA

stock) at $500 million. BRPA's only asset was the cash that it would provide to the combined company, and the Proxy failed to disclose BRPA's net cash per share outright, which amounted to approximately $4.00 per share. A reasonable stockholder would have found it important that BRPA actually held only 40% of the $10 value that stockholders were led to believe existed at the time of the Merger.

28. As of this writing, the trading price of NRXP common stock has declined to under $0.20 per share, a tiny fraction of the $10.80 redemption value, thereby confirming that the Merger was not entirely fair.

PARTIES

Plaintiff

29. ***Jacob Fulcher.*** Plaintiff Jacob Fulcher ("Plaintiff Fulcher" or "Plaintiff") is a current stockholder of NRXP common stock and has been a continuous stockholder of NRXP at all relevant times, including before the Redemption Date (defined below). Plaintiff Fulcher sent a Section 220 demand to NRXP in September 2023 (the "Plaintiff's 220 Demand").

Defendants

30. ***Big Rock Partners Sponsor, LLC*** ("Sponsor") was the beneficial holder of 497,500 Founder Shares as of the record date for the Merger, April 23, 2021 (the "Record Date"). On November 17, 2018, Sponsor transferred 1.5 million

shares of BRPA Founder Shares to BRAC. Sponsor was a Delaware limited liability company.

31. ***BRAC Lending Group LLC*** was the beneficial holder of 1,432,000 Founder Shares as of the Record Date. BRAC was created for the purpose of receiving these shares from Sponsor and is an affiliate of EBC. BRAC was a Delaware limited liability company.

32. ***EarlyBirdCapital, Inc.*** ("EBC") was the underwriter of BRPA's IPO and the beneficial holder of 138,000 shares of BRPA common stock as of the Record Date. EBC is a Delaware corporation.

33. ***Richard Ackerman*** ("Ackerman") was BRPA's Chairman, President, and CEO from BRPA's incorporation through the Merger. The Proxy's beneficial ownership chart listed Ackerman as a beneficial owner of 497,500 Founder Shares through his indirect ownership via Sponsor, indicating that he was conflicted in the Merger. Ackerman formed Big Rock Partners in 2004. Big Rock Partners is an "opportunistic real estate investment firm," with a focus in senior housing development beginning in 2012. Before forming Big Rock Partners, Ackerman served as the head of the Los Angeles office of Apollo Global Management.

34. ***Richard Birdoff*** ("Birdoff") was a BRPA director until the Merger. Birdoff has served as the President of RD Management and Realty Investors

Development Corp., "a privately held retail real estate developer and manager, since January 2015."

35. ***Michael Fong*** ("Fong") was a BRPA director from BRPA's IPO through its Merger. Fong "serves as the Chairman and Chief Executive Officer of JF International Ltd., a private equity firm he founded since 2003. JF International invests and manages a diversified portfolio of worldwide investments in real estate and operating companies."

36. ***Stuart Koenig*** ("Koenig") was a BRPA director from BRPA's IPO through its Merger. The Proxy discloses that Koenig was a member of Sponsor and thus had an interest in the 497,500 Founder Shares held by Sponsor. Koenig has over forty years of experience in the real estate, investment banking, and financial services industries, but no experience with development-stage pharmaceutical companies.

37. ***Steven Levine*** ("Levine") was a managing member of BRAC and the CEO of EBC. Levine is one of two individuals named as principals on EBC's website.

38. ***David Nussbaum*** ("Nussbaum") was a managing member of BRAC and the Chairman of the Board of EBC. Nussbaum is one of two individuals named as principals on EBC's website.

39. ***Albert G. Rex*** ("Rex") was a BRPA director from BRPA's IPO through its Merger. The Proxy discloses that Rex was a member of Sponsor and thus had an interest in the 497,500 Founder Shares held by Sponsor. Rex has served as the Managing Director of Walker & Dunlop, a commercial real estate finance company, since May 2012.

40. ***Troy T. Taylor*** ("Taylor") was a BRPA director from BRPA's IPO through its Merger. The Proxy discloses that Taylor was a member of Sponsor and thus had an interest in the 497,500 Founder Shares held by Sponsor. Taylor has served as President of Algon Group, an advisory firm he founded, since 2002. Algon Group is a specialized financial firm providing sophisticated financial advisory services to stakeholders with complex, challenging, and financially distressed situations.

41. ***Jonathan Javitt*** ("Javitt") was the founder, Chairman, and Chief Executive Officer of NeuroRx until the consummation of the Merger, and continues to serve as the Chairman and Chief Scientist of NRXP. Javitt led negotiation of the Merger on behalf of NeuroRx.

42. ***Alessandra Daigneault*** ("Daigneault") was the general counsel and corporate secretary of NeuroRx and heavily involved in meetings and due diligence between BRPA and NeuroRx.

43. ***Individual Defendants***. The term "Individual Defendants" and "BRPA Board" refers to defendants Ackerman, Birdoff, Fong, Koenig, Rex, and Taylor.

44. ***BRAC Defendants***. The term "BRAC Defendants" refers to EBC, BRAC, Levine, and Nussbaum.

45. ***NeuroRx Defendants.*** The term "NeuroRx Defendants" refers to defendants Javitt and Daigneault.

46. ***NRXP*** (formerly BRPA) is now a publicly traded company that holds itself out as a "clinical-stage biopharmaceutical company developing therapeutics for the treatment of central nervous system disorders, specifically suicidal depression and post-traumatic stress disorder (PTSD)."

JURISDICTION AND VENUE

47. This action arises under the laws of the State of Delaware because it pertains to breaches of fiduciary duty by directors, officers, and controlling stockholders of companies incorporated in Delaware.

48. Personal jurisdiction is proper over all defendants. All the individual defendants were directors/officers/managing members of BRPA, BRAC, EBC, NeuroRx, and/or NRx. All the entity defendants are Delaware entities.

SUBSTANTIVE ALLEGATIONS

I. THE MERGER PROCESS

A. BRPA GOES PUBLIC AS A SPAC

49. BRPA was a blank check company incorporated in Delaware and formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or other similar business combination with one or more businesses.

50. On October 13, 2017, BRPA filed a Form S-1 (Registration Statement) ("Registration Statement") with the SEC. Ackerman signed the Registration Statement. Therein, BRPA disclosed that "our initial stockholder [Sponsor] will continue to exert control at least until the consummation of a business combination." The Registration Statement defined the term "initial stockholder" to mean the Sponsor, Big Rock Partners Sponsor, LLC. Hence, there can be no dispute that Sponsor controlled BRPA at all times relevant to this action.

51. The Registration Statement further noted that, while not limiting themselves to a particular industry, "we intend to initially focus our search on identifying a prospective target business in the senior housing and care industry in the United States."

B. BRPA's IPO

52. On November 20, 2017, BRPA consummated the IPO for the sale of 6,000,000 BRPA units at a price of $10.00 per unit. The underwriters of the IPO exercised their over-allotment option to purchase 900,000 units at $10.00 per unit. Simultaneous with the consummation of the IPO, BRPA consummated the sale of 272,500 units to the Sponsor at a price of $10.00 per unit in a private placement. In total, these sales generated gross proceeds of $71,725,000.

53. EarlyBirdCapital, Inc. ("EBC") was the lead underwriter for the Company's IPO.

54. Following the IPO and the sale of the private placement warrants, a total of $69,000,000 was placed in the Trust Account.

55. After the closing of the IPO, BRPA commenced the process of identifying potential business combination targets, with BRPA's charter requiring that the Company consummate a business combination within twelve months, with two permissible extensions of three months each so long as Sponsor deposited into the trust account $500,000, or up to $575,000 if the underwriters' over-allotment option was exercised in full ($0.10 per share in either case) on or prior to the date of

the applicable deadline. These deposits would be in the form of a loan that would only be repayable upon the consummation of a business combination.

56. On November 17, 2018, with the first deadline pending, the Company entered into a transfer agreement (the "Transfer Agreement") with Sponsor and BRAC, an affiliate of EBC formed for the purpose of the Transfer Agreement. Pursuant to the Transfer Agreement, Sponsor transferred 1.5 million shares of BRPA common stock to BRAC and agreed to take all actions reasonably necessary to extend the period of time BRPA had to consummate an initial business combination up to two times for an aggregate of up to six months (the "Extensions").

57. BRAC agreed to loan BRPA the funds necessary to obtain the Extensions (the "Extension Funds") when and as required by the documentation entered into by the Issuer in connection with its initial public offering. Such loans were evidenced by a non-interest-bearing promissory note, payable upon consummation of any BRPA business combination. If BRPA did not consummate a merger, the note would be cancelled and any outstanding indebtedness thereunder forgiven **except** to the extent of any funds held outside of the Trust Account, after paying all other due and payable fees and expenses of the Issuer incurred prior to the date of such failure to consummate a merger.

58. Immediately following the Transfer Agreement, the two principals of BRAC, Levine and Nussbaum, beneficially owned 18.1% of BRPA's outstanding common stock.

59. On November 20, 2018, BRAC loaned the Issuer an aggregate of $690,000 in order to obtain the first three-month Extension and BRPA issued the Note to BRAC in such amount.

60. That same day, the Company announced its first three-month extension of the deadline to consummate a business combination.

C. BRPA FAILS TO SECURE A TRANSACTION RELATED TO MANAGEMENT'S EXPERTISE

61. From December 2017 through the end of 2019, BRPA signed letters of intent regarding ultimately unsuccessful business combinations with seven different companies. Only one of these companies involved real estate in any way. One involved the transportation industry, another company developed micro-batteries, and two involved vaping or cannabis.

62. Desperate to cash in on their Founder Shares rather than return cash to stockholders, between the IPO and May 24, 2021, Defendants proposed and approved seven more extensions of the deadline put in place by the Company's charter to consummate a business combination.

63. On May 21, 2019, BRPA stockholders approved a third extension of the deadline, to August 22, 2019. In conjunction with this extension, 2,119,772 shares of BRPA common stock exercised their right to convert shares into cash.

64. On August 21, 2019, BRPA stockholders approved a fourth extension, to November 22, 2019. In conjunction with this extension, 846,888 shares of BRPA common stock exercised their right to convert shares into cash.

65. On November 21, 2019, BRPA stockholders approved a fifth extension of the deadline, to March 23, 2020. In conjunction with this extension, 919,091 shares of BRPA common stock exercised their right to convert shares into cash.

66. On March 23, 2020, BRPA stockholders approved a sixth extension of the deadline, to July 23, 2020. In conjunction with this extension, 2,433,721 shares of BRPA common stock exercised their right to convert shares into cash.

67. By this point, only $6.192 million remained in the trust account. This was simply not enough cash to attract a worthwhile merger partner. But rather than fold up the SPAC, the Fiduciary Defendants continued their search rather than lose out on their practically free shares and warrants.

68. On July 23, 2020, BRPA stockholders approved a seventh extension of the deadline, to December 23, 2020. In conjunction with this extension, 27,786 shares of BRPA common stock exercised their right to convert shares into cash.

69. As BRPA's cash trust depleted from stockholder redemptions, the Fiduciary Defendants became desperate.

70. On November 9, 2020, an investment manager at GEM Yield Bahamas Ltd. ("GEM") introduced BRPA representatives to representatives of NeuroRx. As elucidated below, GEM was a significant stockholder of NeuroRx and the controlling stockholder of Relief Therapeutics Holding AG ("Relief"), a biopharmaceutical company. Relief was NeuroRx's counterparty to a cooperation agreement for commercialization of aviptadil, a drug aiming to prevent lung injury in Covid-19 infected patients.

71. On November 11, 2020, Mr. Ackerman and a representative from EBC had a telephonic meeting with Dr. Javitt and Alessandra Daigneault ("Daigneault"), general counsel and corporate secretary of NeuroRx, during which Dr. Javitt and Ms. Daigneault provided an overview of NeuroRx's business and expressed their interest in NeuroRx becoming a **Nasdaq-listed company** by consummating a transaction with a special purpose acquisition company.

72. During this meeting, Dr. Javitt communicated his belief that the equity valuation of NeuroRx should be at least $750 million based on the market capitalization of Relief.

73. This valuation neglected important information, including that Relief's majority stockholder was GEM, who had a substantial interest in inflating the value of NeuroRx to support a business combination with a naïve SPAC.

D. GEM TAKES ADVANTAGE OF COVID-19

74. GEM Global Yield, an alternative investment fund, has as its business model entering into securities purchase agreements with issuers, wherein securities are issued, generally warrants, and GEM is permitted to purchase a specified amount of the issuer's common stock at a discount to the trading price. GEM then subsequently sells this stock on the open market at a substantial profit.

75. This type of financing, pejoratively described as "death-spiral financing," has been censured as illegal dealer activity by the SEC, and indicates that the market price of a company does not reflect that company's fundamental underlying value.

76. On October 18, 2019, NeuroRx entered into a share subscription facility agreement with GEM. Under the terms of this agreement, following the successful listing of NeuroRx on an exchange for trading, GEM could purchase shares of NeuroRx at a 10% discount. NeuroRx could also require these purchases in order to raise capital, but the 10% discount would permit GEM to immediately profit from that exchange. Additionally, if NeuroRx was listed or completed a private

transaction which resulted in a change of control of NeuroRx, NeuroRx would issue GEM a warrant and pay a commitment fee of $1.9 million.

77. At this time, NeuroRx had as its only asset, NRX-101, a compound Dr. Javitt believed could treat depression and suicidality. NRX-101 was in phase 3 initiation of clinical trials to treat bipolar depression in 2019.

78. In 2019, GEM was the largest stockholder of Relief, owning 26.8% of its outstanding shares. GEM also had a share subscription agreement with Relief, entered into in December 2015. This facility gave Relief the right to execute draw downs by which GEM would lend its own shares to be sold on the market up to a total CHF 25 million. The Company would receive the proceeds corresponding to the amount sold deducted from a 10% fee. GEM would then have its shares reimbursed via a regular capital increase.

79. In 2019, Relief issued nine press releases. In 2018, Relief issued eight press releases.

80. Relief's product "pipeline" included aviptadil, a peptide under study for the treatment of sarcoidosis, a lung condition commonly experienced by Covid-19 infected patients.

81. In February 2020, an executive of GEM approached NeuroRx to assess the scientific merit of an idea proposed by Relief's Dr. Yves Sagot: that aviptadil might have therapeutic benefit in the treatment of COVID-19.

82. On March 1, 2020, Relief stock closed at CHF 1.04 per share.[2]

83. As noted by NRXP in its 2022 lawsuit against Relief,

> Relief was willing to extort financial concessions from NeuroRx because it had a strategy to profit from doing so. The people who drove this strategy, as NeuroRx eventually learned, had a serial history of misconduct for which they have been sanctioned, suspended, disbarred, fined, and, in one case, imprisoned. For Relief and this cadre of bandits, **the pandemic was just another looting opportunity**, and NeuroRx provided them with a cloak of legitimacy.[3]

84. On March 11, 2020, Relief began a blitz of press releases with the announcement that that Dr. Javitt would be proposed for election as Vice Chairman of its board of directors at Relief's annual meeting in June 2020. Relief also announced that Dr. Javitt, coincidentally, would guide development of aviptadil for the treatment of COVID-induced acute respiratory distress syndrome. NeuroRx was not mentioned.

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[2] About $1.17 per share as of March 1, 2020. All price values for Relief stock have been adjusted to account for a 400:1 reverse split implemented in 2023.

[3] *NeuroRx, Inc. v. Relief Therapeutics Holding AG, et al.*, Index No. 6510162, Complaint at ¶14 (N.Y. Sup. Ct. January 10, 2022) ("NRXP v. Relief Complaint").

85. On March 17, 2020, Relief announced that aviptadil would undergo a clinical trial at the Rambam Healthcare Campus in Israel under the coordination of Dr. Javitt and the head of Israel's COVID task force. NeuroRx was not mentioned.

86. On March 24, 2020, GEM received ten million new warrants from Relief as compensation for a loan of CHF 500,000.[4]

87. On March 25, 2020, Relief announced that Relief and NeuroRx had filed an Investigational New Drug application with the U.S. FDA.

88. Relief proceeded to issue roughly one aviptadil-hyping press release per week through the rest of 2020.

89. Relief needed NeuroRx and its access to trials in the United States and Israel. The press releases refer only to studies in the United States and Israel.

90. On July 16, 2020, GEM and Relief announced that they had entered into a binding agreement relating to GEM's shareholder loan to Relief. Under the terms of the agreement, GEM redeemed CHF 1,723,000[5] in debt for newly issued shares of Relief representing a 10% discount to the closing price of Relief on July 14, 2020. As a result of this transaction, GEM received 58 million shares of Relief.

[4] Equivalent to $510,000 as of March 24, 2020.

[5] $1,822,934 as of July 16, 2020.

91. Relief's stock price steadily rose until July 31, 2020 when it closed at CHF 13.60.[6]

92. On August 3, 2020, Relief issued a press release announcing that "RLF-100 (aviptadil) showed rapid recovery from respiratory failure in the most critically ill patients with COVID-19." On this news, Relief's daily trading volume skyrocketed from the low tens of thousands of shares to 769,000 shares.

93. On August 6, 2020, Relief issued a press release announcing that "NeuroRx has been granted Investigational New Drug (IND) permission to test RLF-100 (aviptadil) for inhaled use in patients with moderate and severe COVID-19 in order to prevent progression to respiratory failure."

94. By August 10, 2020, Relief stock closed at CHF 280.00.[7]

95. While Relief stock declined over the next several months, the constant barrage of "news" regarding aviptadil propped the price up until late 2022.

96. GEM used the artificially inflated price of Relief to then artificially inflate the value of NeuroRx. In fact, the only basis for Defendants' valuation of NeuroRx was the artificially inflated market capitalization of Relief.

[6] $14.89 as of July 31, 2020.

[7] $305.20 as of August 10, 2020.

97. Relief's market capitalization has plummeted alongside NRXP's, as it has declined from $1.4 billion in November 2020 to $19.7 million in March 2024.

98. Defendants' valuation of NeuroRx also failed to risk-adjust the prospects of FDA approval of aviptadil that would permit NeuroRx to market the drug in the United States.

E. THE NEURORX DEFENDANTS HIDE CONCERNS ABOUT RELIEF

99. On January 10, 2022, the NRXP v. Relief Complaint disclosed for the first time the truth about NeuroRx's knowledge and beliefs regarding Relief during the process leading to the Merger Agreement, at the time the Proxy was filed, and at the time of the Merger's consummation.

100. In April 2020, an individual named Adam S. Gottbetter, "called Dr. Javitt claiming that he was acting as 'Head of M&A' for Relief's largest shareholder and demanded material nonpublic information regarding NeuroRx's work." GEM was Relief's largest stockholder at this time.

101. As later pled by NRXP in 2022, NeuroRx looked into Mr. Gottbetter and learned that he had pled guilty to federal securities fraud for penny-stock manipulation in 2015 and was sentenced to 18-months in prison, paid a $5 million fine, and accepted a lifetime ban from the penny stock industry. NeuroRx knew that "[g]overnment authorities had reported that Gottbetter 'complained about the

difficulties of stock manipulation, but conceded that robbing a bank was the only other way to make so much money so quickly.'"

102. NeuroRx also discovered "during 2020" through its research, that other principals and agents of Relief had a history of unlawful behavior and had made "misleading public statements about the collaboration" giving rise to concerns about sharing patient data with Relief.

103. Dr. Raghuram Selvarau, Relief's Board Chair, had been disciplined by FINRA regarding his engagement in outside business activities while a General Securities Representative and Research Analyst at Aegis Capital Corporation in 2013 and 2014. On April 24, 2015, he settled with FINRA regarding its allegation that he had:

> provided research advice to "Company A" and helped it prepare marketing materials, but failed to provide any prior written notice to Aegis of this outside business activity or of the compensation he received from Company A. In addition, in December 2013, [he] submitted a questionnaire to Aegis in which he attested that he was not engaging in any outside business activities. This statement was not accurate.[8]

104. Dr. Selvaraju was then discharged from his next job at MLV & Co. LLC because of a failure to disclose outside employment.[9]

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[8] NRXP v. Relief Complaint, ¶64.
[9] *Id*.

105. Relief's regulatory consultant appointed in November 2020 also had a history that was alarming to NeuroRx. He had received a fine from the Israel Securities Authority in 2019 for "misleading shareholders in his role as Chairman of Kitov Pharmaceuticals" and had "invoked the Fifth Amendment when subpoenaed by the SEC in its related investigation of the same events."[10] Dr. Selvaraju covered Kitov in his role as a licensed securities analyst for H.C. Wainwright while Dr. Waymack led Kitov.

106. And it appeared to NeuroRx that Dr. Selvaraju, Mr. Gottbetter, and another member of Relief's Board, Peter de Svastich were connected with one another through prior roles at TYME Technologies, Inc., a penny-stock biotechnology company.[11] Gottbetter's office served as the corporation's principal executive office, de Svastich was President, Treasurer, Secretary, and sole director of the predecessor corporation to TYME, and Dr. Selvaraju served as its investor relations contact. NeuroRx also learned that Dr. Selvaraju's role at TYME triggered FINRA's disciplinary action against him.

107. Gottbetter appears to have collaborated with GEM since at least 2012. Moreover, GEM was also involved with TYME Technologies, as de Svastich has

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[10] *Id.*, ¶65.
[11] *Id.*, ¶66.

served as a managing director of GEM since 2010, including during his time at TYME.

108. NeuroRx also had serious concerns about Relief's public misstatements, including that:

a. From 2016 to 2019, Relief frequently claimed that it was engaged in Phase 3 clinical trials of aviptadil, or that these trials were in its pipeline. In reality, **<u>Relief never conducted Phase 3 trials of aviptadil</u>**.

b. Relief's March 11, 2020 press release stating that it "owns Investigational New Drug licenses . . . covering the use of Aviptadil" was false, as the Investigational New Drug license that Relief claimed to own had been cancelled years earlier. In fact, Relief had never obtained the Investigational New Drug license from the Research Foundation for the State University of New York.

c. Relief issued a press release on March 25, 2020 stating that it "has sufficient immediately shippable drug substance to treat more than 100,000 Americans." In fact, Relief possessed zero doses of human-grade aviptadil drug substance. It only had laboratory grade material that had expired at least five years earlier. Dr. Javitt allowed this statement to be attributed to him in the press release, only to claim later that he had been duped.

d. Relief had never disclosed to its investors that Relief's Board had voted in March 2020 to award NeuroRx a 10% stake in Relief in exchange for a partnership to develop aviptadil.

e. In an interview with a Swiss media outlet, *The Market* on August 7, 2020, Dr. Selvaraju stated that "Relief owns the patents on Aviptadil that are currently valued in the US and Europe." In fact, the patent on aviptadil had expired decades earlier, and Relief's patent only covered a formulation that was never used in practice and that caused the peptide to clump and become inactivated.

f. On August 6, 2020, Relief issued a press release stating that Relief owns "a patented formulation of Aviptadil . . ., which has been granted FDA Fast Track Designation, FDA emergency use IND authorization, and an expanded access protocol." According to the *NRXP v. Relief* Complaint, "[t]hese statements were not merely false, but reflected a wanton disregard for human safety."[12]

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[12] *Id.*, ¶67(g).

109. These contemporaneous concerns were plead in the *NRXP v. Relief* Complaint, filed on January 10, 2022. For example, after a meeting between NeuroRx and Relief on August 9, 2020, NeuroRx was "[c]oncerned that Relief's representations about its rights in Prof. Said's work may not have been true."[13] On September 6, 2020, Defendant Javitt wrote to Dr. Selvaraju,

> [W]e were operating in the belief that you had a license to Stony Brook's IP because you told everyone you did. We almost walked into a buzz saw. The Stony Brook people were wondering how you could have been so strident about 'it's our drug' when every piece of paper had their letterhead at the top. . . . If you don't close on [the proposed collaboration agreement by] Tuesday, I suggest you gather up every document in your possession that says Stony Brook on it and return it to the People of the State of New York."[14]

110. The NeuroRx Defendants had full knowledge of these facts at the time of the Merger because it learned of them in 2020. As stated in the *NRXP v. Relief* Complaint, "[a]s NeuroRx came to learn during 2020, some of Relief's principals and agents had a history of unlawful behavior, and Relief made numerous misleading public statements about the collaboration that reflected a grave disregard for patient safety and Relief's legal obligations."[15] Defendants Javitt and Daigneault, the CEO and General Counsel of NeuroRx, were the two individuals most involved

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[13] *Id.*, ¶37.
[14] *Id.*, ¶38.
[15] *Id.*, ¶63.

in the relationship with NeuroRx. NeuroRx began investigating these concerns following the August 9, 2020 meeting.[16] The result of this investigation led NeuroRx to refuse to share patient data with Relief, which in turn caused conflict in the collaboration.[17]

111. But none of these concerns about Relief's principals and agents, or Relief's public statements, was disclosed to BRPA stockholders before the Merger's consummation.

F. DEFENDANTS FALL FOR GEM'S SHELL GAME

112. Nevertheless, BRPA management's review of the market opportunity for the NeuroRx COVID-19 drug and the NeuroRx Antidepressant Drug Regimen, as well as BRPA's management's view of the value that the public equity markets were ascribing solely to the NeuroRx COVID-19 Drug as represented by the $1.5 billion market valuation of Relief (which was entitled to 50% of the profits from sales of the NeuroRx COVID-19 Drug in the United States, Canada, and Israel), BRPA's management believed that a $750 million equity value was supportable. As described *infra*, BRPA's management had no experience investing in

[16] *Id.*, ¶64.
[17] *Id.*, ¶53.

pharmaceutical companies, let alone development-stage pharmaceutical companies with no FDA-approved products.

113. This valuation was entirely based upon an untested drug taking advantage of the U.S. FDA's emergency use authorization at the time COVID-19 vaccines began rolling out. NeuroRx did not own the patent to this drug, having only a three-year license limited to the U.S., Canada, and Israel.

114. As later publicly disclosed, by November 2021, NeuroRx failed to even gather sufficient data from clinical trials to successfully obtain an emergency use authorization.

115. BRPA sent NeuroRx a draft letter of intent (the "LOI") following the November 11, 2020 telephonic meeting that set forth a summary of the material terms of a potential business combination between BRPA and NeuroRx for aggregate consideration that would be based on an equity value of NeuroRx of $750 million. Between November 11 and November 14, Mr. Ackerman, Dr. Javitt, Ms. Daigneault, as well as representatives of EBC held multiple telephonic meetings during which they discussed the equity value of NeuroRx and the other terms of the LOI. During these telephonic meetings, the parties agreed to an equity value of NeuroRx that would be based on aggregate consideration of 50 million shares of Common Stock (assuming a value of $10 per share) and on establishing two

potential earnout payments equal to 25 million shares of Common Stock and $100 million in cash in the aggregate (the “earnout consideration”).

116. On November 14, 2020, a mere **five days** after the initial introduction, representatives of BRPA and NeuroRx executed the LOI.

117. BRPA management commenced a review of the documents provided in NeuroRx’s data room on November 14, 2020. On November 17, 2020, Mr. Ackerman and representatives from EBC held follow-up telephonic meetings with representatives of NeuroRx’s management to further discuss the potential business combination transaction and diligence process. On November 20, 2020, BRPA management had a call with its Board six days after signing the LOI to brief them on the discussions with NeuroRx to date and the potential business combination transaction in general. The Board authorized management to negotiate a business combination transaction with NeuroRx.

118. On November 19, 2020, GEM filed a notification that it had increased its share ownership of Relief from 23.1% in June 2020 to 51.38% through its redemption of debt and increases to the subscription facility. This meant that GEM could unilaterally control Relief to continue maintaining its stock price and thereby pump the “value” of NeuroRx.

119. On November 23, 2020, Mr. Ackerman received a letter from Nasdaq stating that, since BRPA had not completed a business combination within 36 months of its initial public offering, BRPA would be delisted, pending any appeal of that ruling. Mr. Ackerman informed the BRPA Board and representatives of NeuroRx of the development. BRPA appealed the ruling, and Nasdaq scheduled the Nasdaq Appeal for January 14, 2021.

120. On December 13, 2020, BRPA Board held a meeting, [redacted]

121. EBC then presented its valuation of NeuroRx and reasons for the Merger.

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18 [redacted]

122. [redacted]

123. [redacted]

124. [redacted]

[redacted]

[redacted]

125. [redacted]

126. [redacted]

127. [redacted]

128. Following the meeting of the BRPA Board, the parties executed the Merger Agreement on December 13, 2020.

129. On the morning of December 14, 2020, prior to the commencement of trading of shares of Common Stock on the Nasdaq, the parties issued a press release announcing the transaction.

130. The stock price of BRPA immediately skyrocketed from just over $10 per share to $62.71 over the next two months.

131. On December 18, 2020, BRPA held a stockholder meeting to extend the date by which it had to consummate an initial business combination. At the meeting, BRPA's stockholders approved extending the date by which BRPA must complete a business combination transaction to April 23, 2021. No BRPA stockholders exercised their conversion rights in connection with such extension.

132. On January 4, 2021, BRPA received an additional notice from Nasdaq stating that BRPA's failure to hold an annual stockholder meeting for the fiscal year ended December 31, 2019 by December 31, 2020, as required by Nasdaq Listing Rule 5820, could serve as an additional basis for delisting BRPA's securities from Nasdaq. BRPA requested that this issue be added to the Nasdaq Appeal.

133. On January 14, 2021, BRPA attended a hearing before the Nasdaq Hearings Panel with respect to the November 23, 2020 and January 2, 2021 delisting notices. During the hearing, BRPA requested an extension through May 24, 2021 to regain compliance with the Nasdaq listing rules.

134. On January 15, 2021, BRPA received notice from Nasdaq that Nasdaq had granted BRPA's request to continue its listing on Nasdaq through May 24, 2021, the Extended Date.

135. On January 27, 2021, BRPA filed its initial Form S-4 Registration Statement with the SEC. BRPA amended this Registration Statement five times before the stockholder vote on the Merger.

136. On March 12, 2021, BRPA entered into Subscription Agreements with the Investors pursuant to which BRPA would, substantially concurrently with and contingent upon the consummation of the Merger, issue an aggregate of 1,000,000 shares of Common Stock to the Investors at a price of $10.00 per share, for aggregate gross proceeds to BRPA of $10,000,000.

137. By March 15, 2021, Relief had fallen behind on its funding obligations to NeuroRx by more than $1 million. During a telephone conversation on that day between Relief's CFO, Jack Weinstein, and Defendants Javitt and Daigneault, Weinstein stated that "(1) **Relief signed the Collaboration Agreement under 'duress' due to pressure from its principal investor, GEM**; (2) the Collaboration was no longer worthwhile because NeuroRx had **'missed the pandemic'**; and (3) NeuroRx would **not receive 'any more of [Relief's] money'** absent 'a renegotiation

of the Collaboration Agreement.'"[19] Weinstein further stated that demand for COVID therapeutic drugs was 'waning'.[20] Additionally, "Relief said that it 'won't pay a dime' for further development."[21] Hence, Defendants Javitt and Daigneault were explicitly aware that Relief was reneging on the Collaboration Agreement and refusing to further fund development of aviptadil by no later than March 15, 2021.

138. On March 19, 2021, BRPA and NeuroRx agreed to amend the Merger Agreement to extend the Outside Date from April 23, 2021 to May 24, 2021, which is the Extended Date.

139. On March 28, 2021, NeuroRx entered into a Common Stock Purchase Warrant, dated March 28, 2021, for the purchase by GEM of up to 1,053,738 shares of NeuroRx Common Stock at an exercise price of $15.84 per share (the "GEM Warrant"). In connection with the issuance of the GEM Warrant, GEM partially exercised the GEM Warrant to purchase 473,486 shares by payment of funds to NeuroRx on March 30, 2021 of $7,500,018. These shares would be converted to millions of shares of BRPA in the Merger. In addition, GEM indicated its intention

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[19] NRXP v. Relief Complaint, ¶92.
[20] *Id.*, ¶51.
[21] *Id.* ¶9.

to exercise its remaining 580,252 warrant shares immediately following the BRPA shareholder vote.

140. The Proxy described this financial arrangement as non-dilutive to BRPA shareholders, but, crucially, failed to disclose the conversion of these shares to BRPA shares or the exercise price payable by GEM following the Merger.

141. On March 29, 2021, NeuroRx issued a press release, filed as an exhibit to a BRPA Form 8-K, in which Defendant Javitt stated “In exactly 12 months, a lifesaving drug has advanced from concept to clinical success in partnership with Relief Therapeutics in the midst of a public health emergency that has claimed the lives of millions.” This press release did not contain any discussion of the ongoing dispute with Relief or the concerns of NeuroRx management about Relief.

142. On April 19, 2021, Relief issued a press release regarding certain statements made in an amendment filed April 16, 2021 to the BRPA S-4 Registration Statement. This press release sought to inform the public about the nature of the ongoing dispute between Relief and NeuroRx and the obligations of each under the Collaboration Agreement.

143. Later that day, NeuroRx issued its own press release, later filed as an exhibit to a Form 8-K by BRPA. This press release contains no mention of the conversation between Weinstein, Javitt, and Daigneault, nor any mention of Relief’s

repudiation of the Collaboration Agreement. Instead, the press release reaffirms NeuroRx's commitment to the Collaboration Agreement and working with Relief to resolve issues in an amicable manner.

144. On April 21, 2021, BRPA held a stockholder meeting to extend the date by which it had to consummate an initial business combination. At the meeting, BRPA's stockholders approved extending the date by which BRPA must complete a business combination transaction to May 24, 2021. Stockholders holding 330 public shares exercised their conversion rights in connection with such extension.

145. As of the record date of April 23, 2021, BRPA had only 2,687,912 shares of common stock remaining outstanding. BRAC Lending owned 53.275 of those shares, while Sponsor owned another 18.51%.

	Prior to the Transactions (2)		**Assuming No Conversions (3)**		**Assuming Maximum Conversions (4)**	
Name and Address of Beneficial Owners (1)	**Number of Shares**	**Percentage**	**Number of Shares**	**Percentage**	**Number of Shares**	**Percentage**
Officers and Directors Prior to the Transactions						
Richard Ackerman (5)	497,500	18.51%	655,565	1.22%	616,435	1.16%
Bennett Kim	—	0%	—	0%	—	0%
Richard Birdoff	—	0%	—	0%	—	0%
Michael Fong	—	0%	—	0%	—	0%
Stuart Koenig (6)	—	0%	—	0%	—	0%
Albert G. Rex (6)	—	0%	—	0%	—	0%
Troy T. Taylor (6)	—	0%	—	0%	—	0%
All	497,500	18.51%	655,565	1.22%	616,435	1.16%
Greater than 5% Holders						
BRAC Lending Group LLC (7)	1,432,000	53.27%	562,435	1.05%	301,565	*
Big Rock Partners Sponsor, LLC (5)	497,500	18.51%	655,565	1.22%	616,435	1.16%
EarlyBirdCapital, Inc. (8)	138,000	5.13%	1,298,000	2.37%	1,298,000	2.41%

Glytech, LLC (9)	—	0%	14,590,871	27.2%	14,590,871	28.0%
GEM Yield Bahamas Limited (10)	—	0%	3,477,335	6.5%	3,477,335	6.7%

Ackerman, Koenig, Rex, and Taylor were all members of Sponsor and thus had an interest in Sponsor's Founder Shares.

G. BRPA Solicits Approval of the Merger With the Proxy

146. On May 21, 2021, BRPA filed the Proxy with the SEC. In soliciting the public stockholders' support for the Merger and encouraging them to forego their redemption rights, the Proxy made numerous representations. This Proxy set the date of the Annual Meeting to be May 24, 2021.

147. The Proxy explicitly provided that stockholders had the right to redeem their stock before the Merger for approximately $10.80 per share (the "Redemption Right"). Stockholders who wanted to exercise their Redemption Right had to do so no later than ten business days after the Annual Meeting, June 8, 2021 (the "Redemption Date"). As of April 23, 2021, the trust account contained approximately $6.0 million, according to the Form 8-K filed on May 26, 2021.

148. The Proxy indicated that certain PIPE investors would purchase one million shares of BRPA Class A common stock at $10 per share at the time of the Merger's consummation.

149. BRPA had no ongoing business operations, and its sole significant asset was its cash tied up in the Trust Account. Hence, the inherent value of its stock was essentially entirely tied to its cash per share. The purported value of the post-merger company hinged on the value of BRPA, because the consideration for the Merger was BRPA stock. For example, the Proxy represented multiple times that the valuation ascribed to NeuroRx at closing consisted of the immediately payable Merger Consideration of 50 million shares of BRPA common stock at $10.00 per share. Proxy at 4.

150. However, the Proxy never disclosed BRPA's net cash per share outright, and Stockholders who wished to know BRPA's cash per share would have had to conduct a scavenger hunt through the Proxy to attempt to calculate this figure. This omission misrepresented, or at best obscured, the fact that BRPA actually had far less inherent value than the $10 per share that had been assigned to it, and would provide far less cash to the post-Merger company than the $10 per share value implied.

151. Finally, the Proxy disclosed certain conflicts of interest with respect to the Merger, including that BRPA's directors and executive officers and their affiliates owned shares of Common Stock and private placement Units that would be worthless if the Merger was not approved. The Proxy explicitly noted that those

interests might have influenced their decision to approve the business combination with NeuroRx.

152. Additionally, Defendant Ackerman's affiliate, A/Z Partners, was liable to ensure that the proceeds of the trust account were not reduced by vendor claims in the event the Merger was not consummated. But if the Merger was consummated, then BRPA would be liable for these claims. As a result, Defendant Ackerman had a clear conflict of interest in assuring that the Merger was consummated.

153. The Proxy also explicitly acknowledged the inherent conflict in such de-SPAC mergers, that insiders with conflicts of interest could take actions to the detriment of unaffiliated stockholders in order to prevent redemptions and keep the trust account above $5 million:

> At any time prior to the annual meeting, during a period when they are not then aware of any material nonpublic information regarding BRPA or its securities, BRPA, the holders of insider shares, NeuroRx, the NeuroRx officers and directors and/or their respective affiliates may purchase Common Stock from institutional and other investors who vote, or indicate an intention to vote, against the business combination proposal, or execute agreements to purchase such shares from such investors in the future, or they may enter into transactions with such investors and others to provide them with incentives to acquire shares of Common Stock or vote their shares of Common Stock in favor of the business combination proposal. The purpose of such purchases and other transactions would be to ensure that BRPA has in excess of $5,000,001 of net tangible assets to consummate the Transactions where it appears that such requirement would otherwise not be met. While the exact nature of

> any such incentives has not been determined as of the date of this proxy statement / prospectus / consent solicitation statement, they might include, without limitation, arrangements to protect such investors or holders against potential loss in value of their shares, including the granting of put options and the transfer to such investors or holders of shares owned by the Sponsor for nominal value.

154. However, the Proxy never disclosed BRPA's net cash per share, and Stockholders who wished to know this figure were left trying to piece it together based on dispersed and incomplete information.

H. THE MERGER'S CLOSING

155. On May 24, 2021, the holders of 2,135,000 shares of common stock of BRPA were present in person or by proxy. All of these shares voted in favor of the Merger. As of the record date, there were only 2,687,912 shares of BRPA common stock issued and outstanding.

156. Later that day, the Merger was consummated, and BRPA changed its name to NRX Pharmaceuticals, Inc., with its common stock and warrants trading on the NASDAQ under the symbols "NRXP" and "NRXPW" respectively.

157. Concurrent with the closing of the Merger, BRPA and EBC entered into an amendment to the Business Combination Marketing Agreement, dated as of November 20, 2017 ("BCMA"), by and between BRPA and EBC, pursuant to which,

in lieu of the cash fee payable to EBC pursuant to the BCMA, BRPA issued to EBC at the Effective Time an aggregate of 200,000 shares of BRPA Common Stock.

158. After giving effect to the Merger-related transactions and the consummation of the PIPE Investment there were 47,459,958 shares of Common Stock issued and outstanding as of May 24, 2021.

159. 216 additional shares were redeemed by the Redemption Date, leaving 552,196 public shares of Common Stock remaining from the IPO.

160. By the end of 2021, as it became apparent that NeuroRx's COVID drug was nothing but smoke and mirrors, the Company's stock had declined below $5 per share. By June 2022, the stock price was below $1 per share.

161. Because the Company's financials have largely met or exceeded the projections made in support of the Merger, other factors must have created a false impression that the Company was worth roughly $10 per share when the Merger was approved. The misrepresentations and omissions alleged herein appear to have been the primary cause, if not the only cause, for this false impression.

II. THE PROXY WAS MATERIALLY INCOMPLETE AND MISLEADING

162. The Registration Statement and Proxy were materially incomplete and deficient leading up to the Redemption Date.

163. The Individual Defendants had an affirmative fiduciary obligation to provide materially accurate and complete information to stockholders in connection with the redemption choice and Merger vote.

164. The Merger Agreement required both BRPA and NeuroRx to "use their reasonable best efforts to cause the Registration Statement when filed with the SEC to comply in all material respects with all Legal Requirements applicable thereto and to not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading."

165. The full NeuroRx Board also discussed the existence of the Registration Statement, as well as how to access it, during a meeting on May 2, 2021.

166. The Proxy calculated the Merger Consideration "using a $10.00 reference price."

167. The Board determined that the valuation of the Merger Consideration, $500 million or 50 million shares of BRPA at $10.00 per share, before satisfaction

of earnout milestones, would equal the valuation of the NeuroRx COVID-19 Drug at the Closing, before satisfaction of the Earnout Milestones, based upon the Swiss stock market's valuation of Relief Therapeutics.

168. The Proxy also stated that BRPA stockholders could redeem their stock for approximately $10.80 per share. It also repeated that certain PIPE investors would purchase BRPA Class A common stock at a value of $10 per share. Moreover, as noted above, BRPA's sole significant asset was its cash. Hence, the value of its stock was essentially entirely tied to its cash per share. However, the Proxy never disclosed that BRPA actually had much less than $10.00 cash per share as of the close of the Merger. Instead, the Proxy concealed BRPA's net cash per share and obfuscated the key inputs to calculating net cash per share—and thus the value—underlying BRPA's shares.

169. Like other SPACs, BRPA presented its public stockholders with a choice. They could redeem their stock (here for approximately $10.80 per share), or they could choose to roll their shares (and the corresponding cash per share) into the post-Merger NRXP that the stock market indicated had a value of $24.25 per share as of May 24, 2021. The amount of net cash per share that would be invested, though, was far less than $10 per share. Rather, NRXP's net cash was substantially

diminished by dilution and dissipation caused by various transactions, and was actually approximately $4.00 per share as of the Redemption Date.

170. It was also reasonable to expect that the Individual Defendants understood the importance of net cash per share to the value of the Merger and had such information readily available to them. The Individual Defendants touted their experience and qualifications to the stockholders in the Proxy and other SEC filings. Nothing prevented them from disclosing NRXP's net cash per share in a straightforward manner.

171. The net cash per share can be determined by the following formula: ((Cash – Costs) divided by (pre-Merger shares)). Thus, to calculate cash per share, BRPA stockholders were required to know, *inter alia*, (i) BRPA's total cash; (ii) the transaction costs for the Merger, (iii) the value of warrants issued by the Company and outstanding, and (iv) the total quantity of all BRPA shares.

172. According to the Proxy, as of March 31, 2021, BRPA held cash and marketable securities worth $5,968,035 in the trust account and had $232,000 in cash. BRPA would also receive $10,000,000 in cash from the PIPE.

173. According to the Proxy, BRPA had a warrant liability of $1,313,324 as of March 31, 2021.

174. Another 1,000,000 shares were issued to investors in the PIPE.

175. As of the Record Date, there were 2,687,912 shares of common stock issued and outstanding.

176. The net cash figure was never actually stated in the Proxy. The net cash per share inputs were obfuscated and scattered throughout the Proxy, sending stockholders who wished to calculate the cash per share and value per share on a scavenger hunt for the necessary data. BRPA's net cash per share was extremely difficult to discern, even for a sophisticated investor. Proxy solicitations are supposed to be clear and not a game of Clue.

177. Even without taking Merger costs into account, BRPA in fact had only approximately $4.00 per share in cash. Hence, the Proxy's representations concerning the Company's stock having a reference price of $10.00 per share were, at minimum, so materially incomplete as to be misleading.

178. A reasonable BRPA stockholder would find it important that the amount of cash per each share before the Merger was materially less than $10.00 (let alone less than $10.80, the redemption value of the shares), as the cash that would be invested per share in NeuroRx was substantially less than what the stockholders could expect to receive upon redemption. And because BRPA had much less than $10 cash per share, the post-Merger Company would be worth less too, and would have substantially less capital with which to develop its business.

179. Further, Proxy failed to accurately disclose the state of the collaboration arrangement between Relief and NeuroRx. On October 13, 2021, a NRXP shareholder letter disclosed for the first time that Relief had abandoned funding of the aviptadil project in January 2021, and had advised NeuroRx at the time that "that in their view the drug had failed and we had 'missed the pandemic.'" While the Proxy disclosed that Relief had not funded certain costs that it was obligated to under the Collaboration Agreement with NeuroRx, the Proxy failed to disclose the clear communications from Relief that it was abandoning the collaboration arrangement, that the drug had failed and "missed the pandemic," and that Relief would not provide "another dime" for the development of aviptadil.

180. Sponsor, the BRAC Defendants, and the Individual Defendants omitted this information entirely from the Proxy. If they did not know this information, then they failed reasonably inform themselves about NeuroRx before the consummation of the Merger and issuance of the Proxy.

181. Defendant Javitt and Defendant Daigneault participated in the phone call in which Relief's CFO stated Relief's position about the development of aviptadil. Despite the obligation of NeuroRx and its agents to ensure the Proxy contained material facts necessary to avoid misleading stockholders, neither Javitt or Daigneault acted to correct the Proxy.

182. The Proxy also failed to disclose GEM's ownership interest in Relief and role in connecting Relief with NeuroRx. A reasonable stockholder would find this background to be material because the valuation of NeuroRx was based on the valuation of a party related through shared ownership. Instead, the Proxy only discloses that GEM was "a significant shareholder of Relief and had a prior relationship with NeuroRx."

183. The Company's current stock price reflects the reality of these misleading statements and omissions.

CLASS ALLEGATIONS

184. Plaintiff brings this action individually and pursuant to Court of Chancery Rule 23 on behalf of similarly situated record and beneficial BRPA stockholders who were entitled to, but did not, redeem their BRPA shares as of the Redemption Date (the "Class").

185. This action is properly maintainable as a class action.

186. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

187. The Class is so numerous that joinder of all members is impracticable. According to documents filed with the SEC, holders of hundreds of thousands of

shares chose to forego their redemption rights. Thus, on information and belief, the Class here potentially covers hundreds, if not thousands, of individuals and entities.

188. There are separate questions of law and fact which are common to all Class members, including, without limitation:

a. Whether the Board was disinterested and independent with respect to the Merger;

b. Whether the BRAC Defendants controlled BRPA at the relevant times;

c. Whether Sponsor controlled BRPA at the relevant times;

d. Whether the BRAC Defendants and Sponsor constituted a control group with respect to BRPA at the relevant times;

e. Whether the Merger was entirely fair to BRPA stockholders;

f. Whether the Proxy contained material misstatements and omissions;

g. Whether the Defendants breached their fiduciary duties to Plaintiff and the Class;

h. The existence and extent of any injury to the Class caused by any breach; and

i. The proper measure of the Class's damages.

189. Plaintiff's claims are typical of the claims of other Class members, and Plaintiff has no interests antagonistic or adverse to the interests of other Class members. Plaintiff will fairly and adequately protect the interests of the Class.

190. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

191. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of other members or substantially impair or impede their ability to protect their interests.

192. Defendants have acted in a manner that affected Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

193. Questions of law or fact common to members of the Class predominate over any questions affecting only individual members, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

194. Indeed, as a challenge to a merger transaction in which Defendants are alleged to have made the same misleading disclosures to all stockholders, who subsequently suffered the same harm when they did not redeem their shares, there are no individualized issues that undermine class certification here.

COUNT I

Breach of Fiduciary Duty
Against the Sponsor

195. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

196. From the time of the IPO through the Merger, the Sponsor controlled BRPA and its evaluation of the Merger through its shareholdings, partnership with BRAC, and director appointments.

197. As a controlling stockholder, Sponsor owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty. These duties required Sponsor, *inter alia*, to place the interests of BRPA stockholders above its own unique personal interests.

198. Corporate fiduciaries can breach their duty of disclosure under Delaware law in a number of ways—by making a materially false statement, by omitting a material fact, or by making a partial disclosure that is materially misleading.

199. Sponsor exercised its control to secure a Merger that would benefit itself even though it was unfair and disadvantageous to BRPA's other stockholders. The Merger overvalued NeuroRx's business.

200. Sponsor caused BRPA to issue the Proxy that made materially false statements, omitted material facts, and made partial disclosures that were materially misleading.

201. Sponsor competed with the unaffiliated stockholders for money in the Trust Account.

202. The Merger was unfair, reflecting an unfair price and unfair process.

203. Through the events and actions described herein, Sponsor breached its fiduciary duties to Plaintiff and the Class by agreeing to, entering into, and causing the Merger without ensuring that it was entirely fair.

204. As a result, Plaintiff and the Class were harmed by these breaches of fiduciary duty, including by failing to redeem their shares prior to the Redemption Date.

COUNT II

Breach of Fiduciary Duty
Against the BRAC Defendants

205. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

206. From the November 2018 through the Merger, the BRAC Defendants exercised control over BRPA and its evaluation of the Merger through their shareholdings and affiliation.

207. As controlling stockholders, the BRAC Defendants owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty. These duties required the BRAC Defendants, *inter alia*, to place the interests of BRPA stockholders above their own unique personal interests.

208. Corporate fiduciaries can breach their duty of disclosure under Delaware law in a number of ways—by making a materially false statement, by omitting a material fact, or by making a partial disclosure that is materially misleading.

209. The BRAC Defendants exercised its control to secure a Merger that would benefit itself even though it was unfair and disadvantageous to BRPA's other stockholders. The Merger overvalued NeuroRx's business.

210. The BRAC Defendants caused BRPA to issue the Proxy that made materially false statements, omitted material facts, and made partial disclosures that were materially misleading.

211. The BRAC Defendants competed with the unaffiliated stockholders for money in the Trust Account.

212. The Merger was unfair, reflecting an unfair price and unfair process.

213. Through the events and actions described herein, the BRAC Defendants breached their fiduciary duties to Plaintiff and the Class by agreeing to, entering into, and causing the Merger without ensuring that it was entirely fair.

214. As a result, Plaintiff and the Class were harmed by these breaches of fiduciary duty, including by failing to redeem their shares prior to the Redemption Date.

COUNT III

Breach of Fiduciary Duty
Against the Individual Defendants

215. Plaintiff repeats and realleges all foregoing paragraphs as if fully set forth herein.

216. As BRPA directors, the Individual Defendants owed Plaintiff and the Class the utmost fiduciary duties of care and loyalty. These duties required the Individual Defendants, *inter alia*, to place the interests of BRPA stockholders above their own unique personal interests.

217. As BRPA directors, the Individual Defendants had a responsibility to

ensure that BRPA found an appropriate target company, carried out a business combination based on fair terms, and approved a transaction only if it was in the best interests of BRPA stockholders.

218. Each of the Individual Defendants either attended the sole meeting regarding a potential merger and voted to approve the Merger, or failed to attend the that meeting and did not speak out against the Merger.

219. Because the identity of the Individual Defendants who attended the meeting on December 13, 2020 is still unknown to Plaintiff despite the production of Board minutes, each Individual Defendant should be presumed to have attended this meeting and approved the Merger.

220. Corporate fiduciaries can breach their duty of disclosure under Delaware law in a number of ways: by making a materially false statement, by omitting a material fact, or by making a partial disclosure that is materially misleading.

221. The Merger was unfair, reflecting an unfair price and unfair process. The Individual Defendants failed to disclose (or otherwise misrepresented) material facts regarding the Merger, BRPA, and NeuroRx's business.

222. The Proxy also omitted material facts and made partial disclosures that were materially misleading.

223. Through the events and actions described herein, the Individual Defendants breached their fiduciary duties to Plaintiff and the Class prior to the Merger, thus impairing stockholders' ability to make an informed decision on whether to redeem their shares. The Proxy was materially false, misleading, and omitted material information.

224. As a result, Plaintiff and the Class were harmed by not exercising their redemption rights prior to the Redemption Date and were harmed by having to decide whether to redeem their shares without all material information concerning the fairness of the Merger.

COUNT IV

Aiding and Abetting Breach of Fiduciary Duty Against the NeuroRx Defendants

225. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

226. The Sponsor, Individual Defendants, owed fiduciary duties to BRPA and its stockholders at all relevant times.

227. The NeuroRx Defendants were aware of the fiduciary duties and obligations of the Sponsor, Individual Defendants, and BRAC Defendants, including their duties of loyalty and due care.

228. The NeuroRx Defendants knowingly participated in the breach of fiduciary duties by the Sponsor, Individual Defendants, and BRAC Defendants by failing to correct the Proxy that they knew to be materially misleading. The Merger Agreement obligated NeuroRx to use its "reasonable best efforts to cause the Registration Statement when filed . . . to not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading."

229. Through their review of the Registration Statement and Proxy, the NeuroRx Defendants knew these documents to be misleading. For example, the Proxy omitted entirely NeuroRx's concerns about Relief, and omitted Relief's repudiation of the Collaboration Agreement with NeuroRx. The Proxy also represented that NeuroRx could be valued at $500 million based upon the market valuation of Relief. The NeuroRx Defendants knew that these misrepresentations and omissions were materially misleading, but they refused to correct the materially misleading representations.

230. The full NeuroRx Board also discussed the existence of the Registration Statement, as well as how to access it, during a meeting on May 2, 2021. Both Defendant Javitt and Defendant Daigneault attended this meeting.

231. The Merger served the NeuroRx Defendants' own financial interests

while impairing the redemption rights of BRPA stockholders.

232. Plaintiff and the Class were damaged by the NeuroRx Defendants' aiding and abetting of the fiduciary breaches described herein.

233. Plaintiff and the Class have no adequate remedy at law.

COUNT V

Unjust Enrichment Against the NeuroRx Defendants

234. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

235. Through the Merger, the NeuroRx Defendants were enriched by receiving stock for NRXP from BRPA and becoming CEO and General Counsel of NRXP following the Merger.

236. The Class was impoverished through the Merger, and non-redemption of their redemption rights.

237. The NeuroRx Defendants' enrichment is connected to the Class's impoverishment.

238. The NeuroRx Defendants were not justified in obtaining their enrichment. For example, the NeuroRx Defendants misled BRPA stockholders to procure their own enrichment.

239. Plaintiffs and the Class were damaged by the NeuroRx' Defendants'

unjust enrichment.

240. Plaintiffs and the Class have no adequate remedy at law

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Class, and against Defendants, as follows:

A. Declaring that this action is properly maintainable as a class action;

B. Certifying the proposed Class;

C. Declaring or otherwise finding that the Sponsor and Individual Defendants breached their fiduciary duties to BRPA stockholders;

D. Declaring or otherwise finding that the BRAC Defendants breached their fiduciary duties to BRPA stockholders;

E. Declaring or otherwise finding that the NeuroRx Defendants aided and abetted the Sponsor, Individual Defendants, and BRAC Defendants breaches of fiduciary duties;

F. Awarding Plaintiff and other members of the Class damages in an amount which may be proved at trial, together with interest thereon;

G. Ordering that the NeuroRx Defendants disgorge their unjust enrichment;

H. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' fees and costs;

I. Granting such other and further relief as the Court deems just and proper.

ASHBY & GEDDES, P.A.

<u>*/s/ Tiffany Geyer Lydon*</u>
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