IN THE UNITED STATES BANRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Tricida, Inc.	)	Case No. 23-10024 (JTD)
Debtor.	)	
	)	
Jackson Square Advisors LLC, in its capacity as the Liquidating Trustee of the Tricida Liquidating Trust,	)	
	)	Adv. Pro. No. 25- _____(JTD)
Plaintiff,	)	
v.	)	
	)	
David Bonita, Klaus Veitinger, Gerrit Klaerner, Robert McKague, Geoffrey Parker, Dawn Otto, Robert Alpern, and OrbiMed Advisors LLC,	)	
	)	
Defendants.	)	

Complaint

Plaintiff Jackson Square Advisors, LLC, in its capacity as the Liquidating Trustee of the Tricida Liquidating Trust ("Trustee"), brings this Complaint against Tricida's former officers and directors David Bonita, Klaus Veitinger, Gerrit Klaerner, Robert McKague, Geoffrey Parker, Dawn Otto, and Robert Alpern for breaching their fiduciary duties and causing corporate waste, and against OrbiMed Advisors, LLC for aiding and abetting those breaches of fiduciary duty. Trustee alleges as follows:

Nature of the Action

1. This case is about how Tricida's former officers and directors breached their fiduciary duties to Tricida by wrongfully allowing insiders to sell Tricida's stock and paying themselves millions of dollars in bonuses so that they could make as much money as possible. In so doing, defendants intentionally stripped Tricida of over $740 million in assets, caused the

company to spiral into bankruptcy, and forced Tricida to dump its remaining assets for mere pennies on the dollar.

2. This was corporate abuse at its worst. If the former officers and directors had not been self-dealing and were truly acting as fiduciaries for Tricida (as they were required to do) and taken some basic steps to maximize Tricida's assets (like, for example, selling Tricida or using its assets to buy another company), they never would have chosen to pay, or chosen to take, millions of dollars in bonuses after sealing Tricida's fate and knowing Tricida would no longer exist. The Trustee therefore brings this case to hold these officers and directors responsible for their misconduct and the damages they caused to Tricida and its stakeholders.

3. To give this more context, Tricida was a pharmaceutical company that developed a drug called Veverimer to treat chronic kidney disease. In late October 2022, Tricida learned Veverimer's clinical trials failed and that Veverimer wouldn't get FDA approval. By the time Tricida got these results, Tricida had accumulated about $740 million in available net operating losses ("NOLs"). Companies accrue net operating losses when their deductible losses in a given year exceed their taxable income. Companies can use NOLs to offset their taxable income in later years. Tricida's NOLs were valuable because they could be used to offset future income if Tricida was acquired by another company, or if Tricida acquired a profitable company.

4. In November 2022, the officers and directors broke their promised fidelity to Tricida and breached their fiduciary duties by decimating the value of Tricida's NOLs, paying themselves millions of dollars in bonuses, and trading on insider (non-public) information.

5. Specifically, on November 15, 2022, Tricida's officers confirmed that Tricida's stock trading window would stay closed to board members so Tricida could explore a sale or restructuring. But just six days later, after being pestered to open the trading window for weeks

by Tricida's largest shareholder OrbiMed, Tricida's officers dumped that decision and inexplicably reopened the stock trading window for everyone, including the defendant directors. That allowed OrbiMed, which had two directors on Tricida's board (Defendants Bonita and Veitinger), to sell its holdings in Tricida. (OrbiMed is a global investment firm that invests in healthcare companies and currently manages approximately $17 billion across its public and private company investments worldwide.)

6. Shortly after the officers opened that trading window, OrbiMed sold all of its Tricida stock, which caused a "change of control" under Section 382 of the Internal Revenue Code and wiped out Tricida's $740 million NOL stockpile. The officers and directors knew that the NOLs were by far Tricida's largest asset, and that OrbiMed would trade its shares if they opened the trading window. But they refused to make any serious effort to extract value from those NOLs and allowed them to be rendered worthless, as they watched the company crumble from the damage they caused.

7. On the same day that the defendant officers said that Tricida's stock trading window had to stay closed to board members while the company explored a sale or restructuring, the defendant directors approved paying the defendant officers $2.4 million dollars in bonuses (which amounted to more than 100% of the officers' base salaries). There was zero business purpose for these bonuses and Tricida got no value for them.

8. Not coincidentally, the defendant officers were paid these bonuses the same exact day they agreed to reopen the stock trading window for the board members who authorized the bonuses. After the ensuing stock sales wiped out Tricida's NOLs, its assets were sold in bankruptcy for a mere $480,000 (or almost $2 million less than the officers' bonus payments).

9. As a result of all of this, the defendant directors and officers breached their fiduciary duties of due care, loyalty, and good faith regarding the bonus plan and payments, and by failing to protect Tricida's NOLs, which were by far its most valuable asset. Director defendants Bonita and Alpern also misused Tricida's confidential information by trading Tricida's stock in a manner that constituted a breach of their duty of loyalty under *Brophy v. Cities Service Co*., 70 A.2d 5 (Del. Ch. 1949), and its progeny.

10. And all the while, OrbiMed aided and abetted these breaches of fiduciary duty by pressuring Tricida's officers into opening the trading window, and enticing them to do so by using its board representatives (Bonita and Veitinger) to pay the officers windfall bonuses that had no benefit for Tricida and made no business sense because—as they all knew—they would liquidate or sell Tricida in the coming months.

11. Trustee therefore seeks to recover the damages inflicted by these defendants' wrongdoing for the benefit of Tricida's bankruptcy estate and its creditors.

The Parties

12. Jackson Square Advisors, LLC is the Liquidating Trustee of the Tricida Liquidating Trust (the "Trust"), a Delaware Statutory Trust. On January 11, 2023, Tricida filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), which commenced Tricida's Bankruptcy case (the "Bankruptcy Case"). The Trust was created, and the Trustee was appointed, pursuant to Tricida's Fifth Amended Chapter 11 Plan of Liquidation (the "Confirmed Plan"), which this Court confirmed in the Bankruptcy Case on May 23, 2023, and the Liquidating Trust Agreement of Tricida Liquidating Trust dated June 12, 2023 (the "Liquidating Trust Agreement"). The Confirmed Plan's Effective Date was June 12, 2023. The Confirmed Plan expressly retained the Retained Causes of Action

(as defined in the Confirmed Plan) belonging to Tricida and/or its bankruptcy estate, including the claims asserted in this Complaint, for post-confirmation enforcement by the Trust under Bankruptcy Code section 1123(b).

13. Defendant David Bonita ("Bonita") is an individual who, on information and belief, resides in the State of Connecticut. At all relevant times, Bonita was a member of Tricida's Board of Directors. Bonita has been General Partner and member of OrbiMed since February 2020, and before that he was a Private Equity Partner of OrbiMed from June 2013 to February 2020, and a Private Equity Principal of OrbiMed from December 2007 to June 2013. Before that, Bonita served in other roles after joining OrbiMed in 2004. At all relevant times, Bonita was an agent of OrbiMed and one of its designated representatives on Tricida's Board of Directors.

14. Defendant Klaus Veitinger ("Veitinger") is an individual who, on information and belief, resides in the State of Florida. At all relevant times, Veitinger was a member and Chairman of Tricida's Board of Directors, and a Venture Partner and agent of OrbiMed, and one of its designated representatives on Tricida's Board of Directors.

15. Defendant Gerrit Klaerner ("Klaerner") is an individual who, on information and belief, resides in the State of California. At all relevant times, Klaerner was an officer of Tricida, member of Tricida's Board of Directors, and Tricida's Chief Executive Officer and President.

16. Defendant Robert McKague ("McKague") is an individual who, on information and belief, resides in the State of California. At all relevant times, McKague was an officer of Tricida, serving as Tricida's Executive Vice President, General Counsel and Chief Compliance Officer.

17. Defendant Geoffrey Parker ("Parker") is an individual who, on information and belief, resides in the State of California. At all relevant times, Parker was an officer of Tricida. Parker joined Tricida in April 2017, as Chief Financial Officer and Senior Vice President. In February 2020, Parker was promoted to Chief Financial Officer and Executive Vice President. In February 2021, Parker was appointed Chief Operating Officer while keeping his roles of Chief Financial Officer and Executive Vice President.

18. Defendant Robert Alpern ("Alpern") is an individual who, on information and belief, resides in the State of Connecticut. At all relevant times, Alpern was a member of Tricida's Board of Directors.

19. Defendant Dawn Otto (formerly Parsell) ("Parsell") is an individual who, on information and belief, resides in the State of Texas. At all relevant times, Parsell was an officer of Tricida, serving as Tricida's Executive Vice President of Clinical Development.

20. Defendant OrbiMed Advisors LLC ("OrbiMed") is a Delaware limited liability company that was Tricida's largest shareholder and that designated Defendants Bonita and Veitinger to sit as its representatives on Tricida's Board of Directors.

21. Bonita, Veitinger, Klaerner, and Alpern are referred to collectively as the "Director Defendants." Klaerner, Parker, and McKague are referred to collectively as the "Officer Defendants."

Jurisdiction and Venue

22. This adversary proceeding relates to Tricida's Bankruptcy Case.

23. This Court has subject matter jurisdiction over this action under 11 U.S.C. § 1334 because this action arises under or relates to Tricida's Bankruptcy Case. In addition, this is a case

to adjudicate an adversary proceeding relating to the Retained Causes of Action over which this Court retained jurisdiction under Article X, paragraph 7 of Tricida's Confirmed Plan.

24. This matter is a non-core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Pursuant to Bankruptcy Rule 7008 and Local Rule 7008-1), the Trustee does not consent to the entry of a final order by the Court in connection with this adversary proceeding and requests trial by jury in this proceeding.

25. Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c), and 1408(b) because Tricida was incorporated in Delaware and therefore resides in Delaware. Venue is also proper in this District under 28 U.S.C. § 1409, and venue in this District is consistent with the interests of justice, judicial economy, and fairness.

26. This is an adversary proceeding commenced pursuant to Federal Rule of Bankruptcy Procedure 7001 because, at a minimum, it seeks to recover money or property belonging to Tricida's Chapter 11 estate. Fed. R. Bankr. P. 7001(1).

27. This Court has personal jurisdiction over the defendants under Federal Rule of Bankruptcy Procedure 7004(f) because this is a matter arising in or related to Tricida's Bankruptcy Case, and this Court's exercise of jurisdiction over the defendants is consistent with the Constitution and laws of the United States. This Court also has personal jurisdiction over defendants Bonita, Klaerner, Alpern, Parsell, Parker, McKague, and Veitinger under 10 Del. C. § 3114 by virtue of their appointment and acceptance of director and/or officer positions for Tricida, which was a Delaware Corporation. Defendants Veitinger and Bonita further submitted to the personal jurisdiction of this Court by filing proofs of claim in Tricida's Bankruptcy Case.

Tricida's History

28. Tricida was founded in 2013 as a clinical-stage pharmaceutical company to develop and commercialize a drug called Veverimer for the treatment of chronic kidney disease. Veverimer was Tricida's only investigational drug candidate.

29. Since Veverimer was in the development and clinical trial phases throughout Tricida's history, Tricida never generated revenue from selling products, and therefore was dependent on selling stock and borrowing money to fund its operations.

30. OrbiMed, a Delaware limited liability company, is a venture capital firm that created and controlled OrbiMed Private Investments V, LP ("OPI V"), a Delaware limited partnership, as a private fund for investment purposes. OrbiMed Capital GP V LLC ("GP V") is a Delaware limited liability company and the General Partner of OPI V. GP V's managing member is OrbiMed. According to OrbiMed's SEC filings, OrbiMed shares with GP V the power to direct the vote and disposition of shares held by OPI V, and OrbiMed is deemed a beneficial owner of such shares.

31. OrbiMed became one of Tricida's original equity investors, through affiliate OPI V, which allowed OrbiMed to install two directors on Tricida's Board of Directors (the "Board"). OrbiMed appointed Bonita and Veitinger as its two directors to the Board to pursue and protect its interests, and to carry out its directives, in the management of Tricida.

32. As of November 2022, OrbiMed, through affiliate OPI V, had accumulated at least 10,280,947 shares of Tricida's common stock, which amounted to 16.57 percent of all Tricida's common stock at that time (Tricida had no preferred stock at that point). OrbiMed was Tricida's largest shareholder.

33. One step Tricida took to gain FDA approval for Veverimer was to conduct clinical trials. However, in late October 2022, the last of these trials, known as the VALOR-CKD renal outcomes clinical trial ("VALOR-CKD"), failed to yield the results necessary for FDA approval of Veverimer.

Tricida's Net Operating Losses

34. Tricida incurred losses in each fiscal year since its inception in 2013, with substantially all of Tricida's operating losses resulting from expenses incurred while advancing Veverimer through development activities, and general and administrative costs associated with pre-commercialization activities and administrative functions. As of September 30, 2022, Tricida had an accumulated deficit of $882 million.

35. Tricida's nearly decade-long run of year-over-year losses and unprofitability led to the accumulation of NOLs. Tricida's NOLs were tax deductible and could be carried forward and applied against income in subsequent years. As of December 31, 2021, Tricida had accumulated approximately $810 million in carry-forward NOLs, which could be used to offset taxable income (if any) generated in 2022 and beyond, and therefore would reduce future aggregate tax obligations. In 2022, $740 million of the $810 million in NOLs was immediately available for use if Tricida had generated taxable income. But no taxable income was generated in 2022 (and nothing was done to try to generate taxable income or use the NOLs).

36. The NOLs were valuable assets to Tricida. And the Officer and Director Defendants knew that Tricida could lose the ability to use its valuable NOLs if Tricida experienced a "ownership change" for federal income tax purposes under Section 382 of the Internal Revenue Code ("IRC").

37. Generally, an "ownership change" occurs if the percentage of a company's stock owned by one or more of its "5-percent shareholders" (as the term is defined in Section 382 of the IRC) increased by more than 50 percentage points over the lowest percentage of stock owned by such stockholder or stockholders at any time over a rolling three-year period ("Change of Control Event").

38. In 2020, recognizing that protection of Tricida's valuable NOLs was a prudent step, and to combat a potential Change of Control Event causing substantial impairment of its NOLs, Tricida's management, including the Officer Defendants, proposed a "tax benefits preservation plan." The tax benefits preservation plan was intended to prevent against a Change of Control Event by deterring any person or entity from acquiring beneficial ownership of 4.9% or more of Tricida's stock. The tax benefits preservation plan was similar to shareholder rights plans adopted by many other publicly held companies with significant NOLs. At that time (through December 31, 2019), Tricida had $451.2 million of NOLs to which it ascribed a value of $82.3 million.

39. Tricida had its outside lawyers and financial advisors spend months preparing the tax benefits preservation plan, complete with final drafts as well as the necessary SEC filings for use following the Board's anticipated adoption of the plan. The plan, and Change of Control Event concept, was presented to the Board at multiple meetings, and was supported by Tricida's management, including the Officer Defendants. Tricida's management (including the Officer Defendants) and the Board were also advised of their fiduciary duties in connection with the plan, and that adopting the plan was a justified exercise of their fiduciary duties as Tricida's directors and officers. But, just before the Board was set to vote to approve the plan on December 10, 2020, OrbiMed's directors (Bonita and Veitinger) told the Officer Defendants that

OrbiMed was opposed to the plan. Given that Tricida's outside financial and legal advisors, as well as the Officer Defendants themselves, advised Tricida to adopt the plan, there was an obvious conflict of interest between OrbiMed's interests and Tricida's interests. Nevertheless, OrbiMed's opposition caused the Officer Defendants to agree to not have the Board vote on the plan, which ultimately resulted in the plan never being formally considered or adopted by the Board. Although the claims asserted in this case aren't based on these actions or the failure to approve the 2020 tax benefits preservation plan, the Officer Defendants', Veitinger's and Bonita's actions in killing the plan showed that their true motives were to protect OrbiMed's interests, not Tricida's. This would become abundantly clear less than two years later.

40. In addition, as part of Tricida's development, and the Board's consideration of the tax benefits preservation plan, the Director and Officer Defendants learned that Tricida had valuable interests in protecting its NOLs from being eradicated by a Change of Control Event. In fact, the talking points distributed regarding the plan stated that "Protecting these NOLs is a prudent step as they are valuable assets that may be used to offset future federal taxable income, and thus reduce future cash tax liabilities" and that the plan was "appropriate to protect the Company's NOLs, in light of the substantial volatility and decline in the market price of Tricida's common stock resulting from recent regulatory setbacks." The Director and Officer Defendants also learned that their fiduciary duties allowed them to exercise business judgment in voting on the plan only if they were free from conflicts of interest with respect to the plan (which Bonita and Veitinger clearly weren't free of). Despite this knowledge, less than two years later, when Tricida was experiencing regulatory setbacks and declines in its stock price and OrbiMed's interests again conflicted with Tricida's interests, the Director and Officer Defendants abdicated

their fiduciary duties by refusing to protect Tricida's NOLs, ultimately causing the loss of over $740 million in NOLs.

Tricida's Drug Trial Fails

41. On October 20, 2022, Tricida executives learned that the VALOR-CKD study results were negative and failed to yield the results necessary for FDA approval of Veverimer. One day later, the Board was informed of the VALOR-CKD study results.

42. The VALOR-CKD study results were considered a failure because they failed to demonstrate sufficient statistical deviation in endpoint events for the placebo group compared to the Veverimer control group. Essentially, the VALOR-CKD study's results reflected that patients didn't fare significantly better when taking Veverimer as compared to taking the placebo.

43. On October 24, 2022, Tricida filed a Form 8-K disclosing the VALOR-CKD study's results to the marketplace. Before the results were disclosed publicly, Judy Liu, Senior Compliance Officer of OrbiMed, wrote Tricida "trying to get some clarity on upcoming director trading windows [for Tricida]" and inquiring whether there was currently an open trading window. This showed that OrbiMed's intentions were clear—it wanted to dump its Tricida stock as quickly as possible to try to make as much money as it could. It also showed that someone at Tricida, presumably one of OrbiMed's board members (Bonita and Veitinger) shared this non-public information with OrbiMed.

Tricida's Strategic Alternatives Process

44. About a week later, on November 2, 2022, Tricida filed a Form 8-K with the SEC disclosing that the Board had authorized Tricida to initiate a review of strategic alternatives to maximize stakeholder value.

45. The Officer Defendants understood that Tricida's NOLs were a valuable asset to be used as part of Tricida's strategic alternatives process and they were concerned that a Change of Control Event was imminent. As a result, they engaged Moss Adams LLP ("Moss Adams") to conduct an analysis under section 382 of the IRC regarding the NOLs (the "Section 382 Analysis"), including an assessment of whether, and to what extent, the cumulative trading of the company's stock by five percent (5%) or more stockholders in a certain period had caused the cumulative owner percentage of the company to shift, and how close such shift was to the 50 percentage point shift necessary to cause a Change of Control Event. Tricida's last Change of Control Event had occurred in March 2019, and, as of December 31, 2021, of the $810 million in total NOLs Tricida accumulated, the unrestricted NOLs' value totaled approximately $740 million.

46. The Director and Officer Defendants knew that OrbiMed was Tricida's largest stockholder holding approximately 17% of Tricida's stock, and that if OrbiMed sold its stock a Change of Control Event was likely to occur. They knew this because, among other reasons, Tricida routinely included updates on the rankings and holdings of its top 20 equity investors in the information presented during its Board meetings (which the Officer Defendants generally attended), including in at least nine quarterly Board meetings from June 11, 2020 through its last regular quarterly Board meeting on September 28, 2022. And each of these updates identified OrbiMed as Tricida's top stockholder and provided the percentage of Tricida's stock held by OrbiMed. These updates also included information on recent sales and purchases by Tricida's top 20 stockholders (most of which were 5% holders), including OrbiMed, so Defendants also knew that OrbiMed had only increased its Tricida holdings from June 2020 through September 2022 and that many other 5% holders had sold their shares during that time.

47. The Board held a meeting on November 15, 2022, which all Director and Officer Defendants attended. During the November 15th meeting, there was a presentation on the status of discussions with potential strategic partners. Defendant Parker also informed the Board that an evaluation of the Company's NOLs under Section 382 of the IRC was being conducted.

48. Before the November 15th meeting and based on the advice of outside counsel, the Officer Defendants decided that Tricida's stock window, which had been closed since January 1, 2020, would remain closed for Tricida's directors, executives, and employees involved in Tricida's strategic alternatives process, which included Bonita and Veitinger. At the meeting, Defendant McKague informed the Board of this.

49. At this point, the Director and Officer Defendants knew Tricida's valuable NOLs were a potential option or alternative for Tricida's strategic alternatives process. And they knew that preserving the NOLs for Tricida's benefit was absolutely critical. They also knew that preserving the NOLs required ensuring that stock sales didn't provoke a Change of Control Event.

50. The reason that the NOLs had considerable value was that they could be used to offset future taxable income if Tricida were acquired by another company in a transaction that avoided a Section 382 ownership change, or if Tricida acquired a company or revenue generating assets. The NOLs would be the centerpiece of any such transaction. There are numerous possible types of transactions that could have been accomplished by Tricida to unlock the NOLs' value without causing a Change of Control Event. Some examples include:

a. Purchasing at least 80% of the stock of an unrelated, profitable corporation, thus allowing Tricida to file a consolidated tax return with the acquired entity and offset its historic NOLs against the acquired entity's income.

b. Acquiring an interest in a profitable passthrough entity such as an LLC or partnership, with a possible special allocation of profits to Tricida.

c. Acquiring the assets of a profitable business.

d. Reorganizing the company's capital structure under section 382(l)(5) of the Internal Revenue Code by issuing equity in compliance with that and other provisions of the code.

e. Acquiring the stock of an unrelated profitable company through a tax-free reorganization using nonvoting and non-participating preferred stock and cash as consideration.

f. Engaging in a "Midco" transaction while meeting the IRS guidelines on the bona fides of such a transaction. In this approach, an unrelated party that faced a substantial tax liability on a contemplated sale of a subsidiary or asset would transfer the subsidiary's stock or the asset to Tricida in a transaction in which the asset's tax basis would carry over to Tricida (or a Tricida subsidiary). The asset would be acquired at a discounted value to reflect Tricida's assumption of the gain on the ultimate sale of the asset.

g. Establishing a revenue producing service business using Tricida's existing workforce and knowledge base.

h. The stock of Tricida could have been acquired by a profitable company over a period of years, with care being taken that no purchases of its stock breached the 50% threshold. Once the acquirer achieved 80% stock ownership, it could consolidate Tricida for tax purposes and merge Tricida into some profitable corporation within the acquirer group.

51. These potential maneuvers were made even more realistic by the fact that Tricida had almost $75 million in cash at the time, which it could have used to facilitate one of these transactions to maximize value for Tricida and its stakeholders.

The Director Defendants Approve Outrageous Bonuses

52. On November 15, 2022, Tricida's Board authorized and approved a bonus retention plan whereby Tricida made discretionary bonus payments to Tricida's officers totaling $2,415,258.00 (the "Bonus Plan"). More specifically, under the Bonus Plan, the Board authorized and approved the following payments: (i) $780,000 to Klaerner; (ii) $558,338 to Parker; (iii) $520,000 to McKague; and (iv) $558,338 to Dawn Parsell (collectively, the "Bonus Payments"). The Bonus Payments represented more than 100% of each recipient's annual base salary. According to Tricida's Statement of Financial Affairs filed in the Bankruptcy Case, Tricida made the Bonus Payments on November 21, 2022.

53. In approving the Bonus Plan, the Director Defendants engaged in bad-faith self-dealing. Their motivation was to prod the Officer Defendants to open the trading window, which would allow the directors and OrbiMed to dump their stock.

54. The decision to approve the Bonus Plan was not made by independent, non-interested Board members. In making the decision, the Board was acting upon the recommendation of the three-member Compensation Committee. Two of the members of that committee were the OrbiMed-affiliated directors, Defendants Bonita and Veitinger, who controlled that committee. Moreover, the entire Board's independence was compromised because, of the six members who voted on the plan, three members were interested in convincing the officers to open the trading window (the two OrbiMed-affiliated directors and Alpern).

55. There was no rational business purpose for the Bonus Plan and the Bonus Payments. The Bonus Plan and the Bonus Payments were authorized and made after the Board had determined that Tricida should be sold or restructured. While it is not unprecedented for a company to provide bonuses to retain key employees during a sale/restructuring process, that rationale did not apply here because Tricida's drug trial had already failed and none of the Officer Defendants or Parsell had indicated that they intended to leave Tricida. Further, without the NOLs, the company had little or no value to strategic partners—indeed, as set forth below, when the NOLS were lost, the company sold for a mere $480,000 (or almost $2 million less than the Bonus Payments). The Director Defendants knew that OrbiMed was Tricida's largest shareholder, so that the sale of its stock presented a strong danger of a Change of Control Event that would render the NOLs worthless. At least the OrbiMed directors, who controlled the compensation committee, knew that OrbiMed was poised to sell its stock. As set forth below, the Board's unreasonable decision to goad the officers into reopening Tricida's stock trading window by approving the Bonus Payments did, in fact, allow OrbiMed to sell all its Tricida stock in three days, which triggered a Change in Control Event and the substantial impairment of Tricida's NOLs, making any lucrative strategic partnership highly unlikely.

56. The Bonus Payments also violated Tricida's board-approved compensation policies. Specifically, in February of 2022 Tricida's Compensation Committee and Board approved a compensation policy that set maximum bonuses for Klaerner, Parker, Parsell, and McKague for 2022 in amounts that were considerably less than the Bonus Payments. Specifically, their maximum approved bonuses for 2022 under Tricida's compensation policy were $360,000 (Klaerner), $201,001.50 (Parker), $200,491.20 (Parsell), and $166,400 (McKague) respectively. The Bonus Payments exceeded these by almost $1.5 million, making

the Bonus Payments 2.6 times higher than what they were allowed to be paid under Tricida's 2022 compensation policy. Furthermore, Tricida's approved compensation policy conditioned Klaerner's, Parker's, Parsell's, and McKague's receipt of portions of their bonus payments on achieving a positive result from Veverimer's clinical trial (which wasn't achieved). They therefore shouldn't have received, been granted, or accepted the grossly inflated Bonus Payments after failing to reach that milestone.

57. The Bonus Payments were also increased due to Defendant Klaerner's self-interested demands for more money. When originally presented to the Board's Compensation Committee, the proposed bonus payments were approximately 21% lower than the Bonus Payments approved by the Compensation Committee. This is because Defendant Klaerner demanded a higher payment for himself, which caused the Compensation Committee's original meeting to be continued so a new "recommendation" reflecting Klaerner's increased demand could be considered the following day, and recommended to the Board. These details weren't reflected in the Compensation Committee's minutes. In fact, although draft minutes were prepared, no final minutes of the Compensation Committee's meeting approving the Bonus Payments were ever issued. This was likely because Defendants Klaerner, Parker, Parsell, Bonita, Veitinger, and McKague didn't want their self-interested actions recorded in official minutes.

Defendants Trade on Inside Information and Squander Tricida's NOLs

58. Tricida's insider trading policy (the "Insider Trading Policy") allowed Tricida to restrict, or blackout, the trading window on an ad hoc basis for certain employees, officers or directors who possessed material nonpublic information about Tricida. This restriction was discretionary. Pursuant to the policy, recognizing the obvious fact that senior management (and

the directors themselves) had ongoing access to material, non-public information, the trading window for the directors had been closed since January 1, 2020.

59. Upon information and belief, OrbiMed also had a policy to not sell shares of a company while an OrbiMed representative served on the board of directors if that director was restricted from selling by the company's policies. As a result of OrbiMed's policy, because Bonita and Veitinger were directors on the Board, OrbiMed would not sell OrbiMed's shares of Tricida stock while the trading window for Bonita and Veitinger was closed under the Insider Trading Policy. Tricida also required that its directors, and OrbiMed, receive clearance from Tricida's CFO (Parker) before selling shares.

60. In October 2022, OrbiMed started peppering Tricida with inquiries about opening Tricida's trading window. On October 24, 2022, Judy Liu of OrbiMed began writing to Tricida asking when Tricida's trading window would reopen. Ms. Liu made similar requests on November 10th and 14th as well. Defendants McKague and Parker received each of these emails. In fact, Defendant McKague was consulted after each of OrbiMed's requests, and each time he directed that Ms. Liu be advised that Tricida's trading window was closed for directors, executives, officers, and those involved with Tricida's strategic alternatives process. OrbiMed's deputy general counsel also reached out to request copies of Tricida's indemnification agreements with Bonita and Veitinger during this time period, which was a clear indication that OrbiMed, Bonita, and Veitinger knew OrbiMed's interests would conflict with Tricida's interests in the near future.

61. But on November 21, 2022 (just six days after saying the window would remain closed during the strategic review process), the Officer Defendants abandoned their decision to keep the trading window closed and caved to the self-interested pressure from Bonita, Veitinger,

and OrbiMed, deciding to reopen Tricida's trading window for everyone, including directors. Defendant McKague conveyed this decision by email to Tricida's entire Board, including Defendants Klaerner, Alpern, Bonita, and Veitinger, as well as Defendant Parker. This decision followed another email from Judy Liu of OrbiMed to Defendant McKague on November 17th regarding opening the trading window.

62. The decision to open the trading window was not made on advice of counsel. Before making this decision, outside counsel educated the Officer Defendants about the topic of not opening the trading window for directors or officers who possessed material, non-public information, but provided no advice about whether the directors or officers possessed such information. Defendant McKague was an attorney, but was self-interested because he was one of the recipients of the Bonus Payments.

63. The Officer Defendants' decision to open the trading window, and therefore allow OrbiMed to trade its shares, also followed directly from Bonita's and Veitinger's approval of their Bonus Payments. The actual Bonus Payments were made to the Officer Defendants on the same day (November 21, 2022) they decided to reopen the trading the window. The only logical conclusion is that the Officer Defendants' decision to reopen the trading window, and therefore their decision to allow OrbiMed to sell its shares, was influenced by Veitinger and Bonita's approval of the Bonus Payments. Accordingly, the Officer Defendants' decision was the result of bad faith and self-dealing. Moreover, there was no rational business purpose for opening the window, since there was a substantial danger that OrbiMed's anticipated sales would cause a Change of Control Event that would eliminate Tricida's largest asset.

64. Opening the trading window for officers and directors was also improper because the Officer Defendants knew that the Officers and Directors were in possession of material, nonpublic information. This included the following information:

a. There was a serious danger and concern within the company that Tricida's NOLs would be rendered worthless through a Change of Control Event if a major stockholder such as OrbiMed sold its shares, as is evidenced by the fact that Tricida hired Moss Adams to update its previous section 382 analysis regarding Tricida's NOLs and when a Change of Control Event would occur. The Director and Officer Defendants knew that Tricida's NOLs (and their potential destruction through a change of control event) were an important issue because Defendant Parker advised the Director and Officer Defendants about the rationale for Moss Adams' retention at the November 15th Board meeting;

b. OrbiMed, which owned nearly 17% of the company, had sent multiple emails asking if the trading window would be opened, thus indicating that there was a strong likelihood that it was planning on selling all of its Tricida shares immediately, which presented a strong danger that a Change of Control Event would occur that would cause Tricida's to forfeit its $740 million NOL stockpile. In addition to the Officer Defendants, Defendants Bonita and Veitinger knew this based on their affiliation with OrbiMed; and

c. Although the fact that Tricida had initiated a review of strategic alternatives had been made public, the Director and Officer Defendants knew the nonpublic details of its discussions with potential strategic partners (this category of information was specifically called out in Tricida's Insider Trading Policy, which listed

"mergers, tender offers, or acquisitions of other companies, or major purchases or sales of assets" as an example of material, nonpublic information) and that its NOLs were a centerpiece of those discussions. These discussions came to include a potential merger or acquisition with one of Tricida's largest creditors. Defendant Parker personally participated in those discussions, and sought advice from outside counsel about using Tricida's NOLs as part of that transaction on November 17th. Parker then updated the Officer Defendants on those discussions over email on November 18th. And Parker even told the other Officer Defendants about his concern that OrbiMed's potential stock sales would cause a Change of Control Event (and therefore thwart any potential transaction with Tricida's creditor).

65. The same day the Defendant Officers reopened the stock trading window, OrbiMed's Judy Liu sent an email to Defendants McKague and Parker (on November 21, 2022) asking for preclearance to sell OrbiMed's Tricida shares, which would be valid for 48 hours. Defendant Parker approved that request in an email to Ms. Liu and Defendant McKague that same day.

66. At this time, Bonita, and Alpern were in possession of material nonpublic information about Tricida, including the following information:

a. Bonita and Alpern knew there was a serious danger and concern within the company that Tricida's NOLs would be rendered worthless if a major stockholder such as OrbiMed sold its shares, as is evidenced by the fact that Tricida hired Moss Adams to update its previous section 382 analysis regarding Tricida's NOLs and when a Change of Control Event would occur;

b. At least Bonita knew that OrbiMed, which owned nearly 17% of the company, had sent multiple emails asking if the trading window would be opened, and there was a strong likelihood that it was planning on selling all of its Tricida shares immediately, which presented a strong danger that a Change of Control Event would occur that would cause Tricida's to forfeit its $740 million NOL stockpile;

c. Both Bonita and Alpern knew that Tricida had re-opened its trading window for officers, directors, and those involved in the strategic alternatives process, which would allow OrbiMed to trade its shares and decimate the NOLs' value. Although merely opening a trading window would not usually constitute material, nonpublic information (or else individuals affected by the opening could never trade), it was material, nonpublic information within this factual context of this case, because the opening would erase the company's most valuable asset; and

d. Although the fact that Tricida had initiated a review of strategic alternatives had been made public, Bonita and Alpern knew the nonpublic details of those efforts and the extent to which the stockpile of NOLs was relevant to those discussions.

67. Nevertheless, Bonita and OrbiMed took full advantage of the Officer Defendants' reopening of the trading window and traded with this insider information to rapidly cause OrbiMed to sell the entirety of its Tricida holdings over the course of three days from November 22, 2022, to November 25, 2022. Upon information and belief, as a general partner in OrbiMed, Bonita had a personal financial stake in OrbiMed's Tricida stock holdings, and orchestrated and caused OrbiMed's trades, signing the SEC Form 4 on behalf of OrbiMed, and being involved in OrbiMed's decision to sell its shares.

68. More specifically, Bonita and OrbiMed liquidated OrbiMed's holdings in Tricida as follows:

a. 1,034,421 shares of Tricida's common stock on November 22, 2022;

b. 5,617,300 shares of Tricida's common stock on November 23, 2022; and

c. 3,629,226 shares of Tricida's common stock on November 25, 2022.

69. OrbiMed's three-day sell-down of all its Tricida stock triggered a Change of Control Event and substantial impairment of Tricida's valuable NOLs.

70. In addition, as soon as Tricida's stock trading window was reopened, Defendant Alpern sold his Tricida stock. On November 21, 2022, Alpern sold 27,584 shares of Tricida's common stock. And on November 23, 2022, Alpern sold 131,879 shares of the company's common stock.

71. On November 22, 2022, after the Officer Defendants had already reopened the stock trading window for no justifiable reason, Moss Adams informed Parker that from June 30, 2020, through October 25, 2022 (the last date of available stock activity), there was a cumulative ownership shift percentage of approximately thirty-two percent (32%) according to its Section 382 Analysis, which was perilously close to the 50% threshold.

72. On November 23, 2022, OrbiMed's Judy Liu emailed Parker and McKague, stating: "We have not completed our trade yet. Would it be possible to request another pre-clearance? Will I need to pre-clear every two business days if the trade is not finished?" And Parker responded just hours later and approved OrbiMed's plan to trade.

73. One day later, on November 24, 2022, Parker emailed Moss Adams and Defendant McKague asking: "If OrbiMed sells down completely would we have a change in control trigger?"

74. Then, on November 25, 2022, Parker emailed Bonita about the OrbiMed stock sales during the week of November 21, 2022 (McKague and Klaerner were copied on this email). And in that email, Parker reminded Bonita that the company was monitoring shares being sold by 5% shareholders that could affect the Section 382 Analysis and the occurrence of a Change of Control Event, and stated that it "would be helpful to know approximately how many shares OrbiMed intends to sell" because if OrbiMed were to sell all its shares it could lead to a Change of Control Event and impair the company's ability to use its NOLs. Parker also noted that the company's cumulative change of control before OrbiMed's stock sales that week was 32%. At the time Parker sent this email, he already had suspicions that OrbiMed was going to sell all its shares, based at least upon Ms. Liu's email of November 23 stating that OrbiMed had not completed its stock sales yet and Parker's November 24th email to Moss Adams indicating his concerns about OrbiMed selling down its shares completely. Bonita never responded to this email, and Parker, McKague, and Klaerner never followed up on it.

75. Instead, on November 25, 2022, Bonita and OrbiMed sold OrbiMed's remaining 3,629,226 shares of Tricida's stock, which caused a Change of Control Event to occur and destroyed the NOLs' value.

76. The OrbiMed sales constituted 100% of OrbiMed's holdings in Tricida. At the time of the OrbiMed sales, OrbiMed was Tricida's largest shareholder and OrbiMed's Judy Liu had been writing to Tricida since October 24, 2022, about opening the trading window. From all of this, it's clear that in advancing the OrbiMed sales and ignoring Tricida's interests in protecting its NOLs, Bonita cared only about OrbiMed's goal of protecting its own economic interests and ignored the interests of Tricida. And not surprisingly, after OrbiMed had liquidated

its Tricida shares, Bonita exited Tricida. On January 23, 2023, after Tricida filed bankruptcy on January 11, 2023, Bonita resigned from the Board and left the company.

77. Additionally, on November 29, 2022, Tricida's Board had a meeting, which the Officer and Director Defendants attended. According to draft meeting minutes, "Mr. Parker informed the Board that a recent Section 382 tax analysis concluded that, due to the volume of recent trading in Tricida's stock, a change of control had likely occurred which would limit the ability to utilize the Company's NOLs."

78. In its markup of the draft meeting minutes, Tricida's outside counsel struck this language and edited it to read: "Mr. Parker also updated the Board on the Company's most recent Section 382 tax analysis and the potential impact on availability of the Company's NOLs" (leaving out the part that a change of control occurred and the NOLs were depleted). This was no doubt done to remove a clear statement that the Officer Defendants', OrbiMed's, Bonita's, and Veitinger's actions in opening the trading window and facilitating OrbiMed's stock trades, were done in complete violation of Tricida's best interests, and therefore in violation of these officers' and directors' fiduciary obligations.

79. Moss Adams eventually determined under its 382 Analysis that OrbiMed's three-day sell down of all its Tricida stock triggered a Change of Control Event on November 25, 2022, and substantial impairment of the valuable NOLs. As a result of the OrbiMed Sales, the $740 million in NOLs immediately available to Tricida as of December 31, 2021 (to offset any table income generated) was reduced to $1.6 million. This represented a nine-figure impairment to the value of Tricida's NOLs and essentially wiped out Tricida's most valuable asset.

Defendants' Duties and Their Breaches

80. As officers and directors of Tricida, the Officer and Director Defendants and Parsell owed Tricida fiduciary obligations of trust, loyalty, good faith, and due care, and were required to use their utmost ability to control and manage Tricida in a fair, just, honest, and equitable manner. These defendants were required to act to further Tricida's best interests and *not* in their personal interests or any affiliated party's interests.

81. The Officer and Director Defendants' and Parsell's misconduct involves violations of their fiduciary obligations as directors and officers of Tricida, the absence of good faith on their part, and a reckless disregard for their duties to Tricida. These defendants' acts and omissions were committed in bad faith and demonstrated a faithlessness or lack of true devotion to Tricida's interests.

82. The Officer Defendants' decision to open Tricida's stock trading window was illogical, reckless, and grossly negligent. It constituted a self-interested breach of their fiduciary duties of due care, loyalty, and good faith to Tricida. Similarly, Parker's decision to give OrbiMed preclearance to trade its Tricida stock constituted a breach of those duties.

83. The Officer Defendants possessed a wealth of knowledge about the wrongfulness, significance, and consequences of their actions. They knew that:

a. the Director Defendants continued to have access to the material, non-public information described above, including that: i) OrbiMed was likely to trade its shares as soon as the trading window were opened and its sales were cleared; and ii) the trades would likely cause a Change of Control Event that would decimate the value of Tricida's NOLs;

b. there had been a Change in Control Event in 2019 right before the stock trading window was last closed in January 2020 (and they therefore appreciated the consequences of another Change in Control Event if the stock trading window were reopened);

c. Moss Adams was conducting a Section 382 Analysis which had not been completed before the stock trading window was reopened on November 21, 2022;

d. the NOLs were Tricida's most valuable asset, and they were key to executing a strategic transaction that would maximize Tricida's value; and

e. Tricida had not adopted a plan with restrictions or limitations on the sale and purchase of Tricida's stock, or had any other procedures or controls in place, to ensure protection of the value of Tricida's NOLs.

Despite knowing all this, the Officer Defendants chose to provide OrbiMed and the Director Defendants with an opportunity to capitalize on their inside information and offload their Tricida stock.

84. Alpern and Bonita did exactly that. Bonita's OrbiMed Sales caused a Change of Control Event and the destruction or loss of Tricida's valuable NOLs. And of course, it was no coincidence that the Officer Defendants reversed direction and reopened Tricida's stock trading window just days after the Compensation Committee (which was dominated by OrbiMed's directors, Veitinger and Bonita) and the Board (also including OrbiMed's directors Veitinger and Bonita) approved the Bonus Plan, and on the same day the Bonus Payments were made, providing cash bonus windfalls to the Officer Defendants and Parsell.

85. Because the NOLs had considerable value, the Officer Defendants made a decision that no director or officer could ever rationally or responsibly make at the time. The

Officer Defendants didn't even try to take measures to protect or monetize the NOLs and instead chose to use this cash to line their pockets.

86. Indeed, when the stock trading window was reopened, Tricida's strategic alternatives process, including use of and extracting value from the NOLs, had only just begun. By opening the trading window, the Officer Defendants forfeited Tricida's ability to use its $740 million-plus NOL stockpile. Instead of opening the stock trading window, the Officer Defendants should have kept the window closed so at the very least Tricida could fully evaluate its options for making the most beneficial use of the NOLs. But the Officer Defendants selfishly and wrongfully caused Tricida to forfeit its NOL stockpile by opening the trading window, and therefore eliminated any chance Tricida had to derive value from its NOLs before Tricida had any real chance to consider its options.

87. Additionally, the Director Defendants, in authorizing and approving the Bonus Plan Obligation and the Bonus Payments (which represented more than 100% of the base salaries of Tricida's management), gifted corporate assets and committed corporate waste in derogation of their fiduciary duties to Tricida, and caused harm to Tricida.

88. The Officer Defendants and Parsell breached their fiduciary duties by, among other things, accepting the improper Bonus Payments, and failing to take actions to prevent those payments from being approved or made. As noted above, the Bonus Payments were not only gratuitous on their face, they also were issued, received, and approved in amounts that exceeded those allowed for the Officer Defendant's and Parsell's bonuses under Tricida's compensation policy.

89. Following Tricida's reopening its stock trading window on November 21, 2022, Alpern and Bonita also misused Tricida's confidential information when they sold, or

participated in selling, Tricida stock in a manner that constitutes a breach of duty of loyalty under *Brophy v. Cities Service Co*., 70 A.2d 5 (Del. Ch. 1949), and its progeny. This confidential information included the fact that Tricida had opened its trading window to officers and directors, and Tricida would soon forfeit its NOL stockpile based on trades by OrbiMed. In fact, Parker emailed Bonita, Klaerner, and McKague to inform Bonita that Tricida was worried that OrbiMed's share sales would result in Tricida forfeiting its NOLs, but Bonita never responded and Parker, Klaerner, and McKague never took any actions to stop OrbiMed from trading its shares (which should have included reclosing the stock trading window and withholding/revoking trading clearance).

90. As a result of these breaches, the Trust has suffered damages in a form and an amount to be proven at trial. Among other things, the available $740 million of NOLs could have been used in a transaction that preserved and extracted the NOLs' value for the benefit of Tricida and its constituents. But the Officer and Director Defendants prevented that scenario from taking place. And less than two months later, Tricida collapsed and filed bankruptcy in which its assets were sold for a mere $480,000, or at least nine-figures less than they were worth before the Officer and Director Defendants breached their fiduciary duties.

Count I -- Breach of Fiduciary Duty of Care
(Against the Officer Defendants)

91. Trustee realleges and incorporates by reference each and every allegation above.

92. The Officer Defendants owed the fiduciary duty of due care to Tricida. The duty of care requires that corporate fiduciaries use the amount of care that ordinarily careful and prudent people would use in similar circumstances and consider all material information reasonably available in making business decisions. A good faith effort to be informed and exercise judgment is the core duty of care inquiry. Lack of due care can also be shown through

an irrational decision-making process. The Officer Defendants were obligated to assess information regarding important corporate decisions with a critical eye. The Officer Defendants' fiduciary duties also required that they be fully informed of Tricida's financial condition and the consequences of their actions.

93. As described in this Complaint, the Officer Defendants wrongfully opened the trading window for officers and directors who they knew were in possession of material non-public information and when there was no plan in place to protect Tricida's NOLs. They did this while they knew all the other information described above, including that Tricida's NOLs were its most valuable asset, that Moss Adams hadn't completed its Section 382 study, and that opening the trading window would likely lead to a Change of Control Event that would eviscerate the NOLs' value. Defendant Parker also inexplicably gave OrbiMed preclearance to trade its Tricida stock despite knowing all of this. In so doing, the Officer Defendants acted in a recklessly uniformed manner and outside the bounds of reason, and therefore acted with gross negligence such that they breached their fiduciary duty of care. As a direct and proximate result of these breaches, Tricida has been damaged in an amount to be determined at trial.

Count II—Breach of Fiduciary Duties of Loyalty and Good-Faith
(Against the Officer and Director Defendants and Parsell)

94. Trustee realleges and incorporates by reference each and every allegation above.

95. The Officer and Director Defendants and Parsell owed fiduciary duties of loyalty and good faith to Tricida. The duty of loyalty embodies not only an affirmative duty to protect the corporation's interests, but also an obligation to refrain from conduct that would harm the corporation and its stockholders or deprive them of profit or advantage. Directors and officers must eschew any conflict between duty and self-interest. They cannot succumb to influences that convert an otherwise valid business decision into a faithless act. The fiduciary duty of loyalty is

not limited to cases involving a financial or other cognizable fiduciary conflict of interest, but also encompasses cases where the fiduciary fails to act in good faith. Fiduciaries breach their duties of loyalty and good faith, for example, where the fiduciary intentionally acts with a purpose other than that of advancing the best interests of the corporation or where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties. Fiduciaries also breach their duties of loyalty and good faith through abdication of their duties or by any action that demonstrates a faithlessness or lack of true devotion to the interests of the corporation and its shareholders.

96. The Officer and Director Defendants and Parsell breached their fiduciary duties of loyalty and good faith to Tricida by exercising their control of Tricida primarily, if not exclusively, to benefit themselves and enhance their interests, and/or to benefit and enhance the interests of other entities they are affiliated with, disregarding the interests of Tricida. They also breached their duties of loyalty and good faith by failing to act when confronted with a known duty to act, therefore showing their conscious disregard for their duties as fiduciaries.

97. As described in this Complaint, the Director Defendants breached their duties of loyalty and good-faith by approving the Bonus Payments in exchange for the Officer Defendants opening the trading window (and therefore enabling the Director Defendants and/or OrbiMed to sell their Tricida stock). This was a self-interested decision that elevated their interests over Tricida's and that they knew had no benefit for Tricida, was contrary to Tricida's approved compensation policy, and in fact would damage Tricida by resulting in a Change of Control Event that would eviscerate the value of its NOLs.

98. Similarly, the Officer Defendants and Parsell breached their duty of loyalty by accepting the Bonus Payments that had no benefit to Tricida and violated Tricida's compensation

policy. The Officer Defendants also breached their duties of loyalty and good-faith by opening the trading window for the Director Defendants (and therefore OrbiMed) in exchange for the Director Defendants' approval of their Bonus Payments at the Compensation Committee and Board levels. Defendant Parker also breached his duties of loyalty and good-faith by giving OrbiMed preclearance to trade its Tricida shares in exchange for the Director Defendants' approval of the Bonus Payments at the compensation committee and Board levels. And the Officer and Director Defendants breached their duty of good-faith by intentionally failing to protect Tricida's NOLs, which they knew were Tricida's most valuable asset.

99. All of these actions were taken in situations where the respective defendant stood to benefit from a transaction that wasn't fair to Tricida (because Tricida received no benefit, and in fact was damaged), and each respective defendant acted for purposes other than advancing Tricida's best interests and/or intentionally failed to act in the face of a known duty to act, and therefore demonstrated a conscious disregard for their duties as an officer and/or director. As a direct and proximate result of these wrongful acts, omissions and breaches of duty, Tricida has been damaged in an amount to be determined at trial.

Count III

(Breach of Fiduciary Duty of Loyalty under *Brophy* against Bonita and Alpern)

100. Trustee realleges and incorporates by reference each and every allegation above.

101. Alpern was a member of the Board and fiduciary of Tricida.

102. Bonita was a member of the Board and fiduciary of Tricida.

103. Bonita was an agent of OrbiMed and its designee to the Board. Bonita also had substantial personal ties to OrbiMed, including having been General Partner of OrbiMed since February 2020.

104. By reason of their positions as members of the Board, Alpern and Bonita were in possession of material non-public information as described in this Complaint.

105. Alpern's sale of shares was motivated in whole or in part by material, non-public information he possessed.

106. Bonita caused OrbiMed to sell shares based in whole or in part by the material, non-public information he possessed and shared with OrbiMed. Due to his financial interest in OrbiMed, these sales benefitted Bonita personally.

107. Alpern's and Bonita's use of material, non-public information was a breach of Tricida's internal corporate policies and their fiduciary duty of loyalty.

108. Alpen and Bonita were enriched through their fiduciary positions and are obliged to disgorge their unlawful earnings to Trustee.

109. Trustee seeks restitution from Alpern and Bonita and an order of this Court imposing a constructive trust and disgorgement of all earnings, benefits and other compensation obtained by Alpern and Bonita as a result of their wrongful conduct and fiduciary breaches.

Count IV
(Waste of Corporate Assets against the Director Defendants)

110. Trustee realleges and incorporates by reference each and every allegation above.

111. As a result of the acts and omissions above, the Director Defendants caused Tricida to waste its assets by paying improper Bonus Payments to Klaerner, Parker, McKague, and Parsell.

112. The Director Defendants are liable to Trustee for this waste of corporate assets and any and all associated damages.

Count V
(Unjust Enrichment Against the Officer Defendants and Parsell)

113. Trustee realleges and incorporates by reference each and every allegation above.

114. Tricida paid the Bonus Payments directly to the Officer Defendants' and Parsell's respective bank accounts, and the Officer Defendants and Parsell received their respective Bonus Payments from Tricida into their bank accounts, on November 21, 2022.

115. Tricida's payment of the Bonus Payments, and the Officer Defendants' and Parsell's receipt of those payments, were directly linked.

116. The Bonus Payments served no legitimate business purpose for Tricida, as they were made after Tricida's drug trial failed. They were also unauthorized because Veverimer's clinical trial failed, and because they significantly exceeded the Officer Defendants' and Parsell's 2022 bonus payment limits set out in Tricida's compensation plan.

Count VI
(Aiding and Abetting Breach of Fiduciary Duty Against OrbiMed)

117. Trustee realleges and incorporates by reference each and every allegation above.

118. Defendant Bonita was a General Partner and member of OrbiMed and acted as OrbiMed's representative while serving as a director for Tricida. Bonita's knowledge and actions while he was a Tricida director are therefore imputed to OrbiMed.

119. Defendant Veitinger was a Venture Partner of OrbiMed and acted as OrbiMed's representative while serving as a director for Tricida. Veitinger's knowledge and actions while he was a Tricida director are therefore imputed to OrbiMed.

120. Veitinger and Bonita knew all the information described above, including that OrbiMed was Tricida's largest shareholder, that Tricida was concerned about protecting the value of its NOLs from a Change of Control Event during its restructuring process, and that Tricida had retained Moss Adams to perform a Section 382 Analysis.

121. Veitinger and Bonita knew that OrbiMed intended to sell all of its Tricida stock if the trading window for directors and officers was opened by the Officer Defendants and that OrbiMed's sales would likely trigger a Change of Control Event.

122. Veitinger and Bonita formed two-thirds of Tricida's Compensation Committee, and voted to recommend to the Board that the Bonus Payments be made to the Officer Defendants and Parsell. They voted this way with the knowledge that the Bonus Payments were gratuitous and served no business purpose for Tricida—even approving them after the Compensation Committee's meeting to vote on the Bonus Plan had to be continued to the following day because Defendant Klaerner demanded an increased Bonus Payment. Veitinger and Bonita also knew that the Bonus Payments were only being approved so that the Officer Defendants would breach their fiduciary duties by opening the trading window for officers and directors, and therefore allowing OrbiMed to trade its Tricida shares. They also knew that it would be improper for the Officer Defendants to open the trading window because there was no rational business purpose for doing so and the officers and directors possessed material, nonpublic information.

123. Without Veitinger's and Bonita's votes, the Bonus Payments would not have been recommended to the Board by the Compensation Committee, and therefore those payments could not have been made to the Officer Defendants and Parsell. And without the Bonus Payments being approved and made, the Officer Defendants would not have breached their fiduciary duties by opening the trading window for officers and directors. The recommendation was a substantial cause of the Officer Defendants' decision to open the trading window in breach of their fiduciary duties.

124. OrbiMed employee Judy Liu repeatedly pestered Defendants McKague and Parker regarding OrbiMed's desire that the trading window be opened for officers and directors so that OrbiMed could trade its Tricida stock. Because OrbiMed was Tricida's largest shareholder, held two seats on the Board, and had significant influence in the biotech and pharmaceutical industries, these communications exerted significant pressure on the Officer Defendants, and were ultimately a substantial cause of the Officer Defendants' decision to open the trading window and allow OrbiMed to trade its shares in breach of their fiduciary duties.

125. Bonita and Veitinger also knew that they were in possession of the material non-public information when OrbiMed's trades were made. And OrbiMed employees, including Judy Liu, sought out clearance to trade OrbiMed's Tricida shares and helped initiate those trades. These actions and knowledge are imputed to OrbiMed.

126. OrbiMed, through the actions and knowledge of Bonita, Veitinger, and Liu, aided and abetted the Officer Defendants' breaches of their fiduciary duties by opening the trading window and enabling OrbiMed to trade its Tricida stock.

Jury Trial Demanded

Trustee demands a trial by jury on all claims and issues so triable.[1]

Prayer for Relief

WHEREFORE, Trustee respectfully requests that the Court:

A. On Count I – Enter judgment in favor of Trustee and against the Officer Defendants and award Trustee compensatory damages in an amount to be determined at trial;

[1] This matter is a non-core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Pursuant to Bankruptcy Rule 7008 and Local Rule 7008-1, Trustee does not consent to the entry of a final order by the Court in connection with this adversary proceeding and requests trial by jury in this proceeding.

B. On Count II – Enter judgment in favor of Trustee and against the Officer Defendants, Director Defendants and Defendant Parsell, and award Trustee compensatory damages in the amount to be determined at trial;

C. On Count III - Enter judgment in favor of Trustee and against Defendants Bonita and Alpern imposing a constructive trust and awarding Trustee the disgorgement of all earnings made by Defendants Bonita and Alpern as a result of their *Brophy* fiduciary breaches;

D. On Count IV – Enter judgment in favor of Trustee and against the Director Defendants and award Trustee compensatory damages in an amount to be determined at trial;

E. On Count V – Enter judgment in favor of Trustee and against the Officer Defendants and Parsell, and award Trustee compensatory damages, restitution, and/or disgorgement in amounts to be determined at trial;

F. On Count VI – Enter judgment in favor of Trustee and against OrbiMed and award Trustee compensatory in an amount to be determined at trial;

G. Award prejudgment interest on each Count to the extent allowed under applicable law;

H. Award Trustee's reasonable attorney fees and costs to any Count to the extent allowed under applicable law or statute; and

I. Enter judgment in favor of Trustee and against the Defendants and award Trustee such other and further relief, whether at law or in equity, that this Court deems just and proper.

Dated: November 10, 2025
Wilmington, DE

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