UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL ROSEN, derivatively on behalf of CAPRICOR THERAPEUTICS, INC.,

Plaintiff,

v.

LINDA MARBÁN, ANTHONY J. BERGMANN, PAUL G. AUWAERTER, GEORGE W. DUNBAR, JR., KARIMAH ES SABAR, PHILIP J. GOTWALS, MICHAEL KELLIHER, FRANK LITVACK, and DAVID B. MUSKET,

Defendants,

and

CAPRICOR THERAPEUTICS, INC.,

Nominal Defendant.

Case No.: '26CV4539 LL AHG

DEMAND FOR JURY TRIAL

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

INTRODUCTION

Plaintiff Michael Rosen ("Plaintiff"), by Plaintiff's undersigned attorneys, derivatively and on behalf of nominal defendant Capricor Therapeutics, Inc. ("Capricor" or the "Company"), files this Verified Shareholder Derivative Complaint against defendants Linda Marbán ("Marbán"), Anthony J. Bergmann ("Bergmann"), Paul G. Auwaerter ("Auwaerter"), George W. Dunbar, Jr. ("Dunbar"), Karimah Es Sabar ("Es Sabar"), Philip J. Gotwals ("Gotwals"), Michael Kelliher ("Kelliher"), Frank Litvack ("Litvack"), and David B. Musket ("Musket") (collectively, the "Individual Defendants," and together with Capricor, "Defendants") for breaches of their fiduciary duties as directors and/or officers of Capricor, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and violations of Section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and for contribution under Sections 10(b) and 21D of the Exchange Act against Defendants Marbán and Bergmann. As for Plaintiff's complaint against the Individual Defendants, Plaintiff alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Capricor, legal filings, news reports, securities analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a shareholder derivative action that seeks to remedy wrongdoing committed by the Individual Defendants from December 17, 2025 through July 26, 2026, inclusive (the "Relevant Period").

2. Capricor is a clinical-stage biotechnology company that purports to be "focused on the development of transformative cell and exosome-based therapeutics for treating Duchenne muscular dystrophy ('DMD'), a rare form of muscular dystrophy which results in muscle degeneration and premature death, and other diseases with high unmet medical needs."[1]

3. The Company's core program is focused on the development and commercialization of Deramiocel, a cell therapy technology intended to slow disease progression in DMD. Capricor admits that its "ability to eventually generate any product revenue sufficient to achieve profitability will depend on the successful development, approval and eventual commercialization of Deramiocel for the treatment of DMD and [Capricor's] other product candidates."[2]

4. Throughout 2024 and 2025, the Individual Defendants repeatedly touted the purported efficacy of Deramiocel and the Company's ability to obtain a Biologics License Application ("BLA") for Deramiocel from the U.S. Food and Drug Administration ("FDA"). However, these rosy representations failed to disclose, *inter alia*, that the FDA had expressed skepticism of Deramiocel for the treatment of DMD as a result of, among other things, insufficient clinical trial data and, thus, would be denying Deramiocel's BLA. In particular, Defendants failed to disclose material adverse facts about Capricor's four-year safety and efficacy data from its Phase 2 HOPE-2 clinical trial of Deramiocel.

5. On May 5, 2025, the Company published a press release announcing it had finished its FDA mid-cycle review meeting on Deramiocel for the treatment of DMD. In relevant part, Defendants disclosed that no significant deficiencies had been identified by the review committee and that the BLA package was on track for a Prescription Drug User Fee Act ("PDUFA") action date of August 31, 2025. The FDA also confirmed that it intended to hold an advisory committee meeting on Deramiocel for the treatment of DMD.

[1] https://www.sec.gov/ix?doc=/Archives/edgar/data/0001133869/000155837025003707/capr-20241231x10k.htm#ITEM1BUSINESS_934608

[2] *Id.*

6. By June 20, 2025, *Stat News* reported that the director of the FDA's Center for Biologics Evaluation and Research ("CBER") had canceled the Deramiocel advisory committee meeting because he was "skeptical of the treatment" and uncertain about Deramiocel's efficacy and safety.

7. Less than a month later, on July 11, 2025, the Company published a press release revealing it had received a Complete Response Letter ("CRL") from the FDA denying the BLA for Deramiocel. In particular, the FDA cited that the BLA did not meet the statutory requirement for substantial evidence of effectiveness and that additional clinical data was needed. The CRL also referenced items that were outstanding in the Chemistry, Manufacturing, and Controls ("CMC") section of the BLA.

8. Throughout the Relevant Period, the Individual Defendants continued to understate the substantial risk of the FDA's disapproval of the Deramiocel BLA given the unapproved changes made to the pre-specified statistical analysis plan ("SAP") and contents of the CRL. For example, on January 20, 2026, a Company press release represented that "***[t]he Company expects that this submission will address the items outlined in the CRL***[.]" Similarly, in a press release issued March 12, 2026, the Company continued to obfuscate the likelihood of the FDA granting the Deramiocel BLA, stating that "***recent late-breaking data*… *reinforce Deramiocel's potential to become first-in-class therapy for Duchenne***[.]"

9. The truth fully emerged on July 27, 2026 when the FDA released briefing documents prior to its July 29 Advisory Committee meeting held to discuss the Deramiocel BLA (the "FDA Briefing Documents"). The FDA Briefing Documents noted that Capricor has made changes to the pre-specified SAP, adding that the final version "was not submitted to FDA for review prior to BLA submission and was not discussed and consequently not agreed upon." The FDA took issue with the Company's changes to SAP as it "does not consider the conversion of raw change to percent change and then back to raw change to have been scientifically justified, as it adds complexity and reduces

accuracy."

10. As a result of these considerations discussed in the FDA Briefing Documents, the FDA stated that it "considers [Capricor's] analyses based on the post-study SAP versions to be post-hoc and exploratory." The FDA Briefing Documents went further to state that "***the benefit-risk assessment for Deramiocel appears unfavorable in the absence of evidence of effectiveness***."[3]

11. Also on July 27, 2026, Cantor Fitzgerald published an investor note, reporting that the FDA Briefing Documents "paint an ugly picture" and "***raise several concerns and make allegations about the integrity of data collecting***."

12. The Advisory Committee meeting to discuss the BLA for Deramiocel was held on July 29, 2026. Within this meeting, as reported by Medscape the following day, a non-binding vote saw 9 out of 12 panel members "conclude[] that the available evidence does not support the efficacy of Deramiocel for treating DMD-associated cardiomyopathy. In coming to this decision, the panel relied on SAP version 1.1 as the "prespecified plan[.]"

13. On this news, the price of the Company's common stock fell $2.38 per share, or approximately 36%, from a closing price of $6.57 per share on July 29, 2026 to close at $4.19 per share on July 30, 2026.

14. During the Relevant Period, the Individual Defendants breached their fiduciary duties by personally making and/or causing the Company to make to the investing public a series of materially false and misleading statements regarding the Company's business, operations, and prospects. Specifically, the Individual Defendants willfully or recklessly made and/or caused the Company to make false and misleading statements that failed to disclose, *inter alia*, that: (1) the pre-specified statistical analysis plan used for analysis of clinical data for Deramiocel was altered; (2) the FDA did not agree to those alterations prior to the Company's resubmission of the Deramiocel BLA; (3) as a result of the foregoing, there was a substantial risk of the FDA disapproving of the clinical results

[3] All emphasis added unless otherwise stated.

for lack of substantial evidence of effectiveness of Deramiocel; and (4) as a result, the regulatory approval of Deramiocel for the treatment of Duchenne muscular dystrophy was at substantial risk. As a result of the foregoing, the Company's public statements were materially false and misleading and/or lacked a reasonable basis at all relevant times.

15. The Individual Defendants failed to correct and/or caused the Company to fail to correct these false and misleading statements and omissions of material fact, rendering them personally liable to the Company for breaching their fiduciary duties.

16. In addition, during the Relevant Period, the Individual Defendants breached their fiduciary duties by failing to maintain adequate internal controls while Defendants Bergmann and Es Saber engaged in improper insider sales, netting combined total proceeds of approximately $6.1 million.

17. In light of the Individual Defendants' misconduct—which has subjected the Company, its Chief Executive Officer ("CEO") and director, and its Chief Financial Officer ("CFO") to a federal securities fraud class action lawsuit pending in the United States District Court for the Southern District of California (the "Securities Class Action"), and which has further subjected the Company to the need to undertake internal investigations, the need to implement adequate internal controls, losses from the waste of corporate assets, and losses due to the unjust enrichment of the Individual Defendants who were improperly overcompensated by the Company and/or who benefitted from the wrongdoing alleged herein—the Company will have to expend many millions of dollars.

18. The Company has been substantially damaged as a result of the Individual Defendants' knowing or highly reckless breaches of fiduciary duty and other misconduct.

19. In light of the breaches of fiduciary duty engaged in by the Individual Defendants, most of whom are the Company's current directors, of the collective engagement in fraud and misconduct by the Company's directors, of the substantial likelihood of the directors' liability in this derivative action and of Defendants Marbán's and Bergmann's liability in the Securities Class Action, and of their not being disinterested

and/or independent directors, a majority of the Company's Board of Directors ("Board") cannot consider a demand to commence litigation against themselves on behalf of the Company with the requisite level of disinterestedness and independence.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), Rule 14a-9 of the Exchange Act (17 C.F.R. § 240.14a-9), Section 10(b) of the Exchange Act (15. U.S.C. § 78j(b)) and Section 21D of the Exchange Act (15 U.S.C. § 78u-4(f)). Plaintiff's claims also raise a federal question pertaining to the claims made in the Securities Class Action based on violations of the Exchange Act.

21. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

22. This derivative action is not a collusive action to confer jurisdiction on a court of the United States that it would not otherwise have.

23. Venue is proper in this District because Capricor's principal executive offices are in this District. In addition, a substantial portion of the transactions and wrongs complained of herein occurred in this District, the Defendants have conducted business in this District, and Defendants' actions have had an effect in this District.

PARTIES

Plaintiff

24. Plaintiff is a current shareholder of Capricor. Plaintiff has continuously held Capricor common stock at all relevant times.

Nominal Defendant Capricor

25. Capricor is a Delaware corporation with principal executive offices at 10865 Road to the Cure, Suite 150, San Diego, California 92121. Capricor's common stock trades on The Nasdaq Global Select Market ("NASDAQ") under the ticker symbol "CAPR."

Defendant Marbán

26. Defendant Marbán has served as the Company's CEO since 2010 and as a Company director since November 2013. Defendant Marbán has worked at the Company since 2005. She is also a co-founder of Capricor, Inc., a wholly-owned subsidiary of Capricor.

27. The Schedule 14A the Company filed with the SEC on April 10, 2026 (the "2026 Proxy Statement") stated the following about Defendant Marbán:

> ***Linda Marbán, Ph.D.*** Dr. Marbán is our Chief Executive Officer, and has served in that capacity and on the Board since November 2013. Dr. Marbán is a co-founder of Capricor, Inc. (wholly-owned subsidiary of Capricor Therapeutics, Inc.) and has been with the Company since 2005 and became its Chief Executive Officer in 2010. Dr. Marbán has been in the biotechnology field for more than 20 years and brings extensive experience across research, product development and business development to the Company. From 2003-2009, Dr. Marbán held various senior roles at Excigen, Inc., a gene therapy biotechnology company, where she was responsible for operations and business development and where she oversaw the development of a biologic pacemaker for the heart. Prior to Excigen, Dr. Marbán worked in academic science, first at the Cleveland Clinic Foundation working on the development of contractile dysfunction in heart failure due to myocarditis, followed by a postdoctoral fellowship at Johns Hopkins University. While at Johns Hopkins, she advanced to the rank of Research Assistant Professor in the Department of Pediatrics, specializing in the mechanism of the biophysical properties of cardiac muscle. Her tenure at Johns Hopkins ran from 2000 to 2003. Dr. Marbán earned a Ph.D. from Case Western Reserve University in cardiac physiology and her Bachelor of Science from the University of Maryland.
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> Dr. Linda Marbán was selected to serve as a member of the Board in part due to her wealth of knowledge in research and development, especially for the treatment of cardiovascular diseases, her experience in early-stage life sciences companies spanning over a decade, as well as her business development expertise.

Defendant Bergmann

28. Defendant Bergmann has served as the Company's CFO since January 2018. He has held various positions at the Company since joining in 2011, including Director of Finance and Operations from December 2011 to November 2013 and Vice President of

Finance from November 2013 to January 2018.

29. During the Relevant Period, while the Company's stock price was artificially inflated and before the scheme was exposed, Defendant Bergmann made the following sales of Company stock:

Date	Number of Shares	Avg. Price/Share	Proceeds
March 31, 2026	25,000	$30.13	$753,153
May 1, 2026	25,000	$31.70	$792,540
June 22, 2026	500	$30.00	$15,000
June 24, 2026	400	$30.00	$12,000
June 25, 2026	24,100	$30.38	$732,158

Thus, in total, before the fraud was exposed, Defendant Bergmann sold 75,000 shares of Company stock on inside information, for which he received approximately $2.3 million in proceeds. His insider sales, made with knowledge of material nonpublic information before the material misstatements and omissions were exposed, demonstrate his motive in facilitating and participating in the scheme.

30. The 2026 Proxy Statement stated the following about Defendant Bergmann:

> Mr. Bergmann has served as Capricor Therapeutics' Chief Financial Officer since 2018 and has been involved in the biotechnology industry for approximately 15 years. He joined Capricor in 2011 and has held roles of increasing responsibility, playing a key role in the Company's strategic development and growth into a publicly traded biotechnology company. Mr. Bergmann oversaw Capricor's entry into the public markets, including its reverse merger and subsequent uplisting to the Nasdaq Capital Market. He has also led equity financings totaling over $500 million to date as well as guided business development efforts resulting in multiple strategic partnerships throughout his tenure. Prior to Capricor, Mr. Bergmann was with Gettleson, Witzer and O'Connor, a Beverly Hills-based business and financial management firm, where he oversaw accounting and finance functions for several production studios with global box office revenue exceeding $1

billion. His clients included actors, musicians, directors, and international foundations in the entertainment industry. Prior to that he held roles in accounting, finance, and operations across start-ups and mid-sized companies. Mr. Bergmann earned his Bachelor of Science from Providence College and his M.B.A. from the University of Southern California's Marshall School of Business. He is actively engaged in venture and entrepreneurial initiatives in the Southern California area and serves on the board of a privately-held commercial real estate company.

Defendant Auwaerter

31. Defendant Auwaerter has served as a Company director since July 2023 and also serves as a member of the Nominating and Corporate Governance Committee.

32. The 2026 Proxy Statement stated the following about Defendant Auwaerter:

Paul G. Auwaerter, M.D., M.B.A., FIDSA. Dr. Paul Auwaerter joined the Company's Board in July 2023 and is currently a member of the Company's Nominating and Corporate Governance Committee. He is the Sherrilyn and Ken Fisher Professor of Medicine at the Johns Hopkins University School of Medicine, where he also serves as Director of the Division of Infectious Diseases and Director of the Sherrilyn and Ken Fisher Center for Environmental Infectious Diseases. Dr. Auwaerter is the Executive Director and Chief Medical Officer of the Johns Hopkins Point-of-Care Information Technology (POC-IT) Center, a globally recognized clinical decision support initiative that develops widely used digital tools, including the Johns Hopkins ABX Guide, HIV Guide, and other specialty resources. He has served as Editor-in-Chief of the ABX Guide since 2017. An internationally recognized clinician-scientist with training in virology and immunology, Dr. Auwaerter has authored more than 130 peer-reviewed publications focused on improving the diagnosis and management of infectious diseases, with particular expertise in Lyme disease, fever of unknown origin, and complex multisystem infections. He chaired therapeutic guidance for the Johns Hopkins Health System response to COVID-19. His work bridges clinical medicine, digital health innovation, and translational research relevant to therapeutic development and real-world evidence generation. Dr. Auwaerter is a past President of the Infectious Diseases Society of America (2017–2018) and former Chair of the IDSA Foundation. He has participated in FDA anti-infective advisory and review activities and has contributed to clinical guideline development and therapeutic evaluation efforts relevant to regulatory and clinical trial frameworks. He currently serves on the Board of Directors of the American Lyme Disease Foundation. He received his A.B.

and M.D. from Columbia University and completed his residency and fellowship training in internal medicine and infectious diseases at Johns Hopkins, where he has been on faculty for over three decades. He also holds an M.B.A. from Johns Hopkins University.

Dr. Paul Auwaerter was selected to serve as a member of the Board in part due to his extensive medical background, including expertise in infectious diseases.

Defendant Dunbar

33. Defendant Dunbar has served as a Company director since November 2013 and also serves as a member of the Audit, Compensation, and Nominating and Corporate Governance Committees.

34. The 2026 Proxy Statement stated the following about Defendant Dunbar:

George W. Dunbar Jr. Mr. Dunbar has been a member of the Capricor, Inc. Board since 2012 and a member of the Company's Board since November 2013. He is currently a member of the Company's Audit and Compensation Committees. He has been a Managing Partner of The Dunbar Group, LLC since 2011, and provides advisory services to healthcare and life science investors and companies who recognize they need short-term or interim industry expertise as they grow and remain capital efficient. Mr. Dunbar has extensive healthcare and life sciences operating experience and has served as a director or chief executive officer with private and public life science companies specializing in diagnostics, specialty pharma, cell therapy and biologics, two as chief executive officer, where he led initial public offerings. He served as chief executive officer of ISTO Technologies and ISTO Biologics, two private orthobiologics companies acquired by Thompson Street Capital Partners. Prior to ISTO, Mr. Dunbar served as a Venture Partner with Arboretum Ventures, a leading healthcare venture capital firm. Mr. Dunbar attended Auburn University where he graduated with a Bachelor of Science degree in Electrical Engineering, and later received his M.B.A. He served on the Harbert College of Business M.B.A. Advisory Board and is currently an advisor with Life Science Tennessee, and to Vanderbilt University's Center for Technology Transfer and Commercialization.

Mr. Dunbar was selected to serve as a member of the Board in part due to his significant experience with early stage private and public companies and depth of knowledge in building stockholder value, growing a company from inception and navigating significant corporate transactions and the public

company process. Additionally, Mr. Dunbar has extensive experience in the pharmaceutical industry, allowing him to contribute significant operational experience.

Defendant Es Sabar

35. Defendant Es Sabar has served as a Company director since July 2021 and also serves as a member of the Audit Committee and as Chairperson of the Nominating and Corporate Governance Committee.

36. During the Relevant Period, while the Company's stock price was artificially inflated and before the scheme was exposed, Defendant Es Sabar made the following sales of Company stock:

Date	Number of Shares	Avg. Price/Share	Proceeds
March 31, 2026	61,265	$30.17	$1,848,243
April 1, 2026	53,735	$31.03	$1,667,225
April 2, 2026	7,529	$32.00	$240,928

Thus, in total, before the fraud was exposed, Defendant Es Saber sold 122,529 shares of Company stock on inside information, for which she received approximately $3.8 million in proceeds. Her insider sales, made with knowledge of material nonpublic information before the material misstatements and omissions were exposed, demonstrate her motive in facilitating and participating in the scheme.

37. The 2026 Proxy Statement stated the following about Defendant Es Sabar:

> ***Karimah Es Sabar.*** Ms. Es Sabar joined the Company's Board in July 2021 and is currently the Chairman of the Company's Nominating and Corporate Governance Committee. She is a corporate director and strategic advisor for private and not for profit organizations. From 2016-2025 she has been the CEO and General Partner at Quark Venture LP, a venture capital investment firm, leading their global health sciences enterprise. Prior to Quark Venture, Ms. Es Sabar was President and CEO at the Centre for Drug Research and Development (CDRD), Canada's national drug development and

commercialization center, responsible for developing and executing on the overall strategic direction. Ms. Es Sabar has held senior management positions with multinational pharmaceutical companies, most notably as Director International Division, and later Global Head Marketing and Business Development at Sanofi Pasteur based in Toronto. She holds degrees in Neurochemistry from the Institute of Psychiatry, University of London, in Biochemistry and Chemistry from the University of Salford Manchester, and an Executive Certificate in Management and Leadership from the MIT Sloan School of Management. Ms. Es Sabar is also the Chair of the Health Biosciences Economic Strategy Table (Government of Canada) and she serves on the board of directors of several biosciences companies. She is a Member of the Order of British Columbia, and recipient of Canada's Most Powerful Women: Top 100 Award and Canada's Gold Award for Business Excellence amongst others.

Ms. Es Sabar was selected to serve as a member of the Board in part due to her significant experience with early stage private and public companies and brings a depth of knowledge in building stockholder value, growing a company from inception and navigating significant corporate transactions and the public company process. Additionally, Ms. Es Sabar has expertise in the innovation ecosystem and has extensive experience in the pharmaceutical industry, allowing her to contribute significant operational experience.

Defendant Gotwals

38. Defendant Gotwals has served as a Company director since July 2023 and also serves as a member of the Compensation Committee.

39. The 2026 Proxy Statement stated the following about Defendant Gotwals:

Philip J. Gotwals, Ph.D. Dr. Philip Gotwals joined the Company's Board in July 2023 and is currently a member of the Company's Compensation Committee. Dr. Gotwals has experience in drug development, research, corporate strategy and business development with a career spanning nearly 30 years in the biotechnology industry. Dr. Gotwals has been a Partner at RedSky Partners, LLC, which provides advisory services to the biotechnology industry in the areas of corporate strategy and business development since 2023. Previously, Dr. Gotwals served as the Global Head, Vice President of Business Development and Licensing at Novartis Institutes for Biomedical Research (NIBR) from 2019 to 2023, where he oversaw business development efforts for all disease areas and technology platforms. Prior to that, Dr. Gotwals was Global Head of Search and Evaluation of NIBR from 2017 to

2019. Dr. Gotwals also served as Executive Director, Immuno-Oncology, at NIBR from 2009 to 2017. Under Dr. Gotwals' leadership, NIBR business development and licensing executed over 50 major strategic transactions which included licensing deals, collaborations, acquisitions and new company creations. These transactions led to significant corporate evolution and growth. During his 13 years at NIBR, Dr. Gotwals was instrumental in building the company's immuno-oncology strategic research area and spearheading the collaboration with the University of Pennsylvania to develop chimeric antigen receptor (CAR) T-cell therapies. Prior to NIBR, he was Vice President of Program Management at Altus Pharmaceuticals from 2006 to 2009, where he was responsible for all product development project management activities. Prior to Altus, he was Senior Director of Program and Alliance Management at Biogen, from 1994 to 2006, where he oversaw leadership of internal and allied early product development teams in the autoimmune, neurology and oncology therapeutic areas. Dr. Gotwals has a B.A. in Biology from Amherst College, holds a Ph.D. in Genetics from the University of California at Berkeley, completed postdoctoral research at the Massachusetts Institute of Technology, business training at Harvard Business School and has published extensively in the area of integrin biology.

Dr. Gotwals was selected to serve as a member of the Board in part due to his significant experience with early stage private and public companies and brings a depth of knowledge in building stockholder value, growing a company from inception and navigating significant corporate transactions and the public company process. Additionally, Dr. Gotwals has extensive experience in the pharmaceutical industry, allowing him to contribute significant operational experience.

Defendant Kelliher

40. Defendant Kelliher has served as a Company director since September 2023 and also serves as a member of the Audit Committee.

41. The 2026 Proxy Statement stated the following about Defendant Kelliher:

Michael Kelliher. Michael Kelliher joined the Company's Board in September 2023 and is currently a member of the Company's Audit Committee. Mr. Kelliher is an experienced business development and finance professional with expertise in corporate strategy, mergers and acquisitions, strategic partnerships and licensing, with a career spanning more than 20 years with leading biotechnology and global pharmaceutical companies. He joined Ardelyx (Nasdaq: ARDX) in 2024, a company focused on discovering,

developing and commercializing first-in-class targeted therapies that advance patient care, as Executive Vice President of Corporate Development and Strategy and currently services as Chief Business Officer. There, he has responsibility for strategy, business development, and M&A. Prior to Ardelyx, Mr. Kelliher served as Group Vice President, M&A and Business Development, at Horizon Therapeutics (now Amgen), a global biotechnology company focused on researching, developing and commercializing medicines for rare, autoimmune and severe inflammatory diseases. During Mr. Kelliher's 9-year tenure at Horizon, he led an aggressive growth and expansion agenda through acquisitions, development collaborations and other transactions. He was instrumental in transforming Horizon into a $28.0 billion innovation-driven biotech company. Prior to his time at Horizon, from 2009 to 2014, Mr. Kelliher held progressive financial roles at Elan Corporation (now Perrigo Company), a leading global pharmaceutical company where he oversaw strategic partnerships and collaborations and advised its board of directors and senior leadership on investments, business development, product commercialization and asset monetization. Mr. Kelliher began his career in banking, public accounting and corporate finance and holds a Bachelor of Commerce degree from the University College Cork (Ireland). He is also an Associated Chartered Accountant.

Mr. Kelliher was selected to serve as a member of the Board in part due to his significant experience with early stage private and public companies and brings a depth of knowledge in building stockholder value, growing a company from inception and navigating significant corporate transactions and the public company process. Additionally, Mr. Kelliher has extensive experience in the pharmaceutical industry, allowing him to contribute significant operational experience.

Defendant Litvack

42. Defendant Litvack has served as a Company director since 2012 and as Executive Chairman of the Board since November 2013. He also serves as a member of the Nominating and Corporate Governance Committee.

43. The 2026 Proxy Statement stated the following about Defendant Litvack:

Frank Litvack, M.D., FACC. Dr. Litvack joined the Capricor, Inc. Board in 2012 and since November 2013 has been serving as the Company's Executive Chairman and is currently a member of the Company's Nominating and Corporate Governance Committee. Dr. Litvack is a native of Canada. He

completed medical school and residency at McGill University in Montreal and a Cardiovascular Fellowship at Cedars-Sinai Medical Center in Los Angeles, where he subsequently became co-director of the Cardiovascular Intervention Center and Professor of Medicine at UCLA. There he led a prominent clinical and research program known for its excellence in innovation, care, and leadership in Translational Medicine. Dr. Litvack was board-certified in Internal Medicine, Cardiovascular Diseases, and Interventional Cardiology. He has published more than one hundred research articles and chapters and is the recipient of several awards, including an American Heart Association Young Investigator Award, the Leon Goldman Medical Excellence Award for contributions to the field of biomedical optics, and the United States Space Technology and Space Foundation Hall of Fame for pioneering work with the excimer laser. Dr. Litvack left full-time practice and academics in 2000 to concentrate on entrepreneurial activities. Dr. Litvack has founded and operated several healthcare ventures, both as chairman and/or chief executive officer, including Progressive Angioplasty Systems Inc., a medical device company that was acquired by United States Surgical Corp. in 1998; Savacor, Inc., a medical device company that was acquired by St. Jude Medical in 2005; Conor Medsystems, Inc., a publicly-traded medical device company that was acquired by Johnson & Johnson in 2007 and V-Wave Ltd. (sold to Johnson & Johnson in 2024). He presently sits on the boards of Credence MedSystems, a drug delivery company and Levation Pharma, a specialty pharmaceutical company in the area of facial aesthetics which he co-founded. Dr. Litvack was formerly a Member of the Management Company of Pura Vida Investments, LLC, a healthcare hedge fund that he exited in 2023. Since 2023, he is the Managing Member of Wilhareka Partners LLC. He is serving as a director on the board of Cardiovascular Research Foundation, a non-profit research and education entity.

Dr. Frank Litvack, our Executive Chairman, was selected to serve as a member of the Board in part due to his wealth of business-building experience and medical expertise that anchors our activities in sound scientific research and solid business planning and practices. Additionally, as an accomplished veteran of the healthcare industry who has orchestrated the founding, development, financing and sale of several medical technology companies, we believe that Dr. Litvack provides invaluable knowledge and leadership to the Company.

Defendant Musket

44. Defendant Musket has served as a Company director since November 2013

and also serves as Chairperson of the Audit and Compensation Committees.

45. The 2026 Proxy Statement stated the following about Defendant Musket:

> ***David B. Musket.*** Mr. Musket has been a member of the Capricor, Inc. Board since 2012 and a member of the Company's Board since November 2013. He currently services as the Chairman of the Company's Audit and Compensation Committees. Mr. Musket has vast experience in strategic finance and has been following developments in the pharmaceutical and medical device industries for over 30 years. Mr. Musket began his investment career as an equities research analyst at Goldman Sachs & Co. following the pharmaceutical industry. From 1991 through 2016 he served as President of Musket Research Associates, a registered broker/dealer focused exclusively on venture banking transactions for emerging healthcare companies. From 1996 to 2022 he was a General Partner of ProMed Management, a healthcare-focused investment management company. He has served on the boards of several private and public companies throughout his career. From 1999 to 2007, Mr. Musket served on the board of directors of publicly-traded Conor MedSystems, Inc. a medical device company sold to Johnson & Johnson in 2007 for $1.4 billion. Mr. Musket holds a Bachelor of Arts degree in Biology and Psychology from Boston College.
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> Mr. Musket was selected to serve as a member of the Board in part due to his venture capital and investment banking backgrounds and expertise in financing and growing early-stage biopharmaceutical companies. Additionally, Mr. Musket has significant experience with early stage private and public companies and brings a depth of knowledge in building stockholder value, growing a company from inception and navigating significant corporate transactions and the public company process.

FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS

46. By reason of their positions as officers, directors, and/or fiduciaries of Capricor and because of their ability to control the business and corporate affairs of Capricor, the Individual Defendants owed Capricor and its shareholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage Capricor in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests

of Capricor and its shareholders so as to benefit all shareholders equally.

47. Each director and officer of the Company owes to Capricor and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the Company and in the use and preservation of its property and assets and the highest obligations of fair dealing.

48. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Capricor, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

49. To discharge their duties, the officers and directors of Capricor were required to exercise reasonable and prudent supervision over the management, policies, controls, and operations of the Company.

50. Each Individual Defendant, by virtue of their position as a director and/or officer, owed to the Company and to its shareholders the highest fiduciary duties of loyalty, good faith, and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Capricor, the absence of good faith on their part, or a reckless disregard for their duties to the Company and its shareholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company. The conduct of the Individual Defendants who were also officers and directors of the Company has been ratified by the remaining Individual Defendants who collectively comprised a majority of the Company's Board at all relevant times.

51. As senior executive officers and/or directors of a publicly-traded company whose common stock was registered with the SEC pursuant to the Exchange Act and traded on NASDAQ, the Individual Defendants had a duty to prevent and not to effect the dissemination of inaccurate and untruthful information with respect to the Company's

financial condition, performance, growth, operations, financial statements, business, products, management, earnings, internal controls, and present and future business prospects, including the dissemination of false information regarding the Company's business, prospects, and operations, and had a duty to cause the Company to disclose in its regulatory filings with the SEC all those facts described in this complaint that it failed to disclose, so that the market price of the Company's common stock would be based upon truthful and accurate information. Further, they had a duty to ensure the Company remained in compliance with all applicable laws.

52. To discharge their duties, the officers and directors of the Company were required to exercise reasonable and prudent supervision over the management, policies, practices, and internal controls of the Company. By virtue of such duties, the officers and directors of Capricor were required to, among other things:

(a) ensure that the Company was operated in a diligent, honest, and prudent manner in accordance with the laws and regulations of Delaware, California and the United States, and pursuant to Capricor's corporate governance and applicable codes of conduct and/or ethics;

(b) conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(c) remain informed as to how Capricor conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, to make reasonable inquiry in connection therewith, and to take steps to correct such conditions or practices;

(d) establish and maintain systematic and accurate records and reports of the business and internal affairs of Capricor and procedures for the reporting of the business and internal affairs to the Board and to periodically investigate, or cause independent investigation to be made of, said reports and records;

(e) maintain and implement an adequate and functioning system of internal legal, financial, and management controls, such that Capricor's operations would comply with all applicable laws and Capricor's financial statements and regulatory filings filed with the SEC and disseminated to the public and the Company's shareholders would be accurate;

(f) exercise reasonable control and supervision over the public statements made by the Company's officers and employees and any other reports or information that the Company was required by law to disseminate;

(g) refrain from unduly benefiting themselves and other Company insiders at the expense of the Company; and

(h) examine and evaluate any reports of examinations, audits, or other financial information concerning the financial affairs of the Company and make full and accurate disclosure of all material facts concerning, *inter alia*, each of the subjects and duties set forth above.

53. Each of the Individual Defendants further owed to Capricor and the shareholders the duty of loyalty requiring that each favor Capricor's interest and that of its shareholders over their own while conducting the affairs of the Company and refrain from using their position, influence or knowledge of the affairs of the Company to gain personal advantage.

54. At all times relevant hereto, the Individual Defendants were the agents of each other and of Capricor and were at all times acting within the course and scope of such agency.

55. Because of their advisory, executive, managerial, directorial, and controlling positions with Capricor, each of the Individual Defendants had access to adverse, nonpublic information about the Company.

56. The Individual Defendants, because of their positions of control and authority, were able to and did, directly or indirectly, exercise control over the wrongful acts

complained of herein, as well as the contents of the various public statements issued by Capricor.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

57. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their wrongdoing. The Individual Defendants caused the Company to conceal the true facts as alleged herein. The Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

58. The purpose and effect of the conspiracy, common enterprise, and/or common course of conduct was, among other things, to: (i) facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, unjust enrichment, waste of corporate assets, gross mismanagement, abuse of control, and violations of the Exchange Act; (ii) conceal adverse information concerning the Company's operations, financial condition, legal compliance, future business prospects, and internal controls; and (iii) artificially inflate the Company's stock price.

59. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company purposefully or recklessly to conceal material facts, fail to correct such misrepresentations, and violate applicable laws. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants collectively and individually took the actions set forth herein. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants who is a director of Capricor was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

60. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist

the commission of the wrongdoing complained of herein, each of the Individual Defendants acted with actual or constructive knowledge of the primary wrongdoing, either took direct part in, or substantially assisted in the accomplishment of that wrongdoing, and was or should have been aware of his or her overall contribution to and furtherance of the wrongdoing.

61. At all relevant times hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Capricor and was at all times acting within the course and scope of such agency.

CAPRICOR'S CODE OF CONDUCT

62. Capricor's Code of Business Conduct and Ethics (the "Code of Conduct") represents that it "applies to all of our directors, officers and employees." With respect to its purpose, the Code of Conduct states:

> This Code contains general guidelines for conducting the business of the Company consistent with the highest standards of business conduct and ethics. To the extent this Code requires a higher standard than required by commercial practice or applicable laws, rules or regulations, we adhere to these higher standards.

63. In the section titled "Reporting Violations of the Code," the Code of Conduct states, in relevant part:

> All employees have a duty to report any known or suspected violation of this Code, including any violation of the laws, rules, regulations or policies that apply to the Company. If you encounter a situation or are considering a course of action and its appropriateness is unclear, discuss the matter promptly with your supervisor or a Principal Corporate officer of the Company. Remember, even the appearance of impropriety can be very damaging and should be avoided.
>
> If you are aware of a suspected or actual violation of Code by others, you have a responsibility to report it. You are expected to promptly notify a Principal Corporate Officer with a specific description of the violation that you believe has occurred, including any information you have about the persons involved

and the time of the violation.

64. In the section "Policy Against Retaliation," the Code of Conduct states, in relevant part:

> The Company prohibits retaliation against an employee who, in good faith, seeks help or reports known or suspected violations. Any reprisal or retaliation against an employee because the employee, in good faith, sought help or filed a report will be subject to disciplinary action, including potential termination of employment.

65. In the section "Waivers of the Code," the Code of Conduct states, in relevant part:

> Waivers of this Code for employees may be made only by a Principal Corporate Officer of the Company. Any waiver of this Code for our directors, executive officers or other Principal Corporate Officers may be made only by our full Board of Directors and will be disclosed to the public as required by law or the rules of the securities exchange on which the Company is trading.

66. In the section "Competition and Fair Dealing," the Code of Conduct states, in relevant part:

> Each employee should endeavor to deal fairly with fellow employees and with the Company's customers, suppliers, strategic partners, services providers, competitors and anyone else with whom he or she has contact in the course of performing his or her job. Employees should not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of facts or any other unfair-dealing practice.

67. In violation of the Code of Conduct, the Individual Defendants conducted little, if any, oversight of the Company's engagement in the Individual Defendants' scheme to issue materially false and misleading statements to the public and to facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, gross mismanagement, abuse of control, waste of corporate assets, unjust enrichment, and violations of the Exchange Act. Also, in violation of the Code of Conduct, the Individual

Defendants failed to maintain internal controls, failed to obtain waivers and/or failed to disclose obtained waivers of violating the Code of Conduct, and failed to comply with laws and regulations, conduct business in an honest and ethical manner, and properly report violations of the Codes of Conduct.

CAPRICOR'S AUDIT COMMITTEE CHARTER

68. Capricor also maintains an Audit Committee Charter (the "Audit Committee Charter") which governs the Audit Committee's roles and responsibilities. The Audit Committee Charter states the following, in relevant part, regarding the purpose of the Audit Committee:

> The purpose of the Committee is to oversee the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company.
>
> In addition to the powers and responsibilities expressly delegated to the Committee in this Charter, the Committee may exercise any other powers and carry out any other responsibilities delegated to it by the Board from time to time consistent with the Company's bylaws. The powers and responsibilities delegated by the Board to the Committee in this Charter or otherwise shall be exercised and carried out by the Committee as it deems appropriate without requirement of Board approval, and any decision made by the Committee (including any decision to exercise or refrain from exercising any of the powers delegated to the Committee hereunder) shall be at the Committee's sole discretion. While acting within the scope of the powers and responsibilities delegated to it, the Committee shall have and may exercise all the powers and authority of the Board. To the fullest extent permitted by law, the Committee shall have the power to determine which matters are within the scope of the powers and responsibilities delegated to it. The approval of this Charter shall be construed as a delegation of authority to the Committee with respect to the responsibilities set forth herein.

69. Under the section "Powers and Responsibilities," the Audit Committee Charter states the following, in relevant part:

Annual Financial Statements and Annual Audit 7. Meetings with Management and the Independent Auditors. (a) The Committee shall meet with management and the independent auditors in connection with each annual audit to discuss the scope of the audit, the procedures to be followed and the staffing of the audit. (b) The Committee shall review and discuss with management and the independent auditors: (i) major issues regarding accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles, and major issues as to the adequacy of the Company's internal controls and any special audit steps adopted in light of material control deficiencies; (ii) any analyses prepared by management or the independent auditors setting forth significant financial reporting issues and judgments made in connection with the preparation of the Company's financial statements, including analyses of the effects of alternative U.S. generally accepted accounting principles ("GAAP") methods on the Company's financial statements; and (iii) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the Company's financial statements. (c) The Committee shall review and discuss the annual audited financial statements (including the related notes) with management and the independent auditors, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" to be included in the Company's annual report on Form10-K before the Form 10-K is filed.

***

Quarterly Financial Statements 10. Meetings with Management and the Independent Auditors. The Committee shall review and discuss the quarterly financial statements with management and the independent auditors, including the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" to be included in the Company's quarterly report on Form10-Q before the Form 10-Q is filed. Other Powers and Responsibilities 11. The Committee shall have the authority to consider and, if deemed appropriate, adopt a policy regarding Committee pre-approval of employment by the Company of individuals employed or formerly employed by the Company's independent auditors and engaged on the Company's account. 12. The Committee shall have the authority, in its sole discretion, to retain and obtain the advice and assistance of independent outside counsel and such other advisors as it deems necessary to fulfill its duties and responsibilities under this Charter. The Committee shall set the compensation and oversee the work of any outside counsel and other advisors.

> 13. The Committee shall review, discuss with management and the independent auditors, as appropriate, and approve earnings press releases and press releases containing other financial information, as well as the substance of financial information and earnings guidance provided to analysts and ratings agencies, which discussions may be general discussions of the type of information to be disclosed or the type of presentation to be made. The Chair of the Committee may represent the entire Committee for purposes of this discussion. 14. The Committee shall review the Company's compliance with applicable laws and regulations and review and oversee any policies, procedures and programs designed to promote such compliance. 15. The Committee shall review the results of management's efforts to monitor compliance with the Company's programs and policies designed to ensure adherence to applicable laws and rules.

70. In violation of the Audit Committee Charter, the Individual Defendants conducted little, if any, oversight of the Company's engagement in the Individual Defendants' scheme to issue materially false and misleading statements to the public and to facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, unjust enrichment, gross mismanagement, abuse of control, waste of corporate assets, and violations of the Exchange Act. Moreover, in violation of the Audit Committee Charter, the Individual Defendants failed to maintain the accuracy of the Company records and reports, comply with laws and regulations, act in good faith and diligence without misstating, misrepresenting, or omitting material facts, and properly report violations of the Audit Committee Charter.

INDIVIDUAL DEFENDANTS' MISCONDUCT

Background

71. Capricor is a clinical-stage biotechnology company that purports to be "focused on the development of transformative cell and exosome-based therapeutics for treating Duchenne muscular dystrophy ('DMD'), a rare form of muscular dystrophy which results in muscle degeneration and premature death, and other diseases with high unmet medical needs."[4]

[4] https://www.sec.gov/ix?doc=/Archives/edgar/data/0001133869/000155837025003707/capr-

72. The Company purports to be focused on the development and commercialization of Deramiocel, a cell therapy technology, and Capricor admits that its "ability to eventually generate any product revenue sufficient to achieve profitability will depend on the successful development, approval and eventual commercialization of Deramiocel for the treatment of DMD and [Capricor's] other product candidates."[5]

73. Despite frequent claims throughout 2024 and 2025 that Deramiocel was effective and that the Company would obtain a BLA from the FDA for the drug, it soon became clear that the Company's path to obtaining said BLA would not be so straightforward. On July 27, 2025, the Company announced that the FDA had sent Capricor a CRL, denying the BLA for Deramiocel and noting that additional clinical data was needed to meet the statutory requirement for substantial evidence of effectiveness.

74. Exactly one year later, on July 27, 2026, the FDA Briefing Documents were released, revealing that the Company had made unapproved changes to the SAP and that, ultimately, "the benefit-risk assessment for Deramiocel appears unfavorable in the absence of evidence of effectiveness."

75. The FDA Advisory Committee engaged in a non-binding vote on July 29, 2026 within which three quarters of the panel members agreed that available evidence surrounding Deramiocel did not demonstrate that the drug is an effective treatment for DMD-associated cardiomyopathy.

False and Misleading Statements

December 17, 2025 Webinar

76. On December 17, 2025, the Company participated in a webinar to "discuss positive topline results from Capricor's Phase 3 HOPE-3 trial evaluating Deramiocel" and "how the findings inform ongoing regulatory discussions," alongside Parent Project Muscular Dystrophy.

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[5] *Id.*

77. During the webinar, Defendant Marbán stated, in pertinent part:

> So what this is called is a fourth plot. And you guys probably have seen me present one similar to this from the HOPE-2 study before, but just to remind you that it basically shows the propensity of multiple endpoints either due to a treatment effect of the drug that you're giving or whether or not it's driving towards placebo or basically no clinical efficacy. And what we can see here in the performance of the upper limb 2.0, ***our primary efficacy endpoint, it's trending, in fact, statistically significant towards Deramiocel being the effective in treating the skeletal muscle myopathy***.
>
> We saw the key secondary endpoint, a key secondary endpoint is very important nomenclature because it allows for labeling opportunities. We saw improvement and statistical significance in cardiac function in the patients that were treated with Deramiocel compared to placebo. Digging down a little deeper, we saw that we had even more statistical significance in the mid-level dimension of the POL 2.0. Dr. McDonald did a great job of describing that, but I'll just remind you that's arm function, so might be correlated with the ability to feed yourself or take a drink of water or as Pat used to say, to hug your mother. The total global statistical test was also statistically significant in terms of field function and survived metrics, so skeletal muscle function, cardiac improvement of left ventricular ejection fraction. And finally, a patient-reported outcome measure called the PGI.
>
> And then finally, as John just talked about late gadolinium enhancement, which is the amount of scar in the heart, and we see that, that was statistically significant too. All of these are what statisticians call type 1 error controlled. That means that you put very, very tight regulation around them mathematically as to whether what you're seeing can be due to chance or whether, in fact, it is actually due to treatment by your therapeutic. So taken together, we are going to present this data to the FDA. ***We believe that this should answer all the questions raised in their complete response letter on the BLA that was submitted last December, and we're hoping to move rapidly towards an approval for Deramiocel in DMD, not only now cardiomyopathy, but also skeletal muscle function.***

January 20, 2026 Press Release

78. On January 20, 2026, the Company published a press release titled "Capricor Therapeutics Provides Regulatory Update on Deramiocel BLA Following FDA Review of

HOPE-3 Topline Data." The press release stated, in pertinent part:

> As previously disclosed, the Company provided topline results from its Phase 3 HOPE-3 clinical study to the U.S. Food and Drug Administration (FDA) in late 2025. Following its review of these data, the FDA has formally requested the full HOPE-3 clinical study report (CSR) and supporting data to address the Complete Response Letter (CRL). The FDA did not request any additional clinical studies or new patient data as part of this request.
>
> Preparation of the HOPE-3 CSR is well underway, and the Company plans to submit the requested materials to the FDA in February 2026. ***The Company expects that this submission will address the items outlined in the CRL and support continued review of the BLA***, including the assignment of a new Prescription Drug User Fee Act (PDUFA) target action date.
>
> "***We are actively engaging with the FDA in order to facilitate an efficient review of the HOPE-3 data that directly address the issues raised in the CRL we received in July 2025.*** We were pleased that the FDA requested the HOPE-3 clinical study report, as this is an expected and appropriate next step following their initial review of the topline data," said Linda Marbán, Ph.D., Chief Executive Officer of Capricor. "The HOPE-3 results demonstrated statistically significant and clinically meaningful improvements in both skeletal muscle and cardiac function—key drivers of disease progression and long-term outcomes in Duchenne. These findings build on more than a decade of consistent clinical evidence and reinforce our confidence in Deramiocel's potential. Our near-term priority is to address the FDA's request and continue working collaboratively so that patients with late-stage DMD, who currently have very limited treatment options, may gain access to Deramiocel as soon as possible."

March 10, 2026 Press Release

79. On March 10, 2026, the Company issued a press release announcing the "Establishment of New PDUFA Date for Deramiocel BLA." In the press release, Capricor announced a PDUFA target action date of August 22, 2026, stating, in pertinent part:

> Capricor Therapeutics (NASDAQ: CAPR), a biotechnology company developing transformative cell and exosome-based therapeutics for the treatment of rare diseases, today announced that the U.S. Food and Drug Administration ("FDA") has lifted the previously issued Complete Response Letter and resumed review of its Biologics License Application ("BLA")

> seeking full approval of Deramiocel, an investigational cell therapy, for the treatment of Duchenne muscular dystrophy ("DMD") cardiomyopathy. The submission has been classified as a Class 2 resubmission, with a Prescription Drug User Fee Act ("PDUFA") target action date of August 22, 2026.
>
> "We are encouraged by the FDA's acknowledgment of our response to the Complete Response Letter and its continued review of our BLA for Deramiocel," said Linda Marbán, Ph.D., Chief Executive Officer of Capricor. "We believe the positive HOPE-3 results and broader clinical evidence reinforce Deramiocel's potential to become a first-in-class therapy for Duchenne muscular dystrophy, with the opportunity to address both skeletal and cardiac manifestations of the disease. We look forward to continuing to work closely with the FDA throughout the review process and remain focused on bringing this important therapy to patients as expeditiously as possible."
>
> The Company received a Complete Response Letter ("CRL") from the FDA in July 2025. Following submission of data and supporting documentation from the HOPE-3 clinical trial, the FDA resumed review of the application and assigned a PDUFA target action date of August 22, 2026. At this time, the FDA has not identified any potential review issues in its response to the Company.
>
> Capricor also expects to be eligible to receive a Priority Review Voucher ("PRV") upon potential approval of Deramiocel.

March 12, 2026 Press Release

80. On March 12, 2026, the Company issued a press release announcing its financial results for the fourth quarter and full year of 2025 and providing a corporate update. The press release stated, in pertinent part:

> "Capricor enters 2026 with important regulatory and clinical momentum as we work toward potential approval of Deramiocel for the treatment of Duchenne muscular dystrophy (DMD)," said Linda Marbán, Ph.D., Chief Executive Officer of Capricor. "With the FDA review of our BLA underway and a PDUFA target action date of August 22, 2026, our highest priority is execution, including working closely with the Agency, preparing for potential launch, and continuing to build the capabilities for a commercial-stage company. ***Recent late-breaking data presented at the 2026 MDA Clinical & Scientific Conference further reinforced the strength of the program, highlighting Deramiocel's impact on both cardiac and skeletal muscle***

function in Duchenne. These findings build on the positive topline results from the Phase 3 HOPE-3 study and ***reinforce Deramiocel's potential to become a first-in-class therapy for Duchenne designed to address both the skeletal and cardiac manifestations of this devastating disease.*** At the same time, we remain focused on advancing our exosome platform and expanding the long-term potential of our pipeline. Supported by a strong balance sheet, we believe we are well positioned to execute on these priorities and deliver meaningful value for patients, families, and shareholders."

Fourth Quarter 2025 and Recent Highlights

● **Deramiocel BLA Under FDA Review**: Capricor's Biologics License Application (BLA) seeking full approval of Deramiocel for the treatment of DMD is currently under review by the U.S. Food and Drug Administration. The FDA informed the Company that its response to the previously issued Complete Response Letter was complete to support continued review and assigned a Prescription Drug User Fee Act (PDUFA) target action date of August 22, 2026. The FDA classified the submission as a Class 2 resubmission.

● **Positive Phase 3 HOPE-3 Trial Results**: Capricor reported positive topline results from the HOPE-3 Phase 3 trial, a multicenter, randomized, double-blind, placebo-controlled study which enrolled 106 patients with DMD. The trial met its primary endpoint of Performance of the Upper Limb (PUL v2.0) and the key secondary cardiac endpoint of left ventricular ejection fraction (LVEF), with both achieving statistical significance (p=0.03 and p=0.04, respectively). All Type I error-controlled secondary endpoints also achieved statistical significance. Deramiocel maintained a favorable safety and tolerability profile consistent with prior clinical studies.

● **Late-Breaking HOPE-3 Data Presented at MDA 2026**: Additional data from the HOPE-3 study were presented in a late-breaking oral presentation at the 2026 Muscular Dystrophy Association Clinical & Scientific Conference. Newly reported analyses further supported Deramiocel's potential impact on functional outcomes in Duchenne. Cardiac MRI analyses demonstrated a significant reduction in myocardial fibrosis as measured by late gadolinium enhancement (LGE), corresponding to a three-segment treatment difference versus placebo at 12 months (p=0.022). In patients with baseline cardiomyopathy, treatment resulted in a 3.3 percentage-point improvement in LVEF versus placebo, representing greater than 100% attenuation of expected cardiac decline (p=0.017). Additional functional outcomes were also presented. Data from the Duchenne Video Assessment (DVA), a measure of

activities of daily living in individuals with Duchenne, showed the "eat 10 bites" task demonstrated approximately 83% slowing of disease progression versus placebo (p=0.018).

● **Commercial Launch Preparations Underway**: Capricor continues to advance commercial readiness in preparation for a potential launch. The Company's GMP manufacturing facility in San Diego successfully completed an FDA Pre-License Inspection (PLI) in connection with the BLA review process. All Form 483 observations have been addressed, and the facility is operational and positioned to support an initial commercial launch. Further manufacturing expansion is underway to increase capacity in anticipation of demand following potential approval.

● **Peer-Reviewed Publication on Deramiocel**: In October 2025, Capricor published a peer-reviewed paper in Biomedicines describing Deramiocel's anti-fibrotic and immunomodulatory mechanisms of action, including the release of exosomes and soluble factors that suppress fibrotic gene expression.

March 17, 2026 Form 10-K

81. On March 17, 2026, the Company filed its annual report for the fiscal year ended December 31, 2025 on Form 10-K with the SEC (the "2025 10-K"). The 2025 10-K was signed by Defendants Marbán, Bergmann, Auwaerter, Dunbar, Es Sabar, Gotwals, Kelliher, Litvack, and Musket. The 2025 10-K also attached certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") signed by Defendants Marbán and Bergmann attesting to the accuracy of the 2025 10-K and that "the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report[.]" The 2025 10-K stated, in pertinent part:

Biologics License Application: In late 2024, we completed our submission of a BLA to the FDA seeking approval of Deramiocel for the treatment of Duchenne muscular dystrophy. The FDA accepted the BLA for review, granted Priority Review, and assigned a PDUFA target action date of August 31, 2025. In July 2025, we received a Complete Response Letter ("CRL") from the FDA stating that the application did not meet the statutory requirement for substantial evidence of effectiveness and requesting additional clinical data.

> ***Following a Type A meeting with the FDA in August 2025, we aligned with the Agency on a regulatory path forward to address the CRL, including the submission of additional clinical data from the Phase 3 HOPE-3 trial.*** We subsequently submitted our response to the CRL, which the FDA accepted as a complete response and classified as a Class 2 resubmission, assigning a new Prescription Drug User Fee Act target action date of August 22, 2026. If approved, Deramiocel has the potential to become the first therapy designed to address both skeletal and cardiac muscle manifestations of Duchenne muscular dystrophy.

82. The statements in ¶¶77-81 above were materially false and misleading and failed to disclose, *inter alia*, that: (1) the pre-specified statistical analysis plan used for analysis of clinical data for Deramiocel was altered; (2) the FDA did not agree to those alterations prior to the Company's resubmission of the Deramiocel BLA; (3) as a result of the foregoing, there was a substantial risk of the FDA disapproving of the clinical results for lack of substantial evidence of effectiveness of Deramiocel; and (4) as a result, the regulatory approval of Deramiocel for the treatment of Duchenne muscular dystrophy was at substantial risk. As a result of the foregoing, the Company's public statements were materially false and misleading and/or lacked a reasonable basis at all relevant times.

2026 Proxy Statement

83. On April 10, 2026, the Company filed the 2026 Proxy Statement with the SEC. Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket solicited the 2026 Proxy Statement, filed pursuant to Section 14(a) of Exchange Act, which contained material misstatements and omissions.

84. The 2026 Proxy Statement called for the Company's shareholders to vote to, *inter alia*: (1) reelect Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board; (2) ratify the appointment of Rose, Snyder & Jacobs LLP as the Company's independent registered public accounting firm for 2026; (3) approve a non-binding resolution on the Company's named executive officer compensation; (4) approve a non-binding resolution on the frequency of future votes on our named executive

officer compensation; and (5) consider and act upon approval of an amendment to the Certificate of Incorporation regarding officer exculpation.

85. Regarding the proposal to approve an amendment to the certificate of incorporation regarding officer exculpation, the 2026 Proxy Statement stated, in pertinent part:

> The State of Delaware, which is the Company's state of incorporation, enacted legislation, effective August 1, 2022, that amends the Delaware General Corporation Law (the "DGCL") to enable Delaware corporations to limit the personal monetary liability of officers for breach of fiduciary duty in limited circumstances. In light of this legislation and for the reasons set forth below, we are proposing to amend the exculpation provisions within the Company's Certificate of Incorporation to limit the liability of the Company's officers in specific circumstances, as permitted by the DGCL (the "Proposed Amendment"). The Company submitted the Proposed Amendment for approval at the Company's 2023 annual meeting of stockholders and, while it received significant support, it did not receive the affirmative votes of a majority of the shares of our common stock issued and outstanding required for adoption. Because brokers are not expected to be able to cast a vote on this proposal without your instruction, it is important that you vote your shares.
>
> The Delaware legislation only permits, and our Proposed Amendment would only permit, exculpation of officers of the Company for direct claims brought by shareholders for breach of an officer's fiduciary duty of care, including class actions. The Proposed Amendment would not eliminate any officer's monetary liability for:
>
> - breach of the officer's duty of loyalty to the Company or its stockholders;
> - acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
> - any transaction from which the officer derived an improper personal benefit; or
> - claims brought by the Company itself or for derivative claims brought by shareholders in the name of the Company.
>
> Article NINTH of the Company's Certificate of Incorporation, as amended, currently provides for exculpation of directors to the extent permitted by the DGCL but does not include a similar provision that would allow for the exculpation of officers. We are asking that the shareholders approve an amendment to the exculpation provision to include exculpation of officers to

the fullest extent permitted by the DGCL. The Proposed Amendment would result in Article NINTH reading in its entirety as follows, with new language in underlined text:

"NINTH: A director or officer of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except to the extent that such exemption from liability or limitation thereof is not permitted under the DGCL as currently in effect or as the same may hereafter be amended. If the DGCL is hereafter amended to eliminate or limit further the liability of a director or officer, then, in addition to the elimination and limitation of liability provided by the preceding sentence, the liability of each director or officer shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. For purposes of this Article Ninth, "officer" shall have the meaning provided in Section 102(b)(7) of the DGCL, as it presently exists or may hereafter be amended from time to time. Any amendment, modification or repeal of this Article Ninth shall be prospective only and shall not adversely affect any right or protection of a director or officer of the Corporation that exists at the time of such amendment, modification or repeal."

Reasons for the Proposed Amendment

The DGCL has long permitted Delaware corporations to exculpate directors from certain liabilities, and the Company's Certificate of Incorporation has included such an exculpatory provision. Until the changes to the DGCL were enacted, Delaware corporations were not able to provide similar protection to officers. After careful consideration, the Board believes that it is in the Company's and its stockholders' interest that officers receive exculpatory protection from certain liabilities and expenses that is similar to what directors receive. In the absence of such protection, particularly amidst the recent trend of plaintiffs increasingly naming corporate officers as defendants in shareholder litigation, qualified officers might be deterred from serving as officers or, while officers, from making business decisions that involve risk, due to potential exposure to personal monetary liability for business decisions that in hindsight are not successful.

The nature of the role of officers often requires them to make difficult decisions on crucial matters, frequently in response to time-sensitive opportunities and challenges. These decisions can create substantial risk of investigations, claims, actions, suits, or proceedings seeking to impose liability on the basis of hindsight. The Board believes that it is reasonable to limit our officers' concern about personal risk and will empower them to better exercise their business judgment in furtherance of shareholder interests.

> The Board believes this will help limit litigation that names officers as defendants, when directors cannot be named because of their exculpatory protection, as a litigation strategy to compel settlement offers. It is important to note that, as set forth in the Proposed Amendment and in accordance with the DGCL, the exculpation that would be afforded to our officers is more limited than what may be afforded to our directors in that officers may not be exculpated from liability in any action brought in the right of the Company.
>
> The Board expects that exculpation clauses applicable to officers will continue to be widely used by public corporations, including our peers, and that failing to adopt the Proposed Amendment could negatively impact our ability to recruit (and retain) exceptional officer candidates who value the protection from potential exposure to liabilities, costs of defense and other risks of proceedings that would be afforded by protection similar to that afforded by the Proposed Amendment. Additionally, the Proposed Amendment will align the protections for our officers with those protections already afforded to our directors. All of this will in turn benefit our shareholders by reducing threatened litigation, attorneys' fees and costs of litigation while enhancing the recruiting and retention of skilled officers.
>
> For the reasons stated above, the Board believes that it is in the interests of the Company and its shareholders that the Proposed Amendment be approved.
>
> The Proposed Amendment is not being proposed in response to any specific resignation, threat of resignation or refusal to serve by any officer or as a result of any pending litigation.

86. Regarding the "Role of the Board in Risk Oversight," the 2026 Proxy Statement stated the following:

> We face a variety of risks, including operational risks, such as cybersecurity risks, as well as risks associated with the significant financial needs to operate our business. The Board and each of its committees are involved in overseeing risk associated with our business operations. The Audit Committee reviews and discusses with management and the independent registered public accounting firm our guidelines and policies with respect to risk assessment and risk management, including our major financial risk exposures and the steps taken by management to monitor and control such exposures. The Audit Committee determines and approves, prior to commencement of the audit engagement, the scope and plan for the internal audit and confers with management and the independent registered public accounting firm regarding

the scope, adequacy and effectiveness of internal controls over financial reporting, including any special audit steps taken in the event of a material control deficiency. The Audit Committee also reviews with management and the independent registered public accounting firm any fraud, whether or not material, that includes management or other employees who have a significant role in our internal controls over financial reporting and any significant changes in internal controls or other factors that could significantly affect internal controls, including any corrective actions in regard to significant deficiencies or material weaknesses. Furthermore, the Audit Committee establishes procedures for the receipt, retention and treatment of complaints that we receive regarding accounting, internal accounting controls or auditing matters and the confidential and anonymous submission by our employees of concerns regarding questionable accounting or auditing matters.

It is the role of the Nominating and Corporate Governance Committee to review, discuss and assess, along with input from senior management, the performance of the Board and the committees of the Board at least annually. The Nominating and Corporate Governance Committee is responsible for developing and making recommendations to the Board for approval, and periodically reviewing with our Chief Executive Officer, the plans for succession to the offices of our Chief Executive Officer and other executive officers and the selection of appropriate individuals to succeed to executive positions.

It is the role of the Compensation Committee to review, at least annually, our compensation philosophy and to review and approve (or, if it deems appropriate, recommend to the Board for determination and approval) the compensation of our executive officers, senior management and non-employee directors, taking into consideration the individual's success in achieving his or her individual performance goals and objectives and the corporate performance goals and objectives deemed relevant to him or her, as established by the Compensation Committee, in addition to other factors. The Compensation Committee reviews and recommends to the Board for approval the frequency with which we conduct say-on-pay votes, taking into account the results of the most recent stockholder advisory vote on the frequency of such say-on-pay votes, and reviews and approves the proposals regarding the say-on-pay vote and the frequency of the say-on-pay vote to be included in each of our annual meeting proxy statements, as applicable. It is also the role of the Compensation Committee to review, at least annually, our incentive compensation arrangements to determine whether they encourage excessive risk-taking, review and discuss the relationship between our risk management

policies and practices and compensation, and evaluate compensation policies and practices that could mitigate such risk.

87. Regarding the Code of Conduct, the 2026 Proxy Statement stated:

> The Board has adopted a Code of Business Conduct and Ethics (the "***Code of Ethics***") that applies to all directors, officers, employees, and consultants, wherever they are located and whether they work for us on a full- or part-time basis.
>
> Supervisors are also expected to ensure that all agents, consultants, and contractors conform to Code of Ethics standards when providing services to or on behalf of the Company. The Code of Ethics was designed to help such directors, employees and other agents to resolve ethical issues encountered in the business environment. The Code of Ethics covers topics such as conflicts of interest, compliance with laws, confidentiality of Company information, encouraging the reporting of any violations of the Code of Ethics, fair dealing and protection and use of Company assets.
>
> A copy of the Code of Ethics, as adopted by the Board, and revised in April 2021, is available at the Corporate Governance page of our website at www.capricor.com. We may post amendments to or waivers of the provisions of the Code of Ethics, if any, made with respect to any directors and employees on that website. Please note that information contained on, or that can be accessed through, our website is not incorporated by reference and is not a part of this proxy statement.

88. Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket caused the 2026 Proxy Statement to be false and misleading by failing to disclose, *inter alia*, that: (1) the pre-specified statistical analysis plan used for analysis of clinical data for Deramiocel was altered; (2) the FDA did not agree to those alterations prior to the Company's resubmission of the Deramiocel BLA; (3) as a result of the foregoing, there was a substantial risk of the FDA disapproving of the clinical results for lack of substantial evidence of effectiveness of Deramiocel; and (4) as a result, the regulatory approval of Deramiocel for the treatment of Duchenne muscular dystrophy was

at substantial risk. As a result of the foregoing, the Company's public statements were materially false and misleading and/or lacked a reasonable basis at all relevant times.

89. The 2026 Proxy Statement was also materially false and misleading because, despite assertions to the contrary, the Company's Code of Conduct was not followed, as evidenced by the Individual Defendants: (1) making and/or causing the Company to make the numerous false and misleading statements and omissions alleged herein; and (2) failing to report violations of the Code of Conduct. Further, the 2026 Proxy Statement was materially false and misleading because, despite assertions to the contrary, the Board was not adequately performing its risk oversight functions.

90. As a result of Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket causing the 2026 Proxy Statement to be false and misleading, Company shareholders voted, *inter alia,* to: (1) reelect Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company; (2) ratify the appointment of Rose, Snyder & Jacobs LLP as the Company's independent registered public accounting firm for 2026; (3) approve, on an advisory-basis, the Company's named executive officer compensation; and (4) approve, on an advisory-basis, a resolution for future votes on the Company's named executive officer compensation to be held once per year.

May 12, 2026 Press Release

91. On May 12, 2026, the Company published a press release, providing a corporate update and announcing financial results for the first quarter of fiscal year 2026. The press release stated, in pertinent part:

First Quarter 2026 and Recent Highlights

- **Deramiocel BLA Under FDA Review:** Capricor's Biologics License Application (BLA) seeking approval of Deramiocel for the treatment of DMD is currently under review by the U.S. Food and Drug Administration. The FDA accepted the Company's Class 2 resubmission as complete,

resuming its full review of the BLA, with a PDUFA target action date of August 22, 2026. ***There has been a significant number of information requests from FDA to Capricor, all of which the Company has been able to address. The Company looks forward to continuing an active dialogue with the FDA and expects labeling discussions to commence soon***.

- **Additional HOPE-3 Late-Breaking Data Presented at MDA, AAN, and ASGCT (2026):** HOPE-3 data were selected as one of only four late-breaking oral presentations at the 2026 MDA Clinical & Scientific Conference. Data were also presented at the 2026 AAN Annual Meeting and the 2026 ASGCT Annual Meeting. Cardiac MRI analyses showed a significant reduction in myocardial fibrosis by late gadolinium enhancement (LGE) versus placebo, a clinically meaningful finding given that fibrosis is cumulative and irreversible. The Duchenne Video Assessment (DVA) "eat 10 bites" measure, a home-based, caregiver-captured assessment of upper limb function and daily living activities, demonstrated statistically significant improvement versus placebo, directly correlated with patient independence and quality of life. The full HOPE-3 dataset has been submitted for publication to a peer-reviewed journal.

- **Commercial Launch Preparations Underway:** The Company's GMP manufacturing facility in San Diego successfully completed an FDA Pre-License Inspection, with all Form 483 observations addressed. The facility is operational and positioned to support initial commercial launch. Second-floor expansion adding additional cleanrooms is well underway, scaling to approximately 2,000–2,500 patients per year, roughly 10,000 doses annually, at full capacity, with full facility validation and FDA approval targeted for the first half of 2027. The Company will begin stockpiling commercial doses once guidance on the label is received. Planning is underway across all critical launch functions, including patient support, market access, reimbursement planning, medical affairs and physician education.

92. The statements in ¶91 above were materially false and misleading and failed to disclose, *inter alia*, that: (1) the pre-specified statistical analysis plan used for analysis of clinical data for Deramiocel was altered; (2) the FDA did not agree to those alterations prior to the Company's resubmission of the Deramiocel BLA; (3) as a result of the foregoing, there was a substantial risk of the FDA disapproving of the clinical results for

lack of substantial evidence of effectiveness of Deramiocel; and (4) as a result, the regulatory approval of Deramiocel for the treatment of Duchenne muscular dystrophy was at substantial risk. As a result of the foregoing, the Company's public statements were materially false and misleading and/or lacked a reasonable basis at all relevant times.

THE TRUTH FULLY EMERGES

93. The truth fully emerged before the market opened on July 27, 2026, when the FDA released the FDA Briefing Documents prior to its Advisory Committee meeting for the BLA. The FDA Briefing Documents noted that the Company made changes to the SAP and that the final version "was not submitted to FDA for review prior to BLA submission and was not discussed and consequently not agreed upon." The FDA Briefing Documents stated, in pertinent part:

> Study HOPE-3 was a phase 3, randomized, double blind, placebo controlled, 12-month study of Deramiocel compared to placebo in males with DMD who were predominantly non-ambulatory and had an average age of 15 years old. . . . The study did not meet its pre-specified primary and secondary efficacy endpoints showing no statistically significant difference between Deramiocel and placebo at 12 months.
>
> After completion of the randomized, double blind part of Study HOPE-3 and during Study HOPE-3-OLE (where all patients were treated with Deramiocel), changes were made to the pre-specified statistical analysis plan (SAP), generating at least 2 additional versions. ***Those changes included modifications to the primary and key secondary endpoint definitions; the analytical methods; and the data imputation strategy for certain intercurrent events. FDA noted that the Applicant's final analyses presented in the BLA submission included additional statistical changes without an associated, updated SAP. The final version of the SAP (v. 3.0), dated November 24, 2025 was not submitted to FDA for review prior to BLA submission and was not discussed and consequently not agreed upon. In addition, the process for SAP changes outlined in the study's pre-specified blinding plan was not followed and the final clinical study protocol (Protocol 9.0) deviated from the associated SAP (v. 3.0***). Lastly, the distinctive adverse event profile observed between treatment groups—hypersensitivity reactions seen in 42% of Deramiocel treated patients versus 15% of placebo-treated patients— raises the possibility that treatment

> assignment could be inferred even under formal blinding conditions. This risk of functional unblinding was further extended by the open-label period of HOPE-3, during which additional treatment-related data accumulated and may have made treatment assignment more apparent. Given the post-hoc nature of the SAP changes, FDA considers all analyses implemented following study completion.

94. The FDA disagreed with the Company's changes to the SAP, stating that it "does not consider the conversion of raw change to percent change and then back to raw change to have been scientifically justified, as it adds complexity and reduces accuracy."

95. Significantly, the final SAP was created a mere day before the unblinding of the data. The FDA Briefing Documents outlined the relevant history of regulatory milestones as follows, in part:

Date	Milestone	Topic
November 24, 2025	SAP 3.0* created by Applicant	Not submitted to FDA for review and comment, No FDA concurrence
November 25, 2025	Database lock and data unblinding for Study HOPE-3	
December 29, 2025	BLA resubmission	Study HOPE-3 (missing documents)
January 13, 2026	Incomplete Response Letter	The submission was deemed incomplete due to multiple missing documents, including a complete clinical study report, all versions of the clinical protocol and Statistical Analysis Plan, and narrative summaries.
February 20, 2026	BLA resubmission	Study HOPE-3 with requested additional data and information for a complete submission

96. This prompted the FDA to state that it "considers [Capricor's] analyses based on the post-study SAP versions to be post-hoc and exploratory[,]" adding that "the benefit-risk assessment for Deramiocel appears unfavorable in the absence of evidence of effectiveness."

97. At 11:00 a.m. ET on the same day, the Company provided an update prior to the Advisory Committee meeting, claiming that "Capricor has engaged fully and transparently with the FDA throughout the review process" and that "[i]t is critical to understand that post-hoc analyses in the FDA's briefing materials rely on SAP version 1.1, an unsigned incomplete internal draft which became obsolete with the addition of cohort B and did not include content specifically requested by the FDA."

98. Also on July 27, 2026, Cantor Fitzgerald published an investor note which stated the FDA Briefing Documents "paint an ugly picture" and "***raise several concerns and make allegations about the integrity of data collecting***."

99. On this news, the price of the Company's common stock fell $12.70 per share, or approximately 64%, from a closing price of $19.70 per share on July 24, 2026 to close at $7.00 per share the next trading day, July 27, 2026.

100. On July 29, 2026, the FDA Advisory Committee held a meeting to discuss the Deramiocel BLA. Medscape reported the following day that the committee relied on SAP version 1.1 as the "prespecified plan" and that, pursuant to a non-binding 9-3 vote, the panel "concluded that the available evidence does not support the efficacy of deramiocel for treating DMD-associated cardiomyopathy."

101. On this news, the price of the Company's common stock fell $2.38 per share, or approximately 36%, from a closing price of $6.57 per share on July 29, 2026 to close at $4.19 per share on July 30, 2026.

DAMAGES TO CAPRICOR

102. As a direct and proximate result of the Individual Defendants' conduct, Capricor has lost and will continue to lose and expend many millions of dollars.

103. Such expenditures include, but are not limited to, legal fees, costs, and any payments for resolution of or to satisfy a judgment associated with the Securities Class Action, and amounts paid to outside lawyers, accountants, and investigators in connection thereto.

104. Such expenditures also include, but are not limited to, fees, costs, and any payments for resolution of or to satisfy judgments associated with any other lawsuits filed against the Company or the Individual Defendants based on the misconduct alleged herein, and amounts paid to outside lawyers, accountants, and investigators in connection thereto.

105. Such expenditures will also include costs incurred in any internal investigations pertaining to violations of law, costs incurred in defending any

investigations or legal actions taken against the Company due to its violations of law, and payments of any fines or settlement amounts associated with the Company's violations.

106. Additionally, these expenditures include, but are not limited to, unjust compensation, benefits, and other payments provided to the Individual Defendants who breached their fiduciary duties to the Company.

107. As a direct and proximate result of the Individual Defendants' conduct, Capricor has also suffered and will continue to suffer a loss of reputation and goodwill, and a "liar's discount" that will plague the Company's stock in the future due to the Company's and their misrepresentations.

DERIVATIVE ALLEGATIONS

108. Plaintiff brings this action derivatively and for the benefit of Capricor to redress injuries suffered, and to be suffered, as a result of the Individual Defendants' breaches of their fiduciary duties as directors and/or officers of Capricor, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and violations of the Exchange Act.

109. Capricor is named solely as a nominal party in this action. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

110. Plaintiff is, and has been at all relevant times, a shareholder of Capricor. Plaintiff will adequately and fairly represent the interests of Capricor in enforcing and prosecuting its rights, and, to that end, has retained competent counsel, experienced in derivative litigation, to enforce and prosecute this action.

DEMAND FUTILITY ALLEGATIONS

111. Plaintiff incorporates by reference and realleges each and every allegation stated above as if fully set forth herein.

112. A pre-suit demand on the Board is futile and, therefore, excused. When this action was filed, Capricor's Board consisted of the following eight individuals: Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Kelliher, Litvack, and Musket (the

"Director-Defendants"). Plaintiff needs only to allege demand futility as to four of the eight Director-Defendants that were on the Board at the time this action was filed.

113. Demand is excused as to all of the Director-Defendants because each one of them faces, individually and collectively, a substantial likelihood of liability as a result of the scheme they engaged in knowingly or recklessly to make and/or cause the Company to make false and misleading statements and omissions of material fact. This renders the Director-Defendants unable to impartially investigate the charges and decide whether to pursue action against themselves and the other perpetrators of the scheme.

114. In complete abdication of their fiduciary duties, the Director-Defendants either knowingly or recklessly caused or permitted Capricor to issue materially false and misleading statements. Specifically, the Director-Defendants caused Capricor to issue false and misleading statements which were intended to make Capricor appear more profitable and attractive to investors. Moreover, the Director-Defendants caused the Company to fail to maintain internal controls. As a result of the foregoing, the Director-Defendants breached their fiduciary duties, face a substantial likelihood of liability, are not disinterested, and demand upon them is futile, and thus excused.

115. Additional reasons that demand on Defendant Marbán is futile follow. Defendant Marbán has served as the Company's CEO since 2010 and as a Company director since November 2013. She is also a co-founder of Capricor, Inc., a wholly-owned subsidiary of Capricor. The Company provides Defendant Marbán with her principal occupation for which she receives handsome compensation. Thus, as the Company admits, she is a non-independent director. As the Company's highest officer, she conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded her duties to monitor internal controls over reporting and engagement in the scheme, and consciously disregarded her duties to protect corporate assets. Additionally, Defendant Marbán solicited the 2026 Proxy Statement, which was materially false and misleading and resulted in shareholders voting, *inter alia*, to reelect

Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company. As a trusted Company director, she conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded her duties to monitor internal controls over reporting and engagement in the scheme, and consciously disregarded her duties to protect corporate assets. Moreover, Defendant Marbán is a defendant in the Securities Class Action. For these reasons, Defendant Marbán breached her fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon her is futile and, therefore, excused.

116. Additional reasons that demand on Defendant Auwaerter is futile follow. Defendant Auwaerter has served as a Company director since July 2023 and also serves as a member of the Nominating and Corporate Governance Committee. Defendant Auwaerter has received and continues to receive handsome compensation for his role as a director. Additionally, Defendant Auwaerter solicited the 2026 Proxy Statement, which was materially false and misleading and resulted in shareholders voting, *inter alia*, to reelect Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor internal controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Auwaerter breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

117. Additional reasons that demand on Defendant Dunbar is futile follow. Defendant Dunbar has served as a Company director since November 2013 and also serves

as a member of the Audit, Compensation, and Nominating and Corporate Governance Committees. Defendant Dunbar has received and continues to receive handsome compensation for his role as a director. Additionally, Defendant Dunbar solicited the 2026 Proxy Statement, which was materially false and misleading and resulted in shareholders voting, *inter alia*, to reelect Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor internal controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Dunbar breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused

118. Additional reasons that demand on Defendant Es Sabar is futile follow. Defendant Es Sabar has served as a Company director since July 2021 and also serves as Chairperson of the Nominating and Corporate Governance Committee. Defendant Es Sabar has received and continues to receive handsome compensation for her role as a director. Additionally, Defendant Es Sabar solicited the 2026 Proxy Statement, which was materially false and misleading and resulted in shareholders voting, *inter alia*, to reelect Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company. As a trusted Company director, she conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded her duties to monitor internal controls over reporting and engagement in the scheme, and consciously disregarded her duties to protect corporate assets. Moreover, her insider sales, made with knowledge of material nonpublic information before the material misstatements and omissions were exposed, demonstrate her motive in facilitating and

participating in the scheme. For these reasons, Defendant Es Sabar breached her fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon her is futile and, therefore, excused

119. Additional reasons that demand on Defendant Gotwals is futile follow. Defendant Gotwals has served as a Company director since July 2023 and also serves as a member of the Compensation Committee. Defendant Gotwals has received and continues to receive handsome compensation for his role as a director. Additionally, Defendant Gotwals solicited the 2026 Proxy Statement, which was materially false and misleading and resulted in shareholders voting, *inter alia*, to reelect Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor internal controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Gotwals breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

120. Additional reasons that demand on Defendant Kelliher is futile follow. Defendant Kelliher has served as a Company director since September 2023 and also serves as a member of the Audit Committee. Defendant Kelliher has received and continues to receive handsome compensation for his role as a director. Additionally, Defendant Kelliher solicited the 2026 Proxy Statement, which was materially false and misleading and resulted in shareholders voting, *inter alia*, to reelect Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor internal controls

over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Kelliher breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

121. Additional reasons that demand on Defendant Litvack is futile follow. Defendant Litvack has served as a Company director since 2012 and as Executive Chairman of the Board since November 2013. Defendant Litvack also serves as a member of the Nominating and Corporate Governance Committee. Defendant Litvack has received and continues to receive handsome compensation for his role as a director. Additionally, Defendant Litvack solicited the 2026 Proxy Statement, which was materially false and misleading and resulted in shareholders voting, *inter alia*, to reelect Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company. As a trusted Company director, he conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor internal controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Litvack breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

122. Additional reasons that demand on Defendant Musket is futile follow. Defendant Musket has served as a Company director since November 2013 and also serves as Chairperson of the Audit and Compensation Committees. Defendant Musket has received and continues to receive handsome compensation for his role as a director. Additionally, Defendant Musket solicited the 2026 Proxy Statement, which was materially false and misleading and resulted in shareholders voting, *inter alia*, to reelect Defendants Marbán, Auwaerter, Dunbar, Es Sabar, Gotwals, Litvack, Kelliher, and Musket to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company.

As a trusted Company director, he conducted little, if any, oversight of the scheme to cause the Company to make false and misleading statements, consciously disregarded his duties to monitor internal controls over reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons, Defendant Musket breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile and, therefore, excused.

123. Additional reasons that demand on the Board is futile follow.

124. Defendants Musket (as Chair), Dunbar, Es Sabar, and Kelliher (collectively, the "Audit Committee Defendants") served as members of the Audit Committee at all relevant times. As such, they were responsible for the effectiveness of the Company's internal controls, the truth and accuracy of the Company's financial statements, and the Company's compliance with applicable laws and regulations. During the Relevant Period, they violated the Audit Committee Charter by engaging in or permitting the Company to engage in the dissemination of materially false and misleading statements to the public and to facilitate the Individual Defendants' violations of law, including breaches of fiduciary duty and violations of the Exchange Act; failed to adequately exercise their risk management and risk assessment functions; and failed to ensure adequate Board oversight of the Company's internal control over financial reporting, disclosure controls and procedures, and the Code of Conduct. Thus, the Audit Committee Defendants breached their fiduciary duties, are not independent or disinterested, and thus demand is excused as to them.

125. In violation of the Code of Conduct, the Director-Defendants conducted little, if any, oversight of the Company's engagement in the Individual Defendants' scheme to cause the Company to issue materially false and misleading statements to the public and to facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and violations of the Exchange Act. In further violation of the Code of

Conduct, the Director-Defendants failed to comply with laws and regulations, maintain the accuracy of Company records and reports, avoid conflicts of interest, conduct business in an honest and ethical manner, and properly report violations of the Code of Conduct. Thus, the Director-Defendants face a substantial likelihood of liability, and demand is futile as to them.

126. Capricor has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the Director-Defendants have not filed any lawsuits against themselves or any others who were responsible for that wrongful conduct to attempt to recover for Capricor any part of the damages Capricor suffered and will continue to suffer thereby. Thus, any demand upon the Director-Defendants would be futile.

127. The Director-Defendants' conduct described herein and summarized above could not have been the product of legitimate business judgment as it was based on bad faith and intentional, reckless, or disloyal misconduct. Thus, none of the Director-Defendants can claim exculpation from their violations of duty pursuant to the Company's charter (to the extent such a provision exists). As a majority of the Director-Defendants face a substantial likelihood of liability, they are self-interested in the transactions challenged herein and cannot be presumed to be capable of exercising independent and disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company. Accordingly, demand is excused as being futile.

128. The acts complained of herein constitute violations of fiduciary duties owed by Capricor's officers and directors, and these acts are incapable of ratification.

129. The Director-Defendants may also be protected against personal liability for their acts of mismanagement and breaches of fiduciary duty alleged herein by directors' and officers' liability insurance if there is a directors' and officers' liability insurance policy covering the Director-Defendants. The policy may contain provisions that eliminate coverage for any action brought directly by the Company against the Director-Defendants,

known as, *inter alia*, the "insured-versus-insured exclusion." As a result, if the Director-Defendants were to sue themselves or certain of the officers of Capricor, there would be no directors' and officers' insurance protection. Accordingly, the Director-Defendants cannot be expected to bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage, if such an insurance policy exists, will provide a basis for the Company to effectuate a recovery. Thus, demand on the Director-Defendants is futile and, therefore, excused.

130. If there is no directors' and officers' liability insurance, then the Director-Defendants will not cause Capricor to sue the Individual Defendants named herein, since, if they did, they would face a large uninsured individual liability. Accordingly, demand is futile in that event, as well.

131. Thus, for all of the reasons set forth above, all of the Director-Defendants, and, if not all of them, at least four of the Director-Defendants, cannot consider a demand with disinterestedness and independence. Consequently, a demand upon the Board is excused as futile.

FIRST CLAIM
Against the Individual Defendants for Violations of Section 14(a) of the Exchange Act

132. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

133. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that "[i]t shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title [15 U.S.C. § 78l]."

134. Rule 14a-9, promulgated pursuant to § 14(a) of the Exchange Act, provides that no proxy statement shall contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. §240.14a-9.

135. Defendants Litvack, Marbán, Musket, Dunbar, Es Sabar, Auwaerter, Gotwals, and Kelliher caused the 2025 Proxy Statement to be false and misleading by failing to disclose, *inter alia*, that: (1) the four-year safety and efficacy data from Capricor's Phase 2 HOPE-2 trial study was insufficient to support the FDA's approval of the BLA for Deramiocel for the treatment of DMD; and (2) Defendants continuously gave a false impression that the Company could obtain first approval for DMD cardiomyopathy. As a result of the foregoing, the Company's public statements were materially false and misleading and/or lacked a reasonable basis at all relevant times.

136. Under the direction and watch of Defendants Litvack, Marbán, Musket, Dunbar, Es Sabar, Auwaerter, Gotwals, and Kelliher, the 2025 Proxy Statement also failed to disclose, *inter alia*, that: (1) though the Company claimed its officers and directors adhered to the Code of Conduct, the Individual Defendants violated these policies either without waivers or without such waivers being disclosed; and (2) contrary to the 2025 Proxy Statement's description of the Board's and its committees' risk oversight functions, the Board and its committees were not adequately exercising these functions and were causing or permitting the Company to issue false and misleading statements.

137. In the exercise of reasonable care, Defendants Litvack, Marbán, Musket, Dunbar, Es Sabar, Auwaerter, Gotwals, and Kelliher should have known that, by misrepresenting or failing to disclose the foregoing material facts, the statements contained in the 2025 Proxy Statement were materially false and misleading. The misrepresentations and omissions were material to Plaintiff in voting on the matters set forth for shareholder

determination in the 2025 Proxy Statement, including, but not limited to, the reelection of the Company's directors.

138. As a result of Defendants Litvack, Marbán, Musket, Dunbar, Es Sabar, Auwaerter, Gotwals, and Kelliher causing the 2025 Proxy Statement to be false and misleading, Company shareholders voted, *inter alia*, to re-elect Defendants Marbán, Litvack, Musket, Dunbar, Es Sabar, Auwaerter, Gotwals, and Kelliher to the Board, thereby allowing them to continue breaching their fiduciary duties to the Company.

139. The Company was damaged as a result of Defendants Litvack's, Marbán's, Musket's, Dunbar's, Es Sabar's, Auwaerter's, Gotwals's, and Kelliher's material misrepresentations and omissions in the 2025 Proxy Statement.

140. Plaintiff, on behalf of Capricor, has no adequate remedy at law.

SECOND CLAIM
Against the Individual Defendants for Breach of Fiduciary Duties

141. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

142. Each Individual Defendant owed to the Company the duty to exercise candor, good faith, and loyalty in the management and administration of Capricor's business and affairs.

143. Each of the Individual Defendants violated and breached their fiduciary duties of candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

144. The Individual Defendants' conduct set forth herein was due to their intentional or reckless breach of the fiduciary duties they owed to the Company, as alleged herein. The Individual Defendants intentionally or recklessly breached or disregarded their fiduciary duties to protect the rights and interests of Capricor.

145. In breach of their fiduciary duties owed to Capricor, the Individual Defendants willfully or recklessly made and/or caused the Company to make false and/or misleading statements and/or omissions of material fact that failed to disclose, *inter alia*, that: (1) the

four-year safety and efficacy data from Capricor's Phase 2 HOPE-2 trial study was insufficient to support the FDA's approval of the BLA for Deramiocel for the treatment of DMD; and (2) Defendants continuously gave a false impression that the Company could obtain first approval for DMD cardiomyopathy. As a result of the foregoing, the Company's public statements were materially false and misleading and/or lacked a reasonable basis at all relevant times.

146. In further breach of their fiduciary duties, the Individual Defendants failed to correct and/or caused the Company to fail to correct the false and/or misleading statements and/or omissions of material fact referenced herein, which renders them personally liable to the Company for breaching their fiduciary duties.

147. Also, in breach of their fiduciary duties, the Individual Defendants caused the Company to fail to maintain internal controls.

148. In yet further breach of their fiduciary duties, during the Relevant Period, two of the Individual Defendants engaged in lucrative insider sales while the Company's stock price was artificially inflated before the fraud was exposed, netting total proceeds of approximately $6.1 million.

149. The Individual Defendants had actual or constructive knowledge that they had caused the Company to issue materially false and misleading statements, and they failed to correct the Company's public statements and representations. The Individual Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth, in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such material misrepresentations and omissions were committed knowingly or recklessly and for the purpose and effect of artificially inflating the price of Capricor's securities.

150. The Individual Defendants had actual or constructive knowledge that they had caused the Company to improperly engage in the fraudulent scheme set forth herein and to fail to maintain internal controls. The Individual Defendants had actual knowledge that the

Company was engaging in the fraudulent scheme set forth herein, and that internal controls were not adequately maintained, or acted with reckless disregard for the truth, in that they caused the Company to improperly engage in the fraudulent scheme and to fail to maintain adequate internal controls, even though such facts were available to them. Such improper conduct was committed knowingly or recklessly and for the purpose and effect of artificially inflating the price of Capricor's securities. The Individual Defendants, in good faith, should have taken appropriate action to correct the scheme alleged herein and to prevent it from continuing to occur.

151. These actions were not a good-faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

152. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations, Capricor has sustained and continues to sustain significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

153. Plaintiff, on behalf of Capricor, has no adequate remedy at law.

THIRD CLAIM
Against the Individual Defendants for Unjust Enrichment

154. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

155. By their wrongful acts, violations of law, and false and misleading statements and omissions of material fact that they made and/or caused to be made, the Individual Defendants were unjustly enriched at the expense of, and to the detriment of, Capricor.

156. The Individual Defendants either benefitted financially from the improper conduct, or received bonuses, stock options, or similar compensation from Capricor that was tied to the performance or artificially inflated valuation of Capricor or received compensation or other payments that were unjust in light of the Individual Defendants' bad faith conduct. This includes lavish compensation, benefits, and other payments provided

to the Individual Defendants who breached their fiduciary duties to the Company.

157. Plaintiff, as shareholder and representative of Capricor, seeks restitution from the Individual Defendants and seeks an order from this Court disgorging all profits, including from insider transactions, the redemption of preferred stock, benefits, and other compensation, including any performance-based or valuation-based compensation, obtained by the Individual Defendants due to their wrongful conduct and breach of their fiduciary and contractual duties.

158. Plaintiff, on behalf of Capricor, has no adequate remedy at law.

FOURTH CLAIM
Against the Individual Defendants for Abuse of Control

159. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

160. The Individual Defendants' misconduct alleged herein constituted an abuse of their ability to control and influence Capricor, for which they are legally responsible.

161. As a direct and proximate result of the Individual Defendants' abuse of control, Capricor has sustained significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

162. Plaintiff, on behalf of Capricor, has no adequate remedy at law.

FIFTH CLAIM
Against the Individual Defendants for Gross Mismanagement

163. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

164. By their actions alleged herein, the Individual Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of Capricor in a manner consistent with the operations of a publicly held corporation.

165. As a direct and proximate result of the Individual Defendants' gross

mismanagement and breaches of duty alleged herein, Capricor has sustained and will continue to sustain significant damages.

166. As a result of the misconduct and breaches of duty alleged herein, the Individual Defendants are liable to the Company.

167. Plaintiff, on behalf of Capricor, has no adequate remedy at law.

SIXTH CLAIM
Against the Individual Defendants for Waste of Corporate Assets

168. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

169. The Individual Defendants caused the Company to pay the Individual Defendants excessive salaries and fees, to the detriment of the shareholders and the Company.

170. As a result of the foregoing, and by failing to properly consider the interests of the Company and its public shareholders, the Individual Defendants have caused Capricor to waste valuable corporate assets, to incur many millions of dollars of legal liability and/or costs to defend unlawful actions, to engage in internal investigations, and to lose financing from investors and business from future customers who no longer trust the Company and its products.

171. As a result of the waste of corporate assets, the Individual Defendants are each liable to the Company.

172. Plaintiff, on behalf of Capricor, has no adequate remedy at law.

SEVENTH CLAIM
Against Defendants Marbán and Bergmann for Contribution Under Sections 10(b) and 21D of the Exchange Act

173. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

174. Capricor and Defendants Marbán and Bergmann are named as defendants in

the Securities Class Action, which asserts claims under the federal securities laws for violations of Sections 10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder. If and when the Company is found liable in the Securities Class Action for these violations of the federal securities laws, the Company's liability will be in whole or in part due to Defendants Marbán's and Bergmann's willful and/or reckless violations of their obligations as officers and/or directors of the Company.

175. Defendants Marbán and Bergmann, because of their positions of control and authority as officers and/or directors of the Company, were able to and did, directly and/or indirectly, exercise control over the business and corporate affairs of the Company, including the wrongful acts complained of herein and in the Securities Class Action.

176. Accordingly, Defendants Marbán and Bergmann are liable under 15 U.S.C. § 78j(b), which creates a private right of action for contribution, and Section 21D of the Exchange Act, 15 U.S.C. § 78u-4(f), which governs the application of a private right of action for contribution arising out of violations of the Exchange Act.

177. As such, Capricor is entitled to receive all appropriate contribution or indemnification from Defendants Marbán and Bergmann.

PRAYER FOR RELIEF

FOR THESE REASONS, Plaintiff demands judgment in the Company's favor against all Individual Defendants as follows:

(a) Declaring that Plaintiff may maintain this action on behalf of Capricor, and that Plaintiff is an adequate representative of the Company;

(b) Declaring that the Individual Defendants have breached and/or aided and abetted the breach of their fiduciary duties to Capricor;

(c) Determining and awarding to Capricor the damages sustained by it as a result of the violations set forth above from each of the Individual Defendants, jointly and severally, together with pre-judgment and post-judgment interest thereon;

(d) Directing Capricor and the Individual Defendants to take all necessary

actions to reform and improve Capricor's corporate governance and internal procedures to comply with applicable laws and to protect Capricor and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote the following resolutions for amendments to the Company's Bylaws and/or Certificate of Incorporation and the following actions as may be necessary to ensure proper corporate governance policies:

1. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;
2. a provision to permit the shareholders of Capricor to nominate at least four candidates for election to the Board;
3. a proposal to ensure the establishment of effective oversight of compliance with applicable laws, rules, and regulations;

(e) Awarding Capricor restitution from the Individual Defendants, and each of them;

(f) Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees, costs, and expenses; and

(g) Granting such other and further relief as the Court may deem just and proper.

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