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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. DALE B. CHAPPELL, BLACK HORSE CAPITAL LP, BLACK HORSE CAPITAL MASTER FUND LTD., CHEVAL HOLDINGS, LTD., and CAMERON DURRANT, Defendants, -and- MARY E. CHAPPELL and CANDACE M. DURAN, Relief Defendants.	Case No.: 2:23-cv-03769 (CCC) (JRA) **JURY TRIAL DEMANDED**

SECOND AMENDED COMPLAINT

Plaintiff U.S. Securities and Exchange Commission ("SEC" or

"Commission"), files this Amended Complaint against Defendants Dale B. Chappell ("Chappell"), whose last known address is Via Mezdi 35, 7500 St. Moritz, Switzerland; Black Horse Capital LP, whose last known address is Via Mezdi 35, 7500 St. Moritz, Switzerland; Black Horse Capital Master Fund Ltd., whose last known address is 309 Ugland House, Georgetown, Grand Cayman KY1-1104, Cayman Islands; Cheval Holdings, Ltd., whose last known address is 309 Ugland House, Georgetown, Grand Cayman KY1-1104, Cayman Islands; and Cameron Durrant ("Durrant"), whose last known address is 5 Haines Cove Drive, Toms River, New Jersey 08753, United States. In addition, the SEC files this Complaint against Mary E. Chappell ("Mary Chappell"), whose last known address is Via Mezdi 35, 7500 St. Moritz, Switzerland, and Candace M. Duran ("Duran"), whose last known address is 18795 Road T, Cortez, Colorado 81321-8734, as Relief Defendants. The SEC alleges as follows:

SUMMARY

1. The Commission brings this action due to Defendants' insider trading in the stock of Humanigen, Inc. ("Humanigen"), a clinical stage biopharmaceutical company, in violation of the federal securities laws. Defendants Black Horse Capital LP, Black Horse Capital Master Fund Ltd., and Cheval Holdings, Ltd., at the direction of Chappell, sold 3,835,000 shares of Humanigen stock for more than $68 million while in possession of material nonpublic information regarding

Humanigen's lead potential product, a monoclonal antibody called "lenzilumab." Defendant Durrant sold 81,441 shares of Humanigen stock for approximately $1.68 million while in possession of the same material nonpublic information.

2. Throughout the relevant period, Chappell and Durrant were directors on Humanigen's board of directors. Also throughout the relevant period, Chappell was Humanigen's Chief Scientific Officer, and Durrant was Humanigen's Chief Executive Officer ("CEO"). While he engaged in insider trading, Chappell was also Humanigen's largest shareholder through three investment vehicles he controlled, Defendants Black Horse Capital LP, Black Horse Capital Master Fund Ltd., and Cheval Holdings, Ltd. (collectively, the "Black Horse Entities").

3. In 2020 and 2021, Chappell and Durrant knew that obtaining an Emergency Use Authorization ("EUA") for lenzilumab to treat certain side effects of COVID-19 from the U.S. Food & Drug Administration (the "FDA") was essential to the short-term financial success of Humanigen. They also knew that Humanigen had disclosed the importance of obtaining that EUA to its investors.

4. Chappell and Durrant learned in April 2021 that the FDA had serious concerns that Humanigen's existing clinical data regarding the use of lenzilumab to treat COVID-19 side effects was insufficient to support approval of an EUA. They also learned directly in a meeting with the FDA in April 2021 that the agency was unlikely to approve an EUA submission for lenzilumab unless Humanigen

conducted additional confirmatory studies that sufficiently demonstrated its benefits, efficacy, and risks.

5. Chappell and Durrant knew that Humanigen had conducted no new trials of lenzilumab when, despite the FDA's warnings, it submitted its EUA application on May 28, 2021.

6. Armed with the material nonpublic information that the FDA had warned it would likely reject such an EUA application, Chappell, through his Black Horse Entities, sold 3,835,000 shares of Humanigen stock for more than $68 million, from June 2021 to August 2021. Armed with the same material nonpublic information, Durrant sold 81,441 shares of Humanigen stock for more than $1 million, on June 14, 2021. Durrant and Chappell made these trades between the May 2021 public announcement that Humanigen had submitted its EUA application and its eventual September 2021 announcement that the FDA had rejected that application.

7. Once Humanigen announced the FDA's rejection of its EUA application for lenzilumab, its share price plummeted, declining approximately 50%. By trading Humanigen stock while in possession of the material nonpublic information that its EUA application would likely be denied, Chappell and the Black Horse Entities avoided losses of over $38 million, and Durrant avoided losses of over $1 million.

8. When Chappell and Durrant sold their shares, they knew that Humanigen's stock price was artificially inflated because it had not disclosed the fact that the EUA application for lenzilumab it had touted as a "critical step" to making the antibody commercially available was likely to be rejected. Chappell and Durrant defrauded the investors to whom they sold their shares – to the tune of tens of millions of dollars – by knowingly selling their shares at a price that did not reflect full disclosure of this material information.

9. By engaging in the conduct alleged in this Complaint, Chappell, the Black Horse Entities, and Durrant violated, and unless restrained and enjoined, will continue to violate Section 10(b) of the Securities and Exchange Act of 1934 [15 U.S.C. § 78j(b)] ("Exchange Act") and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)] ("Securities Act").

10. In connection with Defendants' insider trading in the stock of Humanigen, Relief Defendants Mary Chappell and Duran received, directly or indirectly, funds or other property from the Black Horse Entities, which are either the proceeds of, or are traceable to the proceeds of, unlawful activities alleged in this Complaint to which they have no legitimate claim. It would be inequitable for the Relief Defendants to retain the proceeds from violations of the federal securities laws and such proceeds should be disgorged.

NATURE OF THE PROCEEDINGS AND REQUESTED RELIEF

11. The SEC brings this action pursuant to the authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

12. The SEC seeks temporary, preliminary, and permanent injunctions, as well as final judgments: (a) permanently enjoining Defendants from violating the federal securities laws and rules this Complaint alleges they have violated; (b) ordering Defendants and Relief Defendants to disgorge all ill-gotten gains they received as a result of the violations alleged pursuant to Exchange Act Sections 21(d)(3), 21(d)(5), and 21(d)(7) [15 U.S.C. §§ 78u(d)(3), 78u(d)(5), and 78u(d)(7)], and to pay prejudgment interest thereon; (c) ordering Defendants to pay civil money penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; (d) ordering Defendants Chappell and Durrant barred from serving as an officer and director of a public securities issuer pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)]; and (e) ordering any other and further relief the Court may deem just and proper.

JURISDICTION AND VENUE

13. The Court has jurisdiction over this action pursuant to Sections 20(b)

and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa].

14. Defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

15. Venue is proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district.

DEFENDANTS

16. **Dale B. Chappell** ("Chappell"), age 53, is a citizen of the Republic of Malta and was recently a legal resident of Switzerland. Chappell was previously a U.S. citizen and resident. He renounced his U.S. citizenship in 2013. Chappell became a controlling shareholder of Humanigen in 2016. In July 2020, Chappell joined Humanigen as its Chief Scientific Officer and has served as a director on its board since February 2021. At all times relevant to this Complaint, Chappell served as a managing member, director, or officer of the Black Horse Entities, and was a control person of the Black Horse Entities. As of April 2021, Chappell and

the Black Horse Entities owned approximately 24% of the outstanding shares of Humanigen common stock.

17. **Black Horse Capital LP** ("BHC") is a private investment fund registered in Delaware. Chappell is the managing member and control person of BHC. The mailing address of BHC is c/o Opus Equum, Inc., P.O. Box 788, Dolores, Colorado 81323. During the relevant period, BHC traded Humanigen stock on a U.S. exchange, specifically the NASDAQ Stock Market ("NASDAQ").

18. **Black Horse Capital Master Fund Ltd.** ("BHCMF") is a private investment fund and Cayman Islands exempt company. Chappell is a director and the control person of BHCMF. The mailing address of BHCMF is c/o Opus Equum, Inc., P.O. Box 788, Dolores, Colorado 81323. During the relevant period, BHCMF traded Humanigen stock on a U.S. exchange, specifically NASDAQ.

19. **Cheval Holdings, Ltd.** ("Cheval") is a private investment company and a Cayman Islands exempt company. Chappell owns Cheval with his wife, Mary E. Chappell. Cheval has direct and indirect ownership interests in BHCMF and indirect ownership interests in BHC. Chappell is the CEO, CFO, President, and control person of Cheval. Cheval is a holding company for Dale and Mary Chappell's personal investing. The mailing address of Cheval is 309 Ugland House, Georgetown, Grand Cayman KY1-1104, Cayman Islands. During the relevant period, Cheval traded Humanigen stock on a U.S. exchange, specifically

NASDAQ.

20. **Cameron Durrant** ("Durrant"), age 63, is a U.S. citizen and resident of New Jersey. Durrant has served as the Chairman of Humanigen's Board of Directors since January 2016, and as Humanigen's CEO since March 2016. As of April 2021, Durrant owned approximately 3.3% of the outstanding shares of Humanigen common stock. Durrant also currently serves on the board of directors of two privately-held healthcare companies.

RELIEF DEFENDANTS

21. **Mary E. Chappell** ("Mary Chappell"), age 58, is a citizen of the Republic of Malta and was recently a legal resident of Switzerland. Mary Chappell was also previously a United States citizen and resident. She renounced her U.S. citizenship in 2011. Mary Chappell is an owner of Cheval with her husband, Dale Chappell. Mary Chappell owns approximately 95% of the assets in Cheval; Dale Chappell owns the remainder.

22. **Candace M. Duran** ("Duran"), age 51, is a U.S. citizen and resident of Colorado. Duran is the sister of Dale Chappell. Duran serves as a Director and Chief Financial Officer of Opus Equum, Inc. ("Opus"), a private investment company registered in Delaware that provides out-sourced accounting services to the Black Horse Entities. Opus is an indirectly wholly-owned subsidiary of Cheval. Together with Chappell, Duran also served during the relevant period as a

Director of Black Horse Capital Offshore Ltd. Cayman, a Cayman Islands company that invests substantially all of its assets in BHCMF. In that role she and Chappell had overall responsibility for the management of Black Horse Capital Offshore Ltd. Cayman and BHCMF. Duran is also an investor in BHC.

RELATED ENTITY

23. **Humanigen, Inc.** ("Humanigen" or the "Company"), incorporated in Delaware with its principal place of business in Short Hills, New Jersey, is a clinical stage biopharmaceutical company. Originally named KaloBios Pharmaceuticals, Inc. ("KaloBios"), it filed for bankruptcy in 2015. KaloBios entered into a restructuring agreement and stock purchase agreement with the Black Horse Entities in 2016, which eventually resulted in Chappell and the Black Horse Entities holding a controlling interest in Company shares. The Company changed its name from KaloBios to Humanigen in 2017. During the relevant period, Humanigen's primary focus was on the development of a single drug, lenzilumab, a monoclonal antibody the Company described as a treatment for certain side effects of COVID-19. Shares of its common stock were registered pursuant to Section 12(b) of the Exchange Act and quoted on NASDAQ under the symbol "HGEN."[1] On October 12, 2023, NASDAQ filed a Form 25 with the

[1] On August 24, 2022 and February 21, 2023, Humanigen received notices from NASDAQ informing the Company that it had failed to meet NASDAQ's $1.00

Commission to initiate the delisting process for Humanigen stock. Humanigen filed for Chapter 11 bankruptcy on January 3, 2024.

FACTS

A. Chappell and Durrant Had Access to Material, Nonpublic Information about Humanigen and a Duty Not to Trade on It

24. As executives and board members of Humanigen, Chappell and Durrant had access to material, nonpublic information concerning Humanigen. Chappell and Durrant owed Humanigen and its shareholders a duty to keep that information confidential and not to use it for their personal gain. Chappell and Durrant knew, or were reckless in not knowing, that they owed Humanigen and its shareholders this duty.

25. Humanigen had a "Company Policy Regarding Insider Trading" ("Insider Trading Policy") in effect during the relevant period, which applied to the Company's "directors, officers, employees and consultants," including Chappell and Durrant. Humanigen's Insider Trading Policy stated, in pertinent part: "You may not trade in the securities of [Humanigen], directly or through family

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minimum listing requirement and that its stock would be delisted if it failed to come into compliance with NASDAQ's $1.00 minimum listing requirement. On April 18, 2023, NASDAQ granted it an extension until August 21, 2023 to demonstrate compliance with all applicable listing requirements. On July 26, 2023, NASDAQ suspended trading in Humanigen shares after receiving notice from the company that it did not expect to be able to demonstrate compliance by that deadline.

members or other persons or entities, if you are aware of material nonpublic information relating to [Humanigen]." The Insider Trading Policy explained that "[i]nformation is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether to buy, hold or sell a security." Accordingly, "[a]ny information that could reasonably be expected to affect the price of the security is material." Humanigen's Insider Trading Policy specifically included "[c]ommunication from regulatory authorities" as an example of material nonpublic information.

26. Humanigen's Insider Trading Policy also addressed Exchange Act Rule 10b5-1 trading plans. The Policy provided that "a 10b5-1 plan must be entered into before [the executive is] aware of material nonpublic information." The Policy emphasized this rule by specifying a second time that Rule 10b5-1 plans "may only be adopted before the person adopting the plan is aware of material nonpublic information."

27. All Humanigen employees were required to certify their understanding of and intent to comply with the Insider Trading Policy annually. Chappell agreed in writing to comply with the Insider Trading Policy in his employment agreement with the Company that he signed on July 6, 2020. The most recent occasion prior to his June 2021 trades on which Durrant agreed in writing to comply with the Insider Trading Policy was September 21, 2020. As

CEO, Durrant also personally approved the content of the Insider Trading Policy when updating it in June 2021, the day after he sold Humanigen stock.

28. Humanigen's other policies and procedures had similar prohibitions on insider trading, including its Code of Business Conduct in effect during the relevant period, which stated:

> **You are not permitted to use or share confidential information for stock trading purposes or for any other purpose, except the conduct of our business.** All non-public information about [Humanigen] should be considered confidential information. To use 'material non-public information' about [Humanigen] or the market for [Humanigen's] securities for personal financial benefit or to 'tip' others who might make an investment decision on the basis of this information is not only unethical, but also illegal, and could result in criminal prosecution in addition to the termination of your employment or other relationship with [Humanigen]. 'Material non-public information' includes information that is not available to the public at large that could affect the market price of [Humanigen's], or another company's, securities, and that a reasonable investor would consider important in deciding whether to buy, sell or hold such securities.

Emphasis added.

B. Chappell and Durrant Knew EUA Approval for Lenzilumab Was Material to Humanigen

29. Humanigen had only two product candidates for commercialization during the relevant period. Its primary focus was on the development of its lead product candidate, lenzilumab, a monoclonal antibody the Company described as a treatment for certain side effects of COVID-19.

30. During the relevant period, Humanigen had no product sales. The Company's operations were primarily financed through proceeds from the public

offerings of Humanigen stock. As Humanigen made clear in its public filings, its future financial success hinged on regulatory approval for its products under development, particularly lenzilumab.

31. In its 2020 annual report and as late as its Q3 2021 quarterly report filed with the SEC on November 12, 2021, Humanigen highlighted lenzilumab as the only product with short-term revenue potential in its pipeline: "Except for the potential of lenzilumab for COVID-19 under an EUA, our product candidates are in the clinical stage of development and will require substantial time, resources, research and development, and regulatory approval prior to commercialization."

32. As board members, and as the Chief Scientific Officer (Chappell) and CEO (Durrant) of Humanigen, Chappell and Durrant knew the paramount importance of an EUA for lenzilumab to the financial wellbeing of Humanigen, as well as to the value of Humanigen's stock.

C. Humanigen's Initial Efforts to Obtain an EUA and the FDA's Concerns

33. On March 9, 2020, Humanigen announced that it was exploring clinical strategies and partnerships to study the use of lenzilumab to treat COVID-19. Over the course of the year, Humanigen performed trials to evaluate the efficacy of lenzilumab for treating the side effects of COVID-19, and obtained funding to facilitate its efforts, including $71.8 million in equity financing through a private placement in June 2020, and $72.8 million in equity financing through an

initial public offering in September 2020.

34. On August 19, 2020, Humanigen requested a Pre-EUA meeting with the FDA in order to obtain feedback on its plans for an EUA submission for lenzilumab. The FDA advised Humanigen by email that it would provide written responses to Humanigen's questions in lieu of a meeting. On August 27, 2020, Humanigen submitted its "Briefing Package" containing questions to the FDA.

35. On September 25, 2020, the FDA provided written responses to Humanigen's Briefing Package, highlighting outstanding issues regarding Humanigen's data: "While positive 28-day results from [Humanigen's ongoing study of 300 patients treated with lenzilumab] may be sufficient to support an EUA request, whether these would be sufficient to support authorization is a review issue." The agency also raised "concerns regarding residual uncertainty that may remain for mortality estimates in a study with 300 patients" that could negatively affect Humanigen's ability to obtain a license to commercialize lenzilumab. It cautioned that "recently completed trials for COVID-19 products ha[d] been substantially larger than [Humanigen's] ongoing trial."

D. Humanigen, Chappell, and Durrant Learned in April 2021 that EUA Approval for Lenzilumab Was Highly Unlikely

36. Discussions between Humanigen and the FDA regarding a potential EUA application for lenzilumab continued into 2021. On March 19, 2021, Humanigen requested another Pre-EUA meeting with the FDA. Humanigen

submitted related questions to the FDA, and the FDA sent written comments in response on April 12, 2021.

37. In those comments, the FDA stated that it had "significant concerns that negatively impact the ability to rely on this single trial to support the potential benefit of lenzilumab." The FDA explained that it had found the data available from Humanigen's small study to be "insufficient . . . to characterize the benefit-risk of [lenzilumab]," and specifically cautioned that "the criteria for issuance of an EUA are unlikely to be met based on results from [Humanigen's study]." Among the agency's numerous concerns, the FDA noted that Humanigen's first analysis considering all patients, in accordance with its specified plan, had failed to sufficiently demonstrate a significant difference in outcomes between patients who used lenzilumab and those who did not. In other words, Humanigen's first analysis had a negative result. The FDA further noted that the post-hoc "main analysis" upon which Humanigen was relying, and which purported to have a positive result, had excluded results from 41 of the patients included in the first analysis. Humanigen requested to further discuss the FDA's written comments.

38. On April 14, 2021, the FDA held a meeting by teleconference with Humanigen executives, including Chappell and Durrant. As memorialized in the minutes, Humanigen, Chappell, and Durrant learned directly from FDA officials in this April 14 meeting that the agency harbored serious concerns regarding the

sufficiency of its data for an EUA. The FDA repeated its "significant concern regarding the robustness of the efficacy results" of Humanigen's clinical trial previously detailed in its written comments. The FDA reiterated that "there are still many uncertainties regarding both the benefits and the risks involved with lenzilumab." And the FDA reemphasized that it had "significant concern whether the existing data would support a positive outcome in the context of an EUA."

39. In this same meeting, the FDA next asked whether Humanigen had another trial planned or underway so that the benefits and risks of lenzilumab could be adequately assessed. Humanigen said it had no further plans for clinical trials beyond one additional small trial currently underway. The FDA replied that this second trial was "likely not sufficient to serve as a confirmatory trial" given its small size. The FDA then "strongly recommended that [Humanigen] conduct an additional confirmatory study and discouraged submission of an EUA at this time."

40. Later that same day, Durrant emailed his "commentary" and proposed "action plan" in light of what he had learned at the meeting to a number of Humanigen executives, as well as to consultants for Humanigen. In that email, Durrant noted that one FDA official had stated the "Data [were] promising but not sufficient for EUA/BLA." He also noted that he "stopped taking notes after some of the discussion to focus on the action plan." In a heading of his action plan Durrant wrote, "If current EUA likely to be rejected (seems it will be) delay

submission of EUA (?by [sic] 60-90days)."

E. Humanigen Submitted Its EUA Request Despite – and Without Disclosing – Strong Warnings of Probable Denial from the FDA

41. Notwithstanding the FDA's warnings, a few weeks later, on May 4, 2021, Humanigen informed the FDA of its plan to submit an EUA request, which it said might include additional data and/or analyses to support its proposed authorized use.

42. On May 13, 2021 at 10:11 a.m., the FDA emailed Durrant the meeting minutes from the April 14 teleconference (the "May 13 Correspondence"). The FDA also included additional "post-meeting comments" alongside the minutes. In those post-meeting comments, and in response to Humanigen's May 4, 2021 email, the FDA strongly cautioned Humanigen against submitting its EUA application. The FDA stated, "We reiterate our concerns conveyed during the meeting on April 14, 2021, as well as FDA's feedback that the totality of scientific evidence currently available for [lenzilumab] is unlikely sufficient to satisfy the criteria for issuance of an EUA." The agency further stated, "In lieu of an EUA request, we strongly recommend that [Humanigen] submit a meeting request to further discuss [its] continued development program," including details of additional clinical trial(s).

43. Records for Durrant's telephone number show five calls between Chappell and Durrant on May 13, 2021. Four of those calls were following

Durrant's receipt of the FDA's May 13 Correspondence, including one call at 10:39 a.m., 28 minutes after Durrant received the FDA correspondence. As detailed further below, within hours of the May 13 Correspondence and these phone calls with Durrant, Chappell contacted his broker about modifying his existing 10b5-1 plan to significantly lower the price at which the shares in the plan would be sold.

44. Less than a month later, on May 28, 2021, despite the FDA's strong and repeated recommendations against it, Humanigen announced its submission of an EUA application for lenzilumab and filed a Form 8-K with the Commission attaching the announcement. The announcement did not disclose any information whatsoever regarding the many concerns about lenzilumab expressed by the FDA to Humanigen prior to its submission, or the fact that the FDA had strongly advised Humanigen not to make the EUA submission at this time. Humanigen did not disclose the FDA's stated concern that the totality of scientific evidence was unlikely to support issuance of an EUA. Nor did it disclose that the FDA had recommended that Humanigen conduct additional clinical trials before making an EUA submission. Instead it made statements expressing enthusiasm and optimism regarding its chances of EUA approval, including: "Filing for EUA in the U.S. is a critical step to making a therapeutic option available for COVID-19," and "We are excited and encouraged by [our] clinical results and are preparing to distribute

lenzilumab if granted Emergency Use Authorization."

45. Despite the FDA's strong recommendation, Humanigen conducted no new trials of lenzilumab before submitting its EUA application. Humanigen's EUA application contained no significant clinical data that had not already been shared with the FDA.

F. Chappell Hastily Traded Humanigen Stock While in Possession of Material Nonpublic Information Following the FDA's May 13 Correspondence

46. On March 14, 2021, five days before Humanigen requested another Pre-EUA meeting with the FDA, Chappell set up his first Rule 10b5-1 trading plans since joining Humanigen in July 2020 for the sale of Humanigen stock by the Black Horse Entities (the "March 2021 Trading Plans"). The March 2021 Trading Plans each had an effective date of March 30, 2021 and a termination date of June 30, 2021. The March 2021 Trading Plans were approved on March 15, 2021 by Humanigen's Chief Financial Officer ("CFO") and Compliance Coordinator at the time. The Plans called for the sale of Humanigen shares at an initial limit price of $25, followed by a limit price of $35. Humanigen stock at this time was trading around $16.07. Because Humanigen's stock price never rose above the initial $25 limit price, no trades were ever initiated under the March 2021 Trading Plans.

47. Less than 2 hours following Durrant's receipt of the FDA's May 13 Correspondence warning that an EUA submission would likely be denied at this

time, and his subsequent telephone conversation with Durrant, Chappell emailed his broker to set up new Rule 10b5-1 trading plans for the Black Horse Entities. In this email, Chappell explained that "price targets [were] a little too high on the last 10b-5," referring to the March 2021 Trading Plans, and that he wanted to reduce the targets "to ensure we get some shares sold."

48. That same day, Chappell prepared new Rule 10b5-1 trading plans for the Black Horse Entities (collectively, the "May 2021 Trading Plans") and emailed them to his broker. Chappell informed his broker that he was waiting for final confirmation of an open trading window before signing. The May 2021 Trading Plans had effective dates of June 1, 2021 and termination dates of August 31, 2021. The terms called for sale of shares at a limit price of $14, significantly lower than the limit price on the March 2021 Trading Plans. Humanigen stock had closed at $17.02 on the day before Chappell prepared the plans. Ultimately, Chappell did not execute the May 2021 Trading Plans, however, because there was no open trading window at the time.

49. When Chappell learned that a trading window would open on June 2, 2021, he directed his broker to sell 475,000 shares of Humanigen stock during that window, mirroring the trading volumes contemplated in the unexecuted May 2021 Trading Plans. From June 2 to June 7, 2021, Chappell sold 475,000 shares of Humanigen stock at prices hovering around $19 per share for a total of more than

$8 million. Chappell made these trades with no 10b5-1 trading plans in place, and while possessing material nonpublic information regarding FDA's strong indications that Humanigen's May 28, 2021 EUA application would be denied.

50. On June 2, 2021, the Black Horse Entities entered into new Rule 10b5-1 trading plans (the "June 2, 2021 Trading Plans") with effective dates of July 1, 2021, termination dates of August 31, 2021, and an initial limit price of $25. But because Humanigen's stock price never rose above the $25 limit price, no trades were initiated under these plans.

51. On June 15, 2021, Chappell entered into another series of Rule 10b5-1 trading plans for the Black Horse Entities (collectively, the "June 15, 2021 Trading Plans"). The June 15, 2021 Trading Plans had an effective date of June 16, 2021, termination date of August 30, 2021, and called for sale of shares at a limit price of $17. Humanigen stock closed at $20.52 on the last trading day before the June 15, 2021 Trading Plans were put in place.

52. When establishing all of these Rule 10b5-1 trading plans, including the June 15, 2021 Trading Plans, Chappell represented in writing to his broker that he was entering into them in good faith and not while in possession of any material nonpublic information concerning Humanigen. These representations were false. And Chappell knew, or was reckless in not knowing, that information concerning communication from regulatory authorities, like the FDA, was material nonpublic

information pursuant to the terms of Humanigen's Insider Trading Policy in effect at the time.

53. The Black Horse Entities started selling shares of Humanigen pursuant to the June 15, 2021 Trading Plans on June 16, 2021, the first trading day after the plans were put in place. From June 16, 2021 through August 12, 2021, Chappell, through the Black Horse Entities, sold 3,360,000 shares of Humanigen common stock at prices ranging from $17.04 to $19.50 per share for nearly $60 million.

54. In total, between June 2, 2021 and August 12, 2021, Chappell and the Black Horse Entities sold 3,835,000 shares of Humanigen, for total proceeds of more than $68 million. Throughout that period, Chappell and the Black Horse Entities were in possession of material nonpublic information about the FDA's communications with Humanigen concerning its EUA application.

55. Specifically, Chappell was aware that the FDA had seriously questioned the sufficiency of Humanigen's clinical data that would be used to support its EUA application, and had recommended that Humanigen submit a meeting request to discuss its development program in lieu of submitting an EUA application. He was also aware that the FDA had strongly discouraged Humanigen from submitting an EUA application when it did, and that the FDA had recommended the Company conduct an additional confirmatory study before doing

so. As a result, Chappell knew that there was a substantial risk that the FDA would deny Humanigen's EUA application. Chappell also knew, or was reckless in not knowing, that information concerning communication from regulatory authorities, like the FDA, was material nonpublic information pursuant to the terms of Humanigen's Insider Trading Policy in effect at the time.

56. At no time between June 2, 2021 and August 12, 2021 did Humanigen disclose any of this material information to the public.

G. Durrant Traded Humanigen Stock While in Possession of Material Nonpublic Information Following the FDA's May 13 Correspondence

57. On March 15, 2021, four days before Humanigen requested another Pre-EUA meeting with the FDA, Durrant set up his first Rule 10b5-1 trading plan since joining Humanigen in 2016 for the sale of Humanigen stock. This trading plan was the only 10b5-1 plan Durrant had during the relevant time period. It had an effective date of "First Allowable" and a termination date of September 30, 2021. Durrant's trading plan was approved on March 15, 2021 by Humanigen's CFO and Compliance Coordinator at the time. The plan called for the sale of Humanigen shares at an initial limit price of $28.33, followed by limit prices ranging from $25 to $100. Humanigen stock at this time was trading around $16.07. Because Humanigen's stock price never rose above the initial $28.33 limit price, no trades were ever initiated under this March 15, 2021 trading plan.

58. On June 14, 2021, while the FDA's concerns remained undisclosed to the public, Durrant sold 81,441 shares of Humanigen stock, for total proceeds of approximately $1.68 million. These sales were the first time Durrant had sold any of his Humanigen shares. Durrant made these trades with no applicable 10b5-1 trading plan in place, and while possessing material nonpublic information regarding FDA's strong indications that Humanigen's May 28, 2021 EUA application would be denied.

59. Specifically, Durrant was aware that that the FDA had seriously questioned the sufficiency of Humanigen's clinical data that would be used to support its EUA application, and had recommended that Humanigen submit a meeting request to discuss its development program in lieu of submitting an EUA application. He was also aware that the FDA had strongly discouraged Humanigen from submitting an EUA application when it did, and that the FDA had recommended the Company conduct an additional confirmatory study before doing so. As a result, Durrant knew that there was a substantial risk that the FDA would deny Humanigen's EUA application. Durrant also knew, or was reckless in not knowing, that information concerning communication from regulatory authorities, like the FDA, was material nonpublic information pursuant to the terms of Humanigen's Insider Trading Policy in the process of being updated by Durrant and others at the time. At no time prior to September 9, 2021, did Humanigen

disclose any of this material information to the public.

60. Durrant's awareness of the materiality of the FDA's strong warnings of likely EUA denial is underscored by an email he sent on July 24, 2021. Durrant forwarded an email inquiry from an investor to Humanigen's CFO and Compliance Coordinator. The investor had asked, "Cameron, any update you can give on EUA? Is the FDA trying to push vaccines more and not focused on something like Lenz?" In his forwarding email, Durrant commented to the CFO, "Apparently this guy is a seasoned investor…..amazing how many investors keep asking me for MNPI [material nonpublic information]….."

H. Humanigen's Stock Fell by Approximately 50% After the FDA Denied Its EUA Application

61. On September 8, 2021, the FDA formally notified Humanigen that its EUA application for lenzilumab had been denied. Shortly after midnight on September 9, 2021, Humanigen publicly disclosed in a press release that the FDA had denied its EUA application (the "September Announcement"): "U.S. FDA has declined [Humanigen's] request for emergency use authorization of lenzilumab to treat newly hospitalized COVID-19 patients." In its denial letter, the FDA stated that it was "unable to reasonably conclude that the known and potential benefits of lenzilumab . . . outweigh the known and potential risks" of its use as a treatment for COVID-19. The FDA's stated reasons for denial were nearly identical to the concerns it raised in the May 13 Correspondence. On September 10, 2021,

Humanigen filed an interim report with the Commission on Form 8-K, attaching the September Announcement.

62. On September 8, 2021, the day before the September Announcement, trading of Humanigen stock closed at a price of $15.11. The next day, following the overnight September Announcement, it opened at a price of only $6.11. At the end of trading on September 9, 2021, Humanigen's stock price closed at $7.97, down $7.14, or approximately 50% from the prior day, and on an exponentially higher trading volume of approximately 35 million shares (compared to a volume of 658,900 shares on September 8, 2021). The stock price continued to fall on September 10, 2021, and closed at $6.88, down $8.23 from the pre-announcement $15.11 stock price.

I. Chappell Avoided Over $38 Million in Losses and Durrant Avoided Over $1 Million in Losses by Selling Humanigen Stock Ahead of the September Announcement

63. By selling 3,835,000 shares of Humanigen stock while in possession of material nonpublic information before the September Announcement, Chappell and the Black Horse Entities avoided losses of approximately $38 million. As investors in the Black Horse Entities, Relief Defendants Mary Chappell and Duran shared in this avoidance of losses.

64. By selling 81,441 shares of Humanigen stock while in possession of material nonpublic information before the September Announcement, Durrant

avoided losses of more than $1 million.

65. A little over a year later, on November 14, 2022, Humanigen stated in its quarterly report that it "no longer expect[ed] to be positioned to receive an EUA or other regulatory approval for, or to commercialize or receive revenues from, lenzilumab for COVID-19 in the foreseeable future." It further stated that it had shifted to researching potential non-COVID-19 applications of lenzilumab, and that it would therefore need to obtain additional financing to fund operations or would be unable to continue as a going concern. On July 18, 2023, Humanigen announced that it would not be able to continue as a going concern and was exploring all restructuring options, which could include commencing a bankruptcy or other insolvency proceeding sometime in the third quarter of 2023. On January 3, 2024, Humanigen filed for Chapter 11 bankruptcy. As of Friday, May 17, 2024, the Company's stock was trading on OTC Link, an alternative trading system operated by OTC Markets Group, Inc., at around $0.0001 per share.

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 (against Defendants Chappell, the Black Horse Entities, and Durrant)

66. Paragraphs 1 through 65 are realleged and incorporated by reference as if fully set forth herein.

67. As set forth above, Defendants Chappell, the Black Horse Entities, and Durrant traded Humanigen securities on the basis of material nonpublic

information about Humanigen in violation of Chappell's and Durrant's duty of confidentiality to Humanigen. Defendants knew, consciously avoided knowing, or were reckless in not knowing that this information was material and nonpublic.

68. By engaging in the conduct described above, Defendants Chappell, the Black Horse Entities, and Durrant, directly or indirectly, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

69. By engaging in the conduct described above, Defendants Chappell, the Black Horse Entities, and Durrant violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

SECOND CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act (against Defendants Chappell, the Black Horse Entities, and Durrant)

70. Paragraphs 1 through 69 are realleged and incorporated by reference

as if fully set forth herein.

71. By engaging in the conduct described above, Defendants Chappell, the Black Horse Entities, and Durrant, singly or in concert with others, in the offer or sale of securities, by use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operated or would have operated as a fraud or deceit upon persons.

72. By engaging in the conduct described above, Defendants Chappell, the Black Horse Entities, and Durrant, violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

THIRD CLAIM FOR RELIEF

Disgorgement From Relief Defendants Under Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)(5)] (Against Relief Defendants Mary Chappell and Duran)

73. Paragraphs 1 through 72 are realleged and incorporated by reference as if fully set forth herein.

74. Relief Defendant Mary Chappell received, directly or indirectly, funds or other property from Defendants Chappell, BHC, and BHCMF, which are either

the proceeds of, or are traceable to the proceeds of, unlawful activities alleged in this Complaint to which she has no legitimate claim.

75. Relief Defendant Duran received, directly or indirectly, funds or other property from Defendant BHC, which are either the proceeds of, or are traceable to the proceeds of, unlawful activities alleged in this Complaint to which she has no legitimate claim.

76. By reason of the foregoing, it would be inequitable for Relief Defendants to retain the proceeds from violations of the federal securities laws and such proceeds should be disgorged.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court enter a Final Judgment:

I.

Permanently enjoining Defendants Chappell, the Black Horse Entities, and Durrant, and those persons in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

Ordering Defendants to disgorge all ill-gotten gains obtained within the statute of limitations, together with prejudgment interest thereon, pursuant to Sections 21(d)(3), 21(d)(5) and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(d)(5) and 78u(d)(7)].

III.

Ordering Defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

IV.

Ordering that Defendants Chappell and Durrant be barred from serving as an officer and director of a public issuer pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)].

V.

Ordering the Relief Defendants to disgorge, with prejudgment interest, all ill-gotten gains received or derived from the activities set forth in this Complaint, and to repatriate any ill-gotten funds or assets sent overseas.

VI.

Retaining jurisdiction of this action in accordance with the principles of

equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as this Court may determine to be just and necessary.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, the SEC demands trial by jury.

Dated: May 20, 2024

Respectfully submitted,

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DESIGNATION OF AGENT FOR SERVICE UNDER LOCAL CIVIL RULE 101.1(f)

In accordance with Local Civil Rule 101.1(f), the undersigned hereby makes the following designation for the receipt of service of all notices or papers in this action at the following address:

United States Attorney's Office
District of New Jersey
Attention: David E. Dauenheimer
Deputy Chief, Government Fraud Unit
970 Broad Street, Suite 700
Newark, NJ 07102-2534

Dated: May 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 20, 2024, a true and correct copy of the foregoing document was filed electronically with the clerk's office, who will send copies to all counsel of record.

I further certify that a true and correct copy of the foregoing document shall be served upon Defendant Durrant consistent with the Federal and Local Rules of Civil Procedure.

/s/ *Anna O. Area*
Anna O. Area
Counsel for Plaintiff United States
Securities and Exchange Commission