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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 **IN RE PRECIGEN, INC. SECURITIES**
13 **LITIGATION**

Lead Case No. 5:20-cv-06936-BLF

CLASS ACTION

PLAINTIFF'S AMENDED CLASS
ACTION COMPLAINT

14 This Document Relates To:
15 All Actions.

JURY TRIAL DEMANDED

Courtroom.: 3 – 5th Floor
Judge: Hon. Beth Labson Freeman

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1 Court-appointed Lead Plaintiff Raju Shah, by and through his undersigned counsel, brings this
2 action under the Securities Exchange Act of 1934 (the “Exchange Act”) on behalf of himself and a
3 class of other similarly situated investors against Precigen, Inc. (“Precigen” or the “Company”) and
4 the other Defendants named herein.¹ Plaintiff alleges the following based upon personal knowledge
5 as to himself and his own acts, and upon information and belief as to all other matters. Plaintiff’s
6 information and belief is based on the ongoing investigation of his undersigned counsel, which
7 includes review of Defendants’ press releases, conference call transcripts, filings with the United States
8 Securities and Exchange Commission (“SEC”), and other public statements; news stories, analyst
9 reports, and other public information concerning Precigen and the industry within which it operates;
10 and interviews with former Precigen employees and/or others familiar with the Company.

11 I. NATURE OF THE ACTION

12 1. This securities class action is brought on behalf of a class (the “Class”) consisting of all
13 persons or entities other than Defendants and their affiliated persons who purchased or otherwise
14 acquired Precigen common stock between May 10, 2017 to September 25, 2020, inclusive (the “Class
15 Period”). Plaintiff brings claims against Precigen and certain of its current and former officers and
16 directors (collectively, “Defendants”). The claims arise under §§10(b) and 20(a) of the Exchange Act
17 and Rule 10b-5 promulgated thereunder.

18 2. At all relevant times, Precigen’s business involved developing chemical and energy
19 technology platforms based on “synthetic biology” that sought to develop biologically based products.
20 Of particular importance to Precigen investors was Precigen’s *methane bioconversion platform*
21 (“MBP”). As detailed below, Defendants touted the ability of the Company’s MBP program to convert
22 *natural gas* into commercial-end products, including (i) isobutanol (used in gasoline blending); (ii)
23 isobutyraldehyde (the primary component of methyl methacrylate (“MMA”), which is used in
24 developing acrylics for automotive parts and in lighting for LED lighting and flat panel screens); (iii)
25 2,3 Butanediol (“2,3 BDO”) (used in producing synthetic rubber); and (iv) 1,4 Butanediol (“1,4 BDO”)

26 _____
27 ¹ Formerly known as Intrexon Corporation (“Intrexon”), on January 2, 2020, the Company was
28 renamed “Precigen, Inc.” For ease of reference, this Complaint generally refers to the Company as
“Precigen,” notwithstanding that it was called “Intrexon” prior to 2020.

1 (used in producing polyester). Developing a commercially viable MBP program would mean
2 potentially massive profits for Precigen, and accordingly the success or failure of such efforts was
3 highly material to investors.

4 3. A key metric in assessing the success of a bioconversion platform (such as Precigen’s
5 MBP) is its “yield” in converting a “feedstock” (such as natural gas) into a given target product (such
6 as 2,3 BDO or isobutyraldehyde). Simply put, “yield” measures the amount or percentage of a
7 feedstock that results in the finished product through the bioconversion process.

8 4. Starting on May 10, 2017 (the first day of the Class Period), Precigen began claiming
9 that, using natural gas as its feedstock, its MBP had achieved isobutyraldehyde and 2,3 BDO yields
10 sufficient for “site selection” – a significant milestone that meant that development had reached a stage
11 that justified the selection of a location to construct a facility to commence commercial production of
12 the product in question. Precigen also reported on May 10, 2017, that it had increased its yield for 2,3
13 BDO by 30% in 1Q 2017, a level that would allow for profitable production based on “current natural
14 gas and product prices.” In other words, as a result of this purported yield breakthrough, Defendants
15 represented to investors that at least two of the Company’s MBP-generated products were “in the
16 money,” *i.e.*, commercially viable. Defendants also made clear that the Company’s purported abilities
17 to produce isobutyraldehyde and 2,3 BDO from its MBP “represent a *multi-billion dollar* revenue
18 opportunity for the Company,” as there was a \$100 billion overall Total Addressable Market (“TAM”)
19 for the various MBP products (such as isobutyraldehyde and 2,3 BDO) that it sought to produce. As
20 shown below, Defendants would continue to tout similarly positive claims regarding the purported
21 success of its MBP program over the course of the Class Period.

22 5. Unbeknownst to investors, however, *Precigen was not utilizing natural gas as the*
23 *“feedstock” for its MBP* – but was instead using *pure methane*. And this was plainly a highly material
24 distinction, as there is an enormous cost difference between the two. Indeed, as the SEC later stated
25 in its September 2020 cease-and-desist order (the “SEC Order”) entered against Precigen:

26 ¶6. Pure methane was purchased [by the Company] in canisters at a cost of
27 approximately \$650 per one million British Thermal Units (MMBtu). *At those*
28 *prices, pure methane was not a commercially viable feedstock*. Pure methane
differs from natural gas in that it contains no ethane, which was inhibitory to the

1 fermentation process. *Natural gas could be purchased from the local utility*
2 *company at a cost of approximately \$3 per MMBtu. At those prices, natural gas*
3 *could provide a commercially viable feedstock.* The problem with natural gas is
4 that it is a composite chemical that contains small percentages of ethane, which
5 again was inhibitory to the fermentation process. *At the time of the laboratory*
6 *experiments with pure methane as a feedstock, [the Company's] scientists were*
7 *working on methods to achieve similar yields . . . with natural gas and, while they*
8 *were optimistic, they had not done so at the time [the Company] made the relevant*
9 *disclosures.*

¶7. *Yields . . . reported internally from laboratory experiments using natural*
10 *gas as a feedstock were substantially lower than those disclosed publicly by [the*
11 *Company] using pure methane during the relevant period.*

12 [Emphasis added.]

13 Accordingly, Precigen's reported "yields" for converting "natural gas" into various end-products were
14 patently false and misleading, as were the Company's Class Period statements regarding the purported
15 readiness of its MBP program for "site selection" and commercial development at "in the money" yield
16 levels.

17 6. Unfortunately for investors, the extent to which the Company had misrepresented its
18 MBP development only emerged over time. Indeed, the precise nature of the Defendants' affirmative
19 misrepresentations – including that the Company (1) had been using costly *pure methane* (instead of
20 natural gas) as its MBP feedstock, (2) had *not* achieved its stated "yields" on its MBP products using
21 natural gas, and (3) had *failed* to produce MBP products that were "in the money" (*i.e.*, commercially
22 viable) – would not be fully revealed to the investing public until September 25, 2020 (the last day of
23 the Class Period), *when the SEC issued a cease-and-desist order* that ordered Precigen to stop making
24 "inaccurate [statements] concerning the company's purported success converting relatively
25 inexpensive natural gas into more expensive industrial chemicals using [its] proprietary [MBP]
26 program."

27 7. As detailed below, however, well before the public announcement of the SEC's
28 September 2020 Order, Precigen's shares had already begun to decline in response to earlier partial
disclosures that had the effect of gradually disclosing the extent of the weakness in Precigen's MBP
development efforts. Indeed, from the start of the Class Period on May 10, 2017 to the end of the

1 Class Period on September 25, 2020, the Company’s share price fell from roughly \$23.62 per share to
2 only \$3.58 per share – reflecting a staggering decline of approximately 85%.

3 8. By this action, Plaintiff now seeks a recovery for himself and the Class he seeks to
4 represent for the massive losses they have suffered as a result of Defendants’ fraudulent and deceptive
5 conduct.

6 **II. JURISDICTION AND VENUE**

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

10 10. This Court has jurisdiction over the subject matter of this action pursuant to Section 27
11 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1331.

12 11. Venue is proper pursuant to 15 U.S.C. §78aa and 28 U.S.C. §1391(b) because, at all
13 relevant times, a substantial part of the events or omissions giving rise to the claims at issue occurred
14 in this District, including the preparation and dissemination of materially false and misleading
15 information. At all relevant times, Precigen’s research and development laboratory at which many of
16 the salient events herein occurred was located at 329 Oyster Point Blvd., South San Francisco, CA
17 94080.

18 12. In connection with the acts alleged herein, Defendants, directly or indirectly, used the
19 means and instrumentalities of interstate commerce, including, but not limited to, the U.S. mail,
20 interstate telephone communications, and the facilities of national securities exchanges.

21 **III. PARTIES**

22 **A. Plaintiff**

23 13. Lead Plaintiff Raju Shah (“Shah” or “Plaintiff”), as set forth in his certification
24 previously filed with the Court, purchased Precigen common stock during the Class Period and was
25 damaged by Defendants’ conduct as alleged herein.

26 **B. Defendant Precigen**

27 14. Defendant Precigen, Inc., is a corporation organized under the laws of the
28

1 Commonwealth of Virginia and is headquartered at 20374 Seneca Meadows Parkway Germantown,
2 Maryland 20876. The Company, then-known as Intrexon, went public in August 2013 on the New
3 York Stock Exchange (“NYSE”) under the ticker “XON.” At the time, its IPO prospectus promoted
4 the Company as a “leader in the field of synthetic biology” that targeted multiple industries, including
5 (i) healthcare products like therapeutics, bioproduction, and diagnostics, (ii) food animals and
6 agriculture, (iii) energy and chemicals, and (iv) environmental sciences like biosensors,
7 bioremediation, and specialty processes.

8 15. At all relevant periods, the Company maintained its synthetic biology research and
9 development facility in a laboratory in South San Francisco, California. This location served as the
10 Company’s only synthetic biology facility.

11 16. At the close of the market on September 24, 2018, the Company’s stock ceased trading
12 on the NYSE and began trading on the Nasdaq Global Select Market (“Nasdaq”) the following day
13 under the same name (which was then Intrexon) and ticker symbol.

14 17. On February 1, 2020, the Company changed its name to “Precigen, Inc.,” and changed
15 its stock symbol to “PGEN.”

16 **C. The Individual Defendants**

17 18. Defendant Randal J. Kirk (“Kirk”) served as the Company’s Chairman of the Board
18 and Chief Executive officer (“CEO”) throughout the entire Class Period until Kirk’s departure from
19 his role as CEO on January 1, 2020. Thereafter, Defendant Kirk continued to serve as the Company’s
20 Executive Chairman. On September 25, 2020, the Company announced that as of the day prior –
21 September 24, 2020 – Defendant Kirk “is no longer an employee or executive officer of the Company,”
22 but that “Mr. Kirk remains the Executive Chairman of the Company.” Defendant Kirk signed both
23 SEC Form 10-Ks (“10-K”) that contained material misstatements and uttered multiple misstatements
24 on earnings calls and in press releases.

25 19. Defendant Rick L. Sterling (“Sterling”) served as the Chief Financial Officer (“CFO”)
26 of the Company throughout the Class Period. Sterling signed each SEC Form 10-K, SEC Form 8-K
27 (“8-K”), and SEC Form 10-Q (“10-Q”) that contained material misstatements.

1 20. Defendant Robert F. Walsh (“Walsh”) served as the Company’s Senior Vice President
2 of Energy & Fine Chemical Platforms, from May 2013 to November 2019, and was a self-described
3 “Section 16 Officer,” meaning he was subject to the SEC’s reporting requirements because he directly
4 or indirectly beneficially owned more than 10% of the Company’s equity. Defendant Walsh directed
5 and led the Company’s efforts to develop and commercialize its MBP program, regularly
6 communicated key details of the program to other senior executives, including Defendant Kirk, and
7 discussed the program on numerous quarterly earnings calls, making multiple of the misstatements
8 himself.

9 21. Defendant Andrew J. Last (“Last”) was the Company’s Chief Operating Officer
10 (“COO”) from August 2016 to December 2017. Defendant Last spoke on multiple earnings calls,
11 presented the Company’s MBP program at the June 20, 2017 JMP Securities Life Science Conference,
12 and made multiple of the misstatements himself.

13 22. The Defendants named in ¶¶18-21 are collectively referred to herein as the “Individual
14 Defendants.” The Individual Defendants, by virtue of their positions with the Company, possessed the
15 power and authority to control the contents of the Company’s SEC filings, public statements, and
16 presentations to securities analysts, investors, and other market participants. Each Individual
17 Defendant was provided with copies of the Company’s statements and public filings alleged herein to
18 be materially false or misleading prior to, or shortly after, their issuance, and each had the ability and
19 opportunity to prevent their issuance or cause them to be corrected. Because of their positions and
20 access to material non-public information, each of these Defendants knew that the material adverse
21 facts specified herein had not been disclosed to, and were being concealed from, the investing public,
22 and that the positive representations which were being made were materially false and/or misleading
23 when made. Each Individual Defendant is liable for the false statements pleaded herein, as those
24 statements were each “group-published” information and the result of the collective actions of these
25 Defendants pursuant to a common scheme and wrongful course of conduct.

IV. SUBSTANTIVE ALLEGATIONS

A. The Company and Its Efforts to Position Itself as a “Leader” in the Field of Synthetic Biology

23. Synthetic Biology is an emerging field that, in its most basic terms, applies engineering principles to biological systems. The focus of Precigen’s synthetic biology efforts was to research, develop, and commercialize the process of successfully transforming certain enzymes – known as methanotrophs – into organic compounds containing a higher carbon content. To do so, the methanotrophs would need to metabolize a “feedstock” by inducing a chemical reaction known as bioconversion. The “feedstock,” however, needs to contain methane for the bioconversion process to take place – and finding a way to efficiently and effectively separate the methane from the other elements that are also contained in the most common methane-bearing feedstocks poses significant technological challenges.

24. As a “feedstock,” pure methane works best, because it *only* contains methane, *i.e.*, there is nothing to separate. However, it is prohibitively expensive at \$650 per one million British Thermal Units (“MMBtu”), and therefore is not a commercially viable feedstock (because the commercially useful by-products of the resulting bioconversion process can be produced through far less expensive means).

25. Natural gas consists primarily of methane, and at a market price of only about \$3 per MMBtu, it offers a dramatically cheaper source of methane compared to pure methane. The problem with natural gas, however, is that it also contains various other composite chemicals, notably ethane (which inhibits the desired fermentation/bioconversion process), which must be separated from the methane for the desired bioconversion process to work. As a result of this separation problem, as of the start of the Class Period, no company had succeeded in developing a commercially viable way to utilize natural gas in the bioconversion process – although given the low \$3 per MMBtu price of natural gas, the commercial potential of such a technology could be extremely lucrative. Relatedly, the profitability of such a commercially viable technology would increase depending on its “yield,” *i.e.*, on the amount or percent of the feedstock that is converted into a desired end-product through the

1 bioconversion process.

2 26. Bioconversion offers the possibility of producing new products – such as fuel,
3 medicines, and materials for making clothing (such as polyester) and cosmetics – as well as developing
4 new applications for existing products (such as microorganisms that can be employed to clean
5 pollutants from water, soil, and air).

6 27. From the start, the Company has faced stiff competition in the synthetic biology field.
7 For example, at the beginning of the Class Period, there were more than 350 companies worldwide
8 with a market value of approximately \$3.34 billion that were engaged in various efforts to develop and
9 commercialize synthetic biology products or applications.

10 28. According to the Company, its proprietary methane bioconversion platform (“MBP”)
11 positioned it as a “leader” in this field. As noted above, the objective of Precigen’s MBP was to convert
12 *natural gas* into commercial-end products, including (i) isobutanol (used in gasoline blending); (ii)
13 isobutyraldehyde (used in producing methyl methacrylate for use in the production of automotive parts
14 and LED flat panels and lighting); (iii) 2,3 BDO (used in producing synthetic rubber); and (iv) 1,4
15 BDO (used in producing polyester). Unfortunately for investors, however, the Company’s claims of
16 being a “leader in the field of synthetic biology” ended up being built on a fabric of materially false
17 public statements concerning the nature and purported “success” of its MBP program.

18 **B. Immediately Before the Class Period, Precigen’s Loss of a Key Partner and Its**
19 **Accelerating Losses Cast Doubt on the Company’s Ability to Succeed in the Synthetic**
20 **Biology Field**

21 29. Aside from inherent scientific challenges, the Company’s efforts to develop a
22 successful MBP program was complicated by two adverse developments immediately prior to the start
23 of the Class Period.

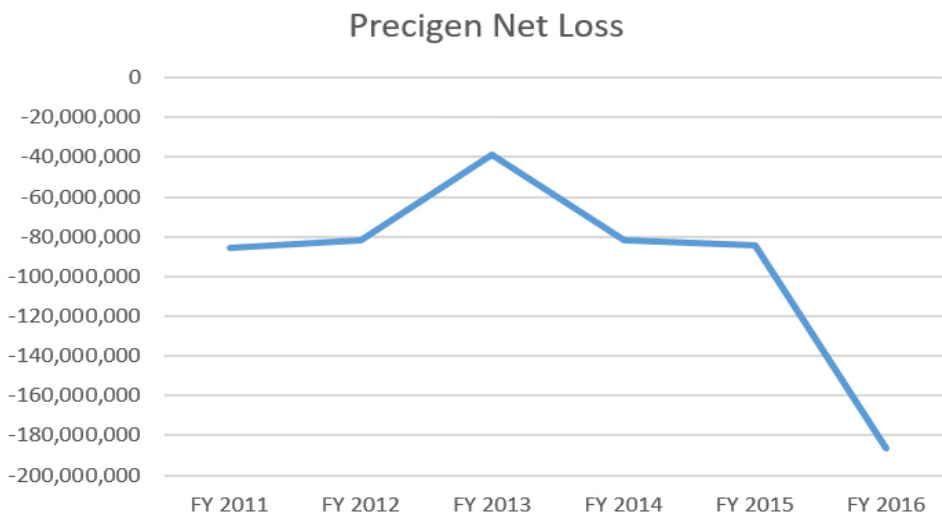
24 30. First, the Company lost the benefits of its partnership with Dominion Energy
25 (“Dominion”). The Company had previously touted the potential of an exclusive agreement entered
26 in 2015 between Dominion and Intrexon Energy Partners (“IEP”) – the subsidiary through which
27 Precigen sought to build its MBP – to explore the potential development of commercial-scale
28 biological conversion of natural gas to isobutanol. Dominion was one of the United States’ largest

1 vertically integrated natural gas utility companies, operating across all segments of the natural gas
 2 industry. Moreover, in early 2016, the Company announced that in connection with this partnership,
 3 IEP would open a “pilot plant” at Precigen’s South San Francisco facility to pursue the goal of
 4 successfully achieving commercially viable yields of isobutanol – and in a May 10, 2016 earnings call,
 5 Defendant Kirk stated:

6 [W]hen you see [IEP] and Dominion Resources go forward with site selection for
 7 the world’s first commercial plant, that should signal to you that we believe that
 8 we’re in the money. We are not yet there, but we are tracking according to plan
 and we are very, very excited by what we are seeing.

9 However, the Company’s public aspirations for its Dominion partnership did not come to pass, as
 10 Dominion decided (without public explanation) in late January 2017, to let its option to construct, own,
 11 and operate two isobutanol production facilities with IEP expire.

12 31. Second, in the years following its IPO in 2013, the Company not only continued to
 13 suffer losses (it has never turned a profit), but its losses accelerated – and for FY 2016, the Company
 14 reported that its net loss had more than doubled (from \$84.5 million in FY 2015 to \$186.6 million in
 15 FY2016). See Precigen Net Loss graph, below:



25

26 32. When the Company disclosed its bleak FY 2016 earnings on March 2, 2017, analysts
 27 such as JMP Securities LLC (“JMP”) expressed concern that “earnings [fell] below our and consensus
 28

1 estimates, driven by lower-than-expected revenues,” and another analyst (Wunderlich Securities, Inc.
2 (“Wunderlich”)) similarly reported surprise at the Company’s declining revenue, while also worrying
3 that the “lapse” of the agreement with Dominion might require Precigen to find a new partner and
4 would further delay its isobutanol development program.

5 33. Against this adverse backdrop, Defendants rolled out a significant shift in narrative,
6 which painted a decidedly more positive picture of the Company’s MBP program and prospects.
7 Unfortunately, for investors, it was a materially false and misleading narrative.

8 **C. Defendants Begin to Issue a Stream of Materially False and Misleading Statements**
9 **Concerning the Purported Successes of Its MBP Program**

10 34. The Class Period begins on May 10, 2017, just two months after the Company reported
11 its record-setting FY 2016 losses and just three months after disclosing the breakup of the Company’s
12 partnership with Dominion. On that day, after the close of the markets, in both a press release and
13 slideshow attached to the Company’s SEC Form 8-K that discussed Precigen’s 1Q 2017 earnings,
14 Defendants purported to disclose what was effectively a breakthrough in the development of their MBP
15 program.

16 35. More specifically, according to the press release and slideshow, (1) the MBP had
17 produced both 2,3 BDO and isobutyraldehyde at sufficiently high “yields” – utilizing “*natural gas*”
18 as the feedstock – for the Company to be able to advance to the next significant phase of commercial
19 development (namely “site selection”), and (2) that the yields effectively meant that the contemplated
20 commercial production of those two products would be “in the money,” *i.e.*, profitable. The first
21 product, 2,3 BDO, if successfully developed, is a precursor component of synthetic rubber. The second
22 product, isobutyraldehyde, is the primary component of MMA, which is used in developing acrylics,
23 which are a major component in automotive parts and lighting for LED and flat panels. In sum,
24 Defendants claimed that it had four products “actively under development,” including 2,3 BDO and
25 isobutyraldehyde, with a TAM exceeding \$100 billion. As Defendants also stated, the Company had
26 succeeded in showing “*the profitable use of low cost natural gas*” in bioconversion, with Defendant
27 Walsh, on that day’s earnings call, further stating:
28

1 [T]hat for two of these products, isobutyraldehyde and 2,3-butanediol, *we've*
2 *attained the yields necessary for the site selection of initial [Precigen] facilities.*
3 *Additionally, we've had a greater than 30% increase in 2,3-butanediol yields*
4 *during the first quarter 2017, which places this valuable chemical commodity in*
5 *the money based on current natural gas prices.*

6 [Emphasis added.]

7 On the call, Defendant Kirk also congratulated “[Defendant Walsh’s] team” for “taking us into such a
8 high-yielding territory on 2,3-BDO and on the precursor to MMA.”

9 36. The following day, May 11, 2017, analyst Wunderlich termed the Defendant’s
10 disclosures an “upside surprise,” and gave the Company a “Buy” rating on the strength of the “long-
11 term, large TAM opportunities in the Energy [market].” Analysts Griffin Securities (“Griffin”) and
12 JMP were similarly upbeat on the news, with the former reporting that “[t]wo chemical production
13 systems are ready for commercialization and more are on the way,” and also noting the huge estimated
14 TAM for isobutyraldehyde and 2,3 BDO TAM.

15 37. In response to these disclosures and the related positive analyst commentary, on May
16 11, 2017, the Company’s common shares closed at \$23.62, up 20.7% compared to the prior day’s
17 closing price.

18 38. The following month at the JMP Securities Life Science Conference on June 20, 2017,
19 the Company’s COO, Defendant Last, declared that the Company had achieved “a very *breakthrough*
20 platform.” [Emphasis added.]

21 39. Unfortunately, Defendants’ success story was not true and the May 10, 2017 statements
22 were the first of a long series of materially false and misleading statements, in which the Defendants
23 fundamentally mischaracterized the reported successes of the Company’s MBP program, and
24 materially mislead investors as to: (1) the actual feedstock (pure methane rather than natural gas) with
25 which the Company had achieved its supposed success, (2) the actual (and *low*) yields the Company
26 had supposedly achieved using natural gas as the feedstock, and (3) the purported commercial (“in the
27 money”) viability of the MBP program.

28 40. For example, Defendants repeated and updated their misstatements on August 9, 2017,
when the Company announced 2Q 2017 earnings after the market closed, repeating in the press release

1 and slideshow attached to a Form 8-K that the Company had “*attain[ed] commercially relevant yields*
 2 *on two high-value industrial molecules, isobutyraldehyde [sic] and 2,3 butanediol (2,3 BDO)*” and
 3 added that the Company “*[o]bserved [a] 30% increase in 2,3 BDO yields on top of 30% increase*
 4 *achieved during the first quarter.*” On the earnings call that day, Defendant Last explained that “*our*
 5 *yields on 2,3-BDO and isobutyraldehyde place these valuable unpartnered chemicals in the money*
 6 *based on the current natural gas prices*” (emphasis added) – comments that caused analyst Northland
 7 Securities to praise the Company’s success in “attain[ing] commercially relevant yields on two
 8 molecules, isobutyraldehyde [sic] and 2,3 butanediol.”

9 41. Similarly, in a November 9, 2017 press release and slideshow attached to the
 10 Company’s Form 8-K that reported its 3Q 2017 earnings, Defendants claimed further yield increases
 11 in both 2,3 BDO – which Defendant Last described as reflecting “commercial robustness” – and in
 12 isobutanol. As Last stated:

13 *[The Company’s] proprietary methanotroph bioconversion platform continued to*
 14 *increase yield across multiple products including 2,3 butanediol, which increased*
 15 *approximately 15% during the quarter, and isobutanol, which increased 78%.*

16 [Emphasis added.]

17 The comments on isobutanol were particularly significant, as the Company had previously touted only
 18 its purported 2,3 BDO and isobutyraldehyde successes and this was the product at the center of the
 19 break-up of the partnership with Dominion. Analysts again reacted positively to these disclosures,
 20 with Griffin writing that the MBP “has produced six high-value fuels/chemicals,” including 2,3 BDO
 21 “which has demonstrated commercial robustness.”

22 42. In later press releases, public comments, and SEC filings, Defendants continued to
 23 make additional material misstatements about its MBP program having successfully utilized natural
 24 gas as a feedstock to produce commercially viable products. These additional actionably false and
 25 misleading statements include those contained in

- 26 • the Company’s March 1, 2018 Annual Report for 2017 filed on Form 10-K;
- 27 • in the Company’s press releases and slideshows attached to the Form 8-Ks disclosing
 28 its 1Q, 2Q, and 3Q 2018 earnings, along with the accompanying earnings call

1 commentaries made on May 10, August 9, and November 8, 2018, respectively;

- 2 • the Company’s press release attached to its Form 8-K reporting the Company’s 4Q and
- 3 FY 2018 earnings, released on February 28, 2019; and
- 4 • the Company’s 2018 Annual Report filed on Form 10-K issued on March 1, 2019.

5 *See infra*, §VI.

6 43. As the SEC Order later confirmed, (1) the Company’s statements about its purported
7 “2,3 BDO yields were based upon laboratory experiments using pure methane not natural gas as the
8 feedstock,” and (2) given the enormous difference in price between natural gas (\$3 per MMBtu) and
9 pure methane (\$650 per MMBtu) and the Company’s failure to achieve the stated yields with far less
10 expensive natural gas (as opposed to the prohibitively expensive pure methane), Defendants’
11 characterizations of the MBP program as “in the money” were also flatly false. Moreover, as the SEC
12 Order further stated, while failing to achieve the stated yields on their MBP products using natural gas
13 as the feedstock, the Company failed to disclose that it “was primarily using significantly more
14 expensive pure methane for the relevant laboratory experiments[,] but was indicating that the results
15 had been achieved using natural gas.”

16 44. Further, in its 3Q 2018 Form 10-Q filed on November 8, 2018, in a section discussing
17 a previously concluded SEC investigation, Defendants warned, for the first time, that there was the
18 *possibility* that the SEC might initiate an investigation into the Company. Specifically, the Company’s
19 Form 10-Q stated that “[t]he Company may become subject to other claims, assessments
20 and governmental investigations from time to time in the ordinary course of business.” [Emphasis
21 added.] However, this “warning” was itself materially misleading, as Defendants had known since at
22 least October 2018 (a month before the release of the 3Q 2018 10-Q) that the Company had received
23 an SEC subpoena and that it was already under investigation concerning the Company’s materially
24 untrue disclosures regarding its MBP platform. Defendants also repeated this materially misleading
25 statement in the Company’s 2018 Annual Report on Form 10-K filed on March 1, 2019, when they
26 again misleadingly warned only about the mere *possibility* of “governmental investigations.”

1 **D. The Individual Defendants Closely Monitored the MBP Program and Were Therefore**
2 **Well-Aware that the Class Period Statements Concerning the Purported Successes of the**
3 **Company’s MBP Program Were Materially False and Misleading**

4 45. Throughout the Class Period, as confirmed by multiple Confidential Witnesses
5 (“CWs”), the MBP program’s inability to achieve commercially viable yields using natural gas as a
6 feedstock was well known by the Individual Defendants, and was indeed a fact that was “very apparent
7 and discussed throughout the organization” – as were the issues concerning the material differences
8 between the yields using “pure methane” and those using natural gas.

9 **1. Defendant Walsh (and his Top Deputy) Oversaw the Company’s MBP Program**
10 **from the Company’s MBP Facility and Had Hands-On Knowledge of the MBP**
11 **Program’s Issues**

12 46. As the Company’s Vice President of Energy & Fine Chemicals, Defendant Walsh
13 oversaw and managed the Company’s MBP program from its South San Francisco location – where
14 the MBP program was headquartered – from the start of the Class Period until he left the Company in
15 November 2019. Walsh’s top lieutenant was Bryan Yeh (“Yeh”), the Company’s Vice President of
16 Process Technologies, and Yeh reported directly to Walsh. Like Walsh, Yeh worked on-location in
17 the South San Francisco facility and managed (directly or indirectly) all of the CWs listed below from
18 the start of the Class Period until Yeh left the Company in December 2019.

19 47. CW1 worked for the Company from before the Class Period as an MBP researcher at
20 the Company’s South San Francisco facility until departing in the middle of 2017. CW1 worked
21 exclusively with pure methane as a feedstock.

22 48. CW1 attended regular in-person meetings with other researchers, engineers, and senior
23 managers at which the MBP program’s progress, and the daunting challenges of developing natural
24 gas (as opposed to pure methane) as a commercially viable feedstock were discussed. As CW1
25 recalled, these meetings occurred either weekly or bi-weekly, and *Yeh was “in the loop” and aware*
26 *of what was discussed at the meetings*, and that Yeh attended at least some of these meetings. As
27 CW1 further recalled, one of the key issues discussed at these meetings revolved around challenges
28 that needed to be overcome in order to get the relevant bacteria to respond to natural gas the same way
they responded to pure methane. CW1 also confirmed that Precigen’s researchers were having trouble

1 replicating the bioconversion data – meaning yield – that they obtained using methane as a feedstock
2 when they tried to use natural gas as a feedstock instead.

3 49. CW2 served as an MBP engineer from September 2013 until September 2020 at the
4 Company’s South San Francisco facility and starting in January 2018, reported directly to Yeh. In the
5 ordinary course of CW2’s duties, *CW2 held weekly or bi-weekly meetings with Yeh*, Defendant
6 Walsh’s top MBP lieutenant, to discuss the status of the MBP program.

7 50. As CW3 also confirmed, the MBP program did not achieve bioconversion using natural
8 gas as the feedstock at the internal target rates that the Company had established. Instead, the MBP
9 program experienced a variety of “roadblocks” throughout CW3’s tenure, and the Company’s efforts
10 were simply never sufficient to overcome the challenges within the timelines set by the Company.
11 Indeed, this inability to meet the Company’s internal milestones ultimately proved so problematic that,
12 as CW3 stated, it led to the Company terminating the MBP program.

13 51. CW3 served as a senior MBP engineer from July 2019 until May 2020 at the
14 Company’s South San Francisco facility, and also reported directly to Yeh, Defendant Walsh’s top
15 MBP lieutenant. Following Walsh’s and Yeh’s departure from the Company in November and
16 December 2019, CW3 reported directly to Alex Mattana, who served as chief lieutenant to Defendant
17 Walsh’s successor, David Witte.

18 52. According to CW3, all personnel at the South San Francisco facility during CW3’s
19 tenure were aware of the ongoing MBP program challenges, including the fact that specific internal
20 program milestones had not been met.

21 53. CW3 explained that the use of natural gas as a feedstock in the bioconversion process
22 created acetate, which materially reduced the feedstock’s productivity and called into question the
23 commercial viability of the initiative. *In CW3’s words, this particular challenge was “very apparent
24 and discussed throughout the organization” and that “we were all aware of it,” including Yeh, and
25 later Yeh’s and Walsh’s successors, Mattana and Witte.*

26 54. *CW3 also attended the weekly meetings with Yeh* at which CW3 and other engineers
27 discussed the status of the MBP program and its ongoing challenges. CW3 also attended larger, less
28

1 frequent meetings – which CW3 recalled as occurring bi-monthly – at which the program’s issues were
 2 also discussed. At both sets of meetings, CW3 confirmed that the program’s lack of commercial
 3 viability, and the major challenges in using natural gas, were discussed. Accordingly, as CW3 noted,
 4 at a minimum, Yeh (and later Mattana and Witte), were “well aware” of the MBP program’s failure to
 5 achieve commercial success at any time during CW3’s tenure.

6 **E. The Truth About the Company’s MBP Program Gradually Emerges**

7 55. The extent of difficulties confronting the Company’s ongoing MBP development
 8 efforts emerged gradually through a series of partial disclosures.

9 56. First, after the market closed on February 28, 2019, Defendants disclosed in a press
 10 release (attached to that day’s Form 8-K) that “[b]ased on Intrexon’s financial position . . . there is
 11 substantial doubt about [the Company’s] ability to continue as a going concern.” As Joel D. Liffmann,
 12 the Company’s Senior Vice President of Finance (“Liffmann”), explained in an analyst call later that
 13 same day:

14 *[Our] financial statements include a going concern qualifier that reflects our*
 15 *analysis that funding on hand is not adequate for operations beyond 12 months.*
 16 Management is, of course, pursuing several options to address the going concern
 issue, including, as I mentioned earlier, potentially partnering and financing at the
 individual program or business unit level.

17 [Emphasis added.]

18 57. Later, on the same call, in response to a question, Liffmann raised the possibility of
 19 “[a]sset sales, . . . additional securities offerings or other means of raising capital” to fund the
 20 Company’s operations, stating:

21 There is a black-and-white test that all companies perform in connection with their
 22 financial statements that is prescribed by the accounting standards, that one has to
 take a measure of your cash and available liquid assets to satisfy your operations.
 23 *You have to have sufficient capital to operate the company beyond a prescribed*
 24 *time horizon, and absent that, you have a going concern opinion. And so that’s*
 25 *where we are.* That is a mathematical exercise. You cannot pro forma into that
 exercise. *Asset sales, you cannot pro forma into that exercise the likelihood of*
additional securities offerings or other means of raising capital. So it’s a black-
 and-white test.

26 [Emphasis added.]

27 58. For investors and analysts who had become accustomed to Defendants’ rosy reports
 28

1 about increasing MBP yields, upcoming site selections, future product partnerships, and the massive
2 “total addressable market” for the Company’s MBP products, Defendants’ disclosures concerning the
3 Company’s cash burn constituted a partial disclosure of just how far away the Company actually was
4 from being able to successfully launch commercially viable technology for producing isobutanol,
5 isobutyraldehyde, 2,3 BDO, 1,4 BDO, or any other MBP products.

6 59. In response, the next day, March 1, 2019, the Company’s common stock closed at
7 \$5.06, representing a sharp one-day decline of 36.5% compared to its prior day’s closing price.

8 60. Further bad news indicating that the Company’s MBP program was not as promising
9 or as successful as Defendants had portrayed emerged after markets closed on August 8, 2019 when
10 the Company issued a press release which disclosed, *inter alia*, that it planned to spin-off its MBP
11 program into a new company. As the press release stated:

12 *[The Company] entered into an agreement under which it will contribute its*
13 *Methane Bioconversion Platform, together with all its associated technologies*
14 *and facilities, to MBP, LLC, a newly formed company* that will be headed by
[former Texas Lt. Governor] David Dewhurst, who is purchasing equity capital in
the venture[.]

15 [Emphasis added.]

16 On the earnings call later that day, Defendant Kirk stated that Precigen would initially retain an 80%
17 ownership stake in the new entity, but would reduce its holdings over time:

18 So the overall object here is [that] . . . *all of our interest in our methane*
19 *bioconversion platform, all of the facilities, all of the technologies that support*
20 *their platform, will be transferred to a new entity, MBP, LLC.* . . . And so we
21 began with a super majority position, over 80%, I believe, equity ownership
22 position. *But we do not believe that [] will hold.* In fact, the subscription agreement
of Governor Dewhurst alone will – I think that thing alone will take us down to I
23 think something in the 60s and that’s before anything else may happen. . . . *But the*
point is over time, we expect to be dilutive in this enterprise, which is I think
appropriate.

24 [Emphasis added.]

25 61. Investors viewed this announcement as a negative development, and as additional
26 confirmation that efforts to develop commercially successful MBP products were further away than
27 what Defendants had previously represented. In response, the following trading day, August 9, 2019,
28

1 the Company's shares declined roughly 8.8% to \$6.95 per share, compared to their prior trading day's
2 closing price.

3 62. After the close of the market on March 2, 2020, Defendants issued the Company's 2019
4 Annual Report on SEC Form 10-K, which revealed perhaps the most stunning news yet regarding the
5 true state of the Company's MBP program – as well as the Defendants' prior active role in affirmatively
6 misrepresenting the program's reported successes. Specifically, the Company's 2019 Form 10-K
7 revealed that the Company had in fact been under investigation by the SEC since at least **October 2018**
8 (*i.e.*, for at least the last year and a half), and that the investigation involved the Company's disclosures
9 concerning its MBP program. As the Form 10-K stated:

10 ***In October 2018, the Company received a subpoena from the Division of***
11 ***Enforcement of the SEC informing the Company of a non-public, fact-finding***
12 ***investigation concerning the Company's disclosures regarding its methane***
13 ***bioconversion platform.*** The Company has produced documents to, and met with,
14 the staff of the SEC and is voluntarily cooperating with their investigation. In
15 November 2019, the staff of the SEC informed the Company that its investigative
16 work was largely completed. ***The Company and the staff of the SEC are currently***
17 ***in discussions, and there can be no assurance regarding the ultimate outcome of***
18 ***the investigation.***

19 [Emphasis added.]

20 The clear implication of this disclosure was that the Company's prior disclosures concerning its MBP
21 program had affirmatively misrepresented it in a materially false positive light (and/or had omitted to
22 disclose material adverse facts about it) which had the effect of materially misleading investors as to
23 the purported successes of that program.

24 63. Moreover, Defendants' March 2, 2020 disclosure revealed, for the first time, that the
25 Company's prior "warning" statements of November 8, 2018 and March 1, 2019, were materially false
26 and misleading, because they had misleadingly warned only about the mere possibility of
27 "governmental investigations," when in fact Defendants' own March 2, 2020 statement ***admitted*** that
28 Defendants had known since at least October 2018, that the Company was ***already*** under investigation.

64. Investors reacted with understandable alarm to these disclosures. In response, the

1 following day, March 3, 2020, Precigen’s shares fell over 17% compared to the closing price the
2 previous day, closing down at \$3.24.

3 65. After the market closed on May 6, 2020, the Company issued a press release that
4 reported its 1Q 2020 results – and that effectively disclosed further new information as to just how
5 little the Company’s MBP program was worth. *Inter alia*, while nominally attributing its actions to a
6 realignment of priorities triggered by the COVID-19 pandemic, the release disclosed that the state of
7 its MBP development efforts was so poor that the Company had recently “[c]ompleted [a] reduction
8 in force at MBP Titan [formerly MBP LLC] to focus [our] resources on healthcare.” On that day’s
9 subsequent earnings call, Precigen’s recently appointed new President and CEO Helen Sabzevari
10 (“Sabzevari”), went even further, disclosing that the Company had suspended its MBP operations
11 entirely and terminated MBP Titan’s CEO – while still holding out hope “for a brighter economic
12 situation.” As Sabzevari stated:

13 The ongoing COVID-19 pandemic and the current state of the energy sector are
14 especially challenging for the prospect and operation of [our MBP platform]
15 business. We expect that progressing this non-health platform will require
16 significant capital and efforts to secure such capital have been hampered by world
17 events. As a result, ***we have made the difficult but necessary decision to suspend***
18 ***operations in our MBP Titan facility and minimize the expense of the operation***
19 while continuing to maintain the potential value of the platform for a brighter
20 economic situation. Specifically, ***we have taken steps to significantly reduce our***
21 ***MBP Titan workforce*** and to cut operating costs, while at the same time prioritizing
22 the preservation of intellectual property and technology. I also want to announce
23 that by mutual agreement, David Witte, CEO of MBP Titan, is no longer with the
24 company. I want to thank the entire MBP Titan team for their contribution in
25 advancing our innovative Methane Bioconversion Platform. We will continue to
26 evaluate options for this technology.

27 [Emphasis added.]

28 66. Amidst the market tumult of the COVID-19 pandemic, analysts and investors largely
gave the Company a pass. The following day, analyst JMP, for example, wrote that “[m]anagement
continues to closely control capital allocation and focus resources to lead therapeutics programs. In
this context, it has achieved further cost reductions at its MBP Titan subsidiary.” Accordingly, in
response to the Company’s disclosures of May 6, 2020, Precigen’s share price only fell 1.55%, to close

1 the following trading day at \$3.17.

2 67. However, after the market closed on August 10, 2020, Precigen disclosed in its 2Q 2020
3 Form 10-Q that, beyond a mere “suspension” of its MBP operations, “[t]he Company is assessing
4 potential next steps related to [its MBP] intellectual property and MBP Titan’s other long-lived assets”
5 – and that Precigen had also “determined” that the value of MBP Titan’s assets was impaired and “not
6 fully recoverable.” As the Form 10-Q stated:

7 [T]he Company reviewed the related property, plant and equipment and right-of-
8 use assets [of MBP Titan] for impairment. **Based on the estimated undiscounted**
9 **cash flows, the Company determined that the related asset values were not fully**
10 **recoverable and calculated estimated fair values using market participant**
11 **assumptions and discounted cash flow models.** The estimated fair values were
12 lower than the carrying values, and the Company recorded impairment losses of
13 \$9,914[,000] related to property, plant, and equipment and \$2,492[,000] related to
14 the right-of-use assets, which are included in impairment of assets on the
15 accompanying condensed consolidated statements of operations.

13 [Emphasis added.]

14 On the earnings call later that day, Sabzevari confirmed that the Company was effectively continuing
15 to wind-down the operations of its MBP program, stating:

16 In the second quarter of 2020, Precigen spending, which includes segment adjusted
17 EBITDA plus corporate costs, was approximately \$13 million versus \$30 million
18 in the first quarter of 2020. **This decrease was primarily attributable to suspending**
19 **operations at MBP Titan and streamlining our corporate functions to feed the**
20 **narrower focus of the company. We expect the spend at MBP to continue to**
21 **substantially reduce as we evaluate the strategic options for this platform.**

20 [Emphasis added.]

21 68. In an analyst report issued the following day, August 11, 2020, analyst JMP “removed
22 \$500MM in value from MBP from our valuation” – a significant reduction, particularly given the
23 Company’s recent sky-high statements concerning the size of the “total addressable market” for the
24 Company’s purported MBP products.

25 69. In response to the news that the MBP program had actually failed so badly that the
26 Company would have to take large write-downs on its related asset values, and the related negative
27 analyst commentary, on August 11, 2020, Precigen’s share price fell over 10%, to close at \$4.60.

1 70. The full nature of the truth finally emerged on September 25, 2020. On that day, after
 2 the market closed, Defendants issued a press release on Form 8-K disclosing that Precigen had
 3 “reached a final settlement with the Securities and Exchange Commission . . . regarding the Company’s
 4 methane bioconversion platform.” The release also tersely disclosed that, under the settlement,
 5 Precigen had (1) consented to entry of a cease-and-desist order prohibiting it from committing “any
 6 future violations” of SEC rules requiring the filing of accurate current reports with the SEC, and (2)
 7 agreed to pay a \$2.5 million penalty to the SEC.

8 71. Simultaneously, the SEC issued its cease-and-desist order against the Company. The
 9 SEC Order confirmed that, beginning in May 2017, the Company had made “inaccurate” statements
 10 concerning the MBP program’s “purported success [in] converting relatively inexpensive natural gas
 11 into more expensive industrial chemicals.” For example, as the SEC specifically found:

12 [O]n May 10, 2017, [the Company] publicly reported progress in the laboratory
 13 converting natural gas into a precursor component of synthetic rubber called ‘2,3
 14 BDO.’ The Company continued to publicly report the [C]ompany’s progress
 15 converting natural gas into 2,3 BDO in August and November 2017, which was
 16 important information for investors and analysts at that time. [However, despite
 17 Defendants’ claims of success in utilizing *natural gas* as a feedstock, the Company]
 was primarily using significantly more expensive *pure methane* for the relevant
 laboratory experiments *but was indicating that the results had been achieved using*
natural gas.”

18 Similarly, as the SEC Order also found:

19 *At the time of the laboratory experiments with pure methane as a feedstock, [the*
 20 *Company’s] scientists were working on methods to achieve similar yields . . . with*
 21 *natural gas and, while they were optimistic, they had not done so at the time [the*
Company] made the relevant disclosures.

22 Instead,

23 *[The Company] failed to disclose during the second and third quarters that 2,3*
 24 *BDO yields were based upon laboratory experiments using pure methane not*
 25 *natural gas as feedstock and that hurdles needed to be overcome to increase yields*
 26 *from natural gas [-- and that] Yields . . . reported internally from laboratory*
experiments using natural gas as a feedstock continued to be substantially lower
than those disclosed publicly using pure methane.

27 [All emphases added.]

1 72. As a result, in addition to the order that Defendants cease-and-desist from misleading
2 the public again and the \$2.5 million penalty, the SEC ordered – and Defendants agreed – to refrain
3 from arguing “that in any Related Investor Action, [Defendants] shall not argue that [they] are entitled
4 to, nor shall [they] benefit by, offset or reduction of any award of compensatory damages by the amount
5 of any part of [Defendants’] payment of a civil penalty in this action.”

6 **V. ADDITIONAL SCIENTER ALLEGATIONS**

7 73. In addition to the facts pleaded above (including, in particular, those alleged at *supra*,
8 §IV.B.1 (citing statements of multiple CWs)), the following additional facts support a strong inference
9 of Defendants’ scienter.

10 **A. Defendant Walsh Kept the Other Individual Defendants Regularly Appraised of the True**
11 **State of the Company’s MBP Program and Regularly Spoke on Behalf of the Company**
11 **on Earnings Calls**

12 74. Defendant Walsh kept the other Individual Defendants, including Defendant Kirk, the
13 CEO, regularly appraised of key aspects relating to the MBP program. Prior to the Class Period, on
14 the 2Q 2016 earnings call, held on August 9, 2016, Defendant Kirk explained that “*I spend a lot of*
15 *time with Bob Walsh*, who [is] Head of our Energy Sector. We think that this is probably our largest
16 single team deployed to one single object in the entire Company.” [Emphasis added.]

17 75. Throughout the Class Period, Defendant Kirk praised Defendant Walsh’s work and
18 informed the public how regularly Walsh kept the other Individual Defendants informed of the MBP
19 program.

20 76. On the 2Q 2017 earnings call, held on August 9, 2017, in response to a question about
21 the MBP program, for example, Defendant Kirk stated:

22 It’s a really good question. *And I have to tell you, when Bob Walsh and his team*
23 *produced the data, they’ve showed us that we really have a technical success in –*
23 *on 2 of these significant molecules.*

24 [Emphasis added.]

25 77. Further, on the 3Q 2017 earnings call, held on November 9, 2017, Defendant Kirk
26 detailed recent conversations with Defendant Walsh.

27 So when we are talking about targeted commercial yield, it’s informed by those
28 models. And so that’s what we think is – that’s what we think the potential is. So

1 without getting into whether or not we are in the money today on isobutanol, *the*
 2 *truth is, as Bob Walsh has explained to me*, look, if you built a plant based on the
 3 characteristics of a particular organism at a particular point in time and then later
 improved that organism, you'd find that you had built the plant incorrectly.

4 * * *

5 So we're very much in the money on 2,3-BDO, right? But we're at 60% of where
 6 we think we can go. I personally have been frustrated by this because I'm thrilled
 7 to be so far in the money, *so I go to Bob Walsh. And I say, "Bob, let's go build*
 8 *this plant, let's get going."* *And he says, "How much water do you want to boil?"*
 Right? It's ridiculous. If we continue to improve the strain on the path we're on,
 he explains to me, right, then we'll find that that's not the plant we want. We'll
 want another plant.

9 [Emphasis added.]

10 78. Again, on the 4Q and FY 2017 earnings call, held on March 1, 2018, Defendant Kirk
 11 explained that "[w]e press Bob all the time for – to tell us that we are solidly in the money in isobutanol.
 12 And look, we're very conservative and Bob's even more so."

13 79. Moreover, Defendant Kirk trusted Defendant Walsh, as Kirk explained on the 3Q 2018
 14 earnings call, held on November 8, 2018.

15 *I sing the highest praise to Bob Walsh* and his team there in South San Francisco,
 16 because it was very difficult work. As he – as Bob mentioned in his comments, the
 prior literature actually said you couldn't engineer this organism.

17 [Emphasis added.]

18 80. Given the MBP program's centrality to the Company's success (*see supra*, §IV.A), the
 19 repeated insistence by Defendant Kirk that there was constant communication between Defendant
 20 Walsh and the other Individual Defendants about the MBP program served to bolster the program's
 21 importance. In fact, on the 1Q 2017 earnings call, held on May 10, 2017, Defendant Kirk explained,
 22 "The results that Bob Walsh disclosed a few minutes ago *represent the achievement of what I*
 23 *personally believe is probably the most valuable biotechnology in history.*" [Emphasis added.]

24 81. Moreover, as discussed above (*supra*, §IV.C), Defendant Walsh repeatedly spoke on
 25 behalf of the Company on earnings calls and, as discussed above (*supra*, §III.C) was a self-described
 26 "Section 16 Officer," meaning he was subject to SEC reporting requirements because of his significant
 27 beneficial holdings of the Company's equity.
 28

1 **B. Precigen’s Need to (i) Obtain Shareholder Approval of a Merger, (ii) Raise Additional**
2 **Cash, and (iii) Allow Key “Selling Securityholders” the Ability to Cash Out at Inflated**
3 **Market Prices Show Additional Motive and Opportunity to Commit Fraud**

4 82. Defendants’ numerous and repeated misstatements directly served Defendants’
5 financial interests throughout the Class Period. Defendants acted with scienter in that Defendants
6 knew, or recklessly disregarded, that the public documents and statements issued or disseminated in
7 the name of the Company were materially false and misleading; knew that such statements or
8 documents would be issued or disseminated to the investing public; and knowingly and substantially
9 participated or acquiesced in the issuance or dissemination of such statements and documents as
10 primary violations of the federal securities laws. Defendants, by virtue of their association with, and
11 control over, the Company, which made them privy to confidential information, fraudulently misled
12 investors about (a) Precigen’s inability to obtain the stated yields in its MBP utilizing natural gas as
13 the feedstock and only obtained the stated results using pure methane; and (b) the existence of an SEC
investigation into Precigen’s MBP.

14 83. By reason of Defendants’ repeated material misstatements, Precigen’s common stock
15 was artificially inflated throughout the Class Period and Defendants took full advantage in order to
16 facilitate a number of key transactions and share issuances that would have otherwise been more
17 expensive, difficult, and/or impossible without an artificially inflated share price. In sum, throughout
18 the Class Period, Defendants utilized their inflated common stock price to facilitate approximately
19 ***\$523 million-worth*** of transactions, including (1) shareholder approval of an acquisition, (2) two
20 secondary public offerings, (3) a debt offering, and (4) the sale of common stock on behalf of former
21 beneficial owners of shares of recently acquired subsidiaries, pursuant to merger and/or securities
22 purchase agreements.

23 84. In each instance, Defendants pursued their transactions ***almost immediately after***
24 issuing materially misleading statements about the Company’s MBP and/or financial condition that
25 artificially inflated its common stock price and put each respective transaction on a glide path to
26 approval and success.

27 85. On May 12, 2017, two days after Defendants issued their first misleading statements
28

1 about the Company's MBP program, the Company issued a Proxy Statement/Prospectus on SEC Form
2 424B3 (the "May 12, 2017 Proxy Statement") asking shareholders of a target biotech company –
3 GenVec, Inc. ("GenVec") – to approve a merger proposal in which Precigen would acquire GenVec.
4 The May 12, 2017 Proxy Statement informed investors that if they approve the merger, each share of
5 GenVec common stock would be converted into 0.297 shares of Precigen common stock, plus
6 payments stemming from certain milestone and royalty earnings GenVec may receive. In sum,
7 Precigen issued approximately \$13.4 million worth of common stock to GenVec shareholders.

8 86. In issuing the May 12, 2017 Proxy Statement, the Company benefited from its elevated
9 share price because if the market knew the truth about its MBP program and financial condition,
10 Precigen's common stock would have traded at a significantly lower price, thus making it less likely
11 that GenVec's shareholders would approve the merger.

12 87. Shortly after the November 9, 2017 misstatements about Precigen's MBP, on January
13 17, 2018, Precigen issued a Prospectus Supplement on SEC Form 424B5 for a secondary public
14 offering (the "First SPO") registering 6,900,000 shares of common stock at a public offering price of
15 \$12.50 per share. In total, the Company raised over \$86 million.

16 88. Again, Precigen benefited from an elevated share price. Had the Company fully
17 disclosed that its MBP program only achieved the stated yields through the utilization of pure methane
18 – instead of natural gas – as a feedstock, the Company's common stock would have traded a
19 significantly lower price, reducing the amount of money the Company would have raised in the First
20 SPO.

21 89. Shortly after the March 1 and May 10, 2018 misstatements about the Company's MBP
22 program, on June 28, 2018, Precigen issued two more Prospectus Supplements on SEC Form 424B5
23 for (i) another secondary public offering (the "Second SPO") registering 7,479,431 shares of common
24 stock a public offering price of \$13.37 per share and (ii) registering \$200 million of debt in the form
25 of 3.50% convertible senior notes ("Notes Offering"). In total, the Company raised \$300 million.

26 90. Once again, Precigen benefited from an elevated share price. Had the Company fully
27 disclosed the truth about its MBP program, Precigen's common stock would have traded at a
28

1 significantly lower price and reduced the amount of money the Company would have raised in the
2 Second SPO and impacted the terms of the Notes Offering – by, for example, requiring the Company
3 to offer investors a higher rate of interest – and/or reducing the total amount of notes the Company
4 would have been able to sell.

5 91. Just days after the November 8, 2018 misstatements about Precigen’s MBP program
6 and the existence of an investigation into the MBP revolving around the Company’s MBP disclosures,
7 on November 26, 2018, the Company issued a Prospectus Supplement on SEC Form 424B7 for the
8 sale of 1,933,737 shares of Precigen common stock by a group of “selling securityholders.” These
9 “selling securityholders” were former beneficial owners of a share of T1D Partners, LLC (“T1D
10 Partners”), a joint venture pharmaceutical company that Precigen had a stake in, who received shares
11 of Precigen following T1D Partners’ complete acquisition by Precigen on November 20, 2018. In
12 total, this selling securityholders offering (the “First SSO”), conducted pursuant to the Company’s
13 T1D Partners merger agreement, raised approximately \$18.2 million for the selling securityholders.

14 92. Again, Precigen benefited from an elevated share price that resulted from material
15 misstatements. Had the market known the truth at the time of the First SSO, the Company’s shares
16 would have traded at a lower price, impacting its T1D Partners merger agreement – by, for example,
17 requiring the Company to issue additional shares to the selling securityholders – and would have made
18 the Company’s acquisition of T1D Partners more difficult.

19 93. Only weeks after the March 1, 2019 misstatement about both Precigen’s MBP program
20 and the existence of an investigation into the MBP, on April 12, 2019, the Company issued a
21 Prospectus Supplement on SEC Form 424B7 for the sale of 20,640,119 shares of Precigen’s common
22 stock by another “selling securityholder.” This single “selling securityholder” was the former
23 beneficial owner of Ziopharm Oncology, Inc. (“Ziopharm Oncology”), a pharmaceutical company that
24 Precigen collaborated with and which Precigen acquired on December 28, 2018. In total, this second
25 selling securityholder offering (the “Second SSO”), conducted pursuant to Precigen’s securities
26 purchase agreement with the selling securityholder, raised approximately \$105 million for the selling
27 securityholder.

1 94. Once again, the Company benefited from an elevated share price caused by Defendants’
2 repeated misstatements. Had the full truth about the MBP program and the SEC investigation been
3 known at the time of the Second SSO, Precigen’s shares would have traded at a lower price, impacting
4 the Company’s Ziopharm Oncology acquisition – by, for example, requiring Precigen to issue
5 additional shares to the selling securityholder – and would have made the acquisition more difficult.

6 **VI. DEFENDANTS’ MATERIALLY FALSE AND MISLEADING STATEMENTS**

7 95. Throughout the Class Period, in numerous SEC filings and public statements
8 Defendants issued materially false and misleading statements about the progress of the Company’s
9 MBP program. Specifically, Defendants claimed (i) that the feedstock with which the Company had
10 achieved its supposed MBP success was natural gas (rather than pure methane); (ii) that the Company
11 had achieved certain high yields in its MBP products using natural gas as the feedstock (rather than
12 pure methane); and (iii) that the Company’s MBP program as to multiple end-products was “in-the-
13 money,” *i.e.*, commercially viable (when it was not). Beginning in late 2018, Defendants also (iv)
14 materially misrepresented that the Company might become the subject of “governmental
15 investigations” (when it knew that it had already become the subject of an SEC investigation by
16 October 2018). Defendants’ actionably false or misleading Class Period statements are separately
17 enumerated below.

18 **A. May 10, 2017 Press Release, Slideshow, and Earnings Call**

19 96. After the market closed on May 10, 2017, Defendants issued a press release and
20 slideshow attached to the Company’s SEC Form 8-K disclosing the Company’s 1Q 2017 earnings and
21 also conducted an earnings call, during which Defendants purported to disclose a breakthrough in
22 the development of the MBP.

23 97. According to the press release, on two products representing “multi-billion dollar”
24 opportunities (isobutyraldehyde and 2,3 BDO), while utilizing “*natural gas*” as the feedstock, the
25 MBP had achieved the targeted “yields” needed for the Company to advance to the next milestone of
26 commercial development and, were “in the money,” *i.e.*, able to be produced at a profit. As the release
27 stated:

1 *Intrexon’s proprietary methanotroph bioconversion platform has achieved yields*
 2 *necessary for site selection on two molecules, isobutyraldehyde [sic] and 2,3*
 3 *butanediol (2,3 BDO), each of which represent a multi-billion dollar revenue*
 4 *opportunity for the Company.* Yields for 2,3 BDO, a precursor to butadiene,
 5 increased by greater than 30% during the first quarter of 2017. *This yield level*
 6 *produces a positive “in the money” gross margin based on current natural gas*
 7 *and product prices.* While additional yield improvements and scaling milestones
 8 must be met, the current yields and business implications have led the Company to
 9 retain Moelis & Company to advise it on strategic and financial options with respect
 10 to its bioconversion platform and specific products.




11 [Emphasis added.]

12 98. The slideshow (see slide immediately below) informed investors that Precigen’s
 13 (Intrexon’s) MBP had succeeded in achieving “the profitable use of low cost natural gas:”

Industrial Products Division

Intrexon Methane Bioconversion Platform

Intrexon has developed disruptive MBP technology that enables
 the profitable use of low cost natural gas to replace oil
 as the feedstock for several high value industrial products.

 <p style="font-size: small; color: white;">High Capex & High Opex</p>		
Gas-to-liquids conversion currently relies on costly, energy-intensive processes	Oil supplies destined for depletion Negative eco-impact from gas flaring	Need for cleaner burning fuels in automotive and other industries

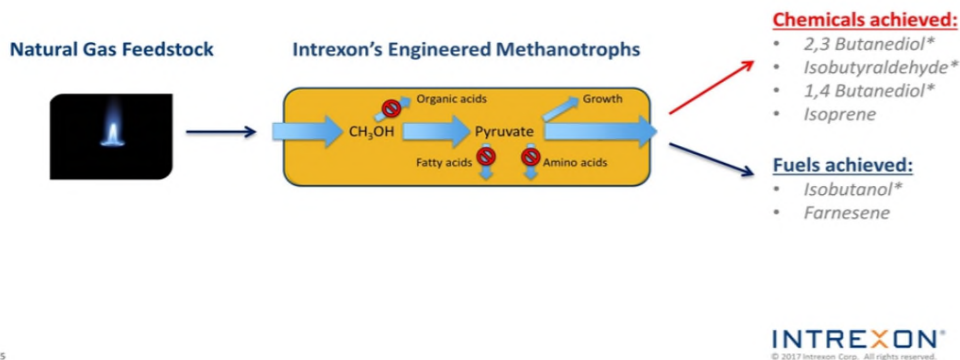
22


21 99. The slideshow (see slide immediately below) also emphasized the potential of the
 22 Company’s target market, advising analysts and investors that four of the molecules the Company had
 23 “actively under development,” including isobutyraldehyde and 2,3 BDO, had a cumulative TAM
 24 *exceeding* \$100 billion.
 25
 26
 27
 28

Industrial Products Division

Significant Gas-to-Liquids Opportunity through MBP

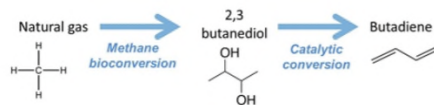
MBP platform has achieved six different molecules to date. The four molecules actively under development (*) with Intrexon's MBP technology have a cumulative **Total Addressable Market of over \$100 billion.**



100. Finally, speaking to the butadiene – BDO – market specifically, in another slide, Defendants claimed that with growing global demand this market alone represented a \$22 billion opportunity for the Company:

Butadiene: \$22B Addressable Market with MBP

Intrexon's on-purpose butadiene process:



Butadiene Market:

- Global demand for butadiene estimated to be 10.8M metric tons per year in 2015, and projected to reach 12.4M tons by 2020. Total market of butadiene is approximately \$22B
- Synthetic rubber production accounts for 62% of consumption.
- >95% of butadiene supply comes from byproduct of ethylene production by steam cracking of naphtha.
- The US shale revolution has caused US ethylene producers to switch to the cheaper ethane feedstock, which produces much less butadiene as a co-product.

26 SOURCE: ICIS, IHS reports

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1 101. Likewise, on the earnings call held later that day, Defendants repeated many of the
2 same misstatements, with Defendant Walsh reiterating that:

3 [F]or two of these products, isobutyraldehyde [sic] and 2,3-butanediol, we've
4 attained the yields necessary for the site selection of initial Intrexon facilities.
5 Additionally, we've had a greater than 30% increase in 2,3-butanediol yields during
6 the first quarter 2017, *which places this valuable chemical commodity in the
7 money based on current natural gas prices.*

8 [Emphasis added.]

9 102. Similarly, on the same call Defendant Kirk declared that “now that [Walsh’s] team has
10 taken us into such a high-yielding territory on 2,3-BDO and on the precursor to MMA
11 [isobutyraldehyde], we’re going to take a moment to talk with other – talk with people in the industry
12 and take the advice of Moelis & Company.”

13 103. The foregoing statements in ¶¶97-102 were materially false and misleading because, at
14 the time they were made:

- 15 (a) the feedstock with which the Company had achieved its supposed MBP success
16 was *pure methane*, not *natural gas*;
- 17 (b) the Company had *not* achieved the stated yields in its MBP products with
18 *natural gas* as the feedstock; and
- 19 (c) due to the cost differences between natural gas and pure methane, Defendants’
20 claims about the commercial viability – *i.e.*, the “in the money” characterization
21 – of the MBP program were not true.

22 **B. June 20, 2017 Presentation at the JMP Securities Life Science Conference**

23 104. On June 20, 2017, at the JMP Securities Life Science Conference, Defendant Last, the
24 Company’s COO, repeated the Defendants’ May 10, 2017 misstatements and added that the Company
25 had achieved “a very *breakthrough* platform.” As Last stated:

26 Now focusing on energy, and in this particular, petrochemical industry. [*The
27 Company*] *has spent a lot of time investing in a very breakthrough platform based
28 on a bacteria – methanotroph bacteria platform.* The situation with the petroleum
industry is very obvious. It’s very significant, whether it be the eco impact, the
sustainability of using petrochemicals, the high costs of converting gas to liquid
products, high-value molecules that are used in other industry segments.

1 *So we've had significant success in developing this methanotroph platform to*
 2 *take fundamentally the cheapest source of carbon on the planet, natural gas,*
 3 *which is 98% methane roughly, through different engineering approaches of the*
 4 *bacteria to produce high-value molecules.* And to date, we've been able to achieve
 5 6 different high-value molecules from this platform. And the addressable market
 6 just for these 6 molecules that we have worked on so far is in excess of \$100 billion.

7 So we're active. We have engaged Moelis to act as strategic advisers with us on
 8 these two molecules *as we work through the best approach to maximize the value*
 9 *of these breakthroughs.*

10 [Emphasis added.]

11 105. The foregoing statements in ¶104 were materially false and misleading because, at the
 12 time they were made:

- 13 (a) the feedstock with which the Company had achieved its supposed MBP success
 14 was *pure methane*, not *natural gas*;
- 15 (b) the Company had *not* achieved the stated yields in its MBP products with
 16 *natural gas* as the feedstock; and
- 17 (c) due to the cost differences between natural gas and pure methane, Defendants'
 18 claims about the commercial viability – *i.e.*, the “in the money” characterization
 19 – of the MBP program were not true.

20 **C. August 9, 2017 Press Release, Slideshow, and Earnings Call**

21 106. On August 9, 2017, Defendants announced the Company's 2Q 2017 earnings after the
 22 market closed, repeating the news about the Company's MBP in a press release and slideshow attached
 23 to that day's Form 8-K and in an earnings call.

24 107. Specifically, the press release, stated that:

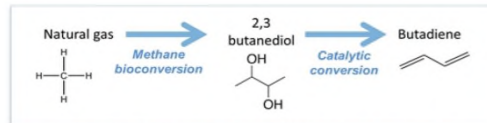
25 *After attaining commercially relevant yields on two high-value industrial*
 26 *molecules, isobutyraldehyde [sic] and 2,3 butanediol (2,3 BDO), [the Company]*
 27 *retained Moelis & Company to advise on strategic and financial options, later*
 28 *converting the assignment to a transactional objective.*

29 [Emphasis added.]

30 108. The August 9, 2017 slideshow included almost identical slides as the May 10, 2017
 31 slideshow that touted the Company's MBP program, and also included the below updated slide about

1 the Company's purported 2,3 BDO progress, which referenced a "**30% increase in 2,3 BDO yields on**
 2 **top of 30% increase achieved during the first quarter,**" as well as the Company's anticipation of "site
 3 selection." [Emphasis added.]

2,3 Butanediol (BDO) Progress Update



Intrexon's on-purpose butadiene process anticipated to have COGS sub \$1,000 per metric ton



Intrexon's 500L Pilot Plant

- Observed 30% increase in 2,3 BDO yields on top of 30% increase achieved during the first quarter
- 2,3 BDO test production runs completed in pilot plant
- Providing 2,3 BDO produced to chemical catalyst companies for conversion to butadiene and quality testing
- Anticipate site selection for small-scale facility by year end and subsequently initiating design of plant with projected ground breaking in 2018

15

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15 109. Defendants repeated these representations on the earnings call later that day when
 16 Defendant Last reiterated to investors and analysts that:

17 As discussed on our last conference call, ***our yields on 2,3-BDO and***
 18 ***isobutyraldehyde place these valuable unpartnered chemicals in the money based***
 19 ***on the current natural gas prices.*** This achievement led [the Company] to retain
 20 Moelis & Company during the second quarter to advise us on strategic and financial
 options with respect to our platform and the specific products being generated, and
 this engagement is proceeding.

21 ***We are pleased to report that on top of the 30% increase in 2,3-BDO yields***
 22 ***achieved during the first quarter, we have maintained solid momentum and***
 23 ***achieved an additional 30% improvement in 2,3-BDO yields achieved during the***
 second quarter.

24 [Emphasis added.]

25 110. Additionally, on the call, Defendant Kirk again referenced the Company's supposed
 26 success in developing 2,3-BDO and isobutyraldehyde from its MBP. As Kirk stated:

27 [A]s we reported at our – on our last call, ***we are very much in the money,***
 28 ***commercial – with commercially significant yields, on two very significant***

1 *multibillion-dollar molecules*. And this led us to hire – we’ve named the banker,
2 I think, publicly, right. So we have Moelis & Company.

3 [Emphasis added.]

4 111. The foregoing statements in ¶¶107-110 were materially false and misleading because,
5 at the time they were made:

- 6 (a) the feedstock with which the Company had achieved its supposed MBP success
7 was *pure methane*, not *natural gas*;
- 8 (b) the Company had *not* achieved the stated yields in its MBP products with
9 *natural gas* as the feedstock; and
- 10 (c) due to the cost differences between natural gas and pure methane, Defendants’
11 claims about the commercial viability – *i.e.*, the “in the money” characterization
12 – of the MBP program were not true.

13 **D. November 9, 2017 Press Release, Slideshow, and Earnings Call**

14 112. In reporting the Company’s 3Q 2017 earnings on November 9, 2017, Defendants again
15 touted the Company’s supposed MBP success in the release and slideshow attached to Form 8-K and
16 in an earnings call.

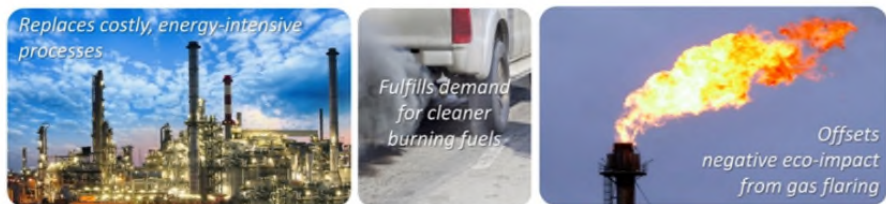
17 113. In the press release, Defendants claimed further yield increases in both 2,3 BDO and
18 isobutanol, the product at the center of the break-up of the partnership with Dominion. Previously, the
19 Company had only touted its 2,3 BDO and isobutyraldehyde success. As the release stated:

20 *[The Company] proprietary methanotroph bioconversion platform continued to*
21 *increase yield across multiple products including 2,3 butanediol, which increased*
22 *approximately 15% during the quarter, and isobutanol, which increased 78%.*

23 [Emphasis added.]

24 114. The slideshow (see slide immediately below) reiterated the \$100 billion TAM that
25 Precigen [Intrexon] was targeting and the fact that it had “attained” “[c]ommercially relevant yields”
26 for 2,3 BDO and isobutyraldehyde.
27
28

Intrexon's Methane Bioconversion Platform (MBP)



Intrexon has developed disruptive MBP technology enabling profitable use of natural gas to produce high value industrial products via fermentation

- MBP has achieved six different high value chemicals with a total addressable market that exceeds \$100 billion
- Commercially relevant yields for 2,3 Butanediol and isobutyraldehyde attained
- Moelis & Co engaged to advise on strategic/financial options for MBP and its products

20

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115. On the following slide, Defendants provided a “Progress Update” on both 2,3 BDO – including a further 15% yield increase and site selection underway – and, on isobutanol, as to which the Company simply wrote “Increased yield by 78% during 3Q.”

2,3 Butanediol (BDO) and Isobutanol Progress Update



Market Size: c.\$22bn

Intrexon's on-purpose 2,3 BDO process anticipated to have COGS sub \$1,000 per metric ton

2,3 BDO

- Yield increased by 15% during Q3 reaching over 60% of first commercial scale plant target
- Commercial robustness of strain demonstrated with continuous production runs >400 hours
- Purity >99% for 2,3 BDO produced in 500 liter pilot plant
- Site selection for small scale 2,3 BDO plant underway and expect construction to begin in 2018



Market Size: c.\$80bn

Isobutanol

- Increased yield by 78% during 3Q

21 ICS, HIS Reports

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1 116. On the earnings class held later that day, Defendant Last provided the same update:

2 During the quarter, *we continued to make solid progress on our lead candidate,*
3 *2,3-butanediol, 2,3-BDO yield increased by 15%*, reaching over 60% of our
4 targeted yield. The commercial robustness of the strain was also demonstrated with
5 continuous production runs exceeding 400 hours. Additionally, the 2,3-BDO
6 produced in the 500-liter pilot plant had a purity exceeding 99%.

7 *We also increased our yield in our isobutanol strain by 78%.*

8 [Emphasis added.]

9 117. The foregoing statements in ¶¶113-116 were materially false and misleading because,
10 at the time they were made:

- 11 (a) the feedstock with which the Company had achieved its supposed MBP success
12 was *pure methane*, not *natural gas*;
- 13 (b) the Company had *not* achieved the stated yields in its MBP products with
14 *natural gas* as the feedstock; and
- 15 (c) due to the cost differences between natural gas and pure methane, Defendants’
16 claims about the commercial viability – *i.e.*, the “in the money” characterization
17 – of the MBP program were not true.

18 **E. March 1, 2018 10-K**

19 118. In the Company’s 2017 Annual Report filed on Form 10-K, released on March 1, 2018,
20 Defendants again reiterated the purported progress the Company had made utilizing natural gas as a
21 feedstock, its “proven production” of six products, including isobutanol and 2,3 BDO, and the massive
22 TAM for those products. As the Annual Report stated:

23 In energy, we are working to create novel, highly engineered bacteria that *utilize*
24 *specific energy feedstocks, typically pipeline grade natural gas, to synthesize*
25 *commercial end products, such as isobutanol for gasoline blending, 2,3*
26 *Butanediol for conversion to synthetic rubber and 1,4 Butanediol for polyester.*
27 *Today these target markets are estimated to represent over \$100 billion in*
28 *aggregate commercial opportunity.*

* * *

To date we have proven biological production of six valuable and large market fuel
and chemical products. *These products are isobutanol for gasoline blending, 2,3*
Butanediol and isoprene for conversion to synthetic rubber, 1,4 Butanediol for

1 *polyester, farnesene for diesel fuel and lubricants and isobutyraldehyde for*
 2 *acrylics. In aggregate, we estimate that these products represent greater than a*
 3 *\$100 billion market opportunity.*

[Emphasis added.]

4 119. The foregoing statements in ¶118 were materially false and misleading because, at the
 5 time they were made:

- 6 (a) the feedstock with which the Company had achieved its supposed MBP success
 7 was *pure methane*, not *natural gas*;
- 8 (b) the Company had *not* achieved the stated yields in its MBP products with
 9 *natural gas* as the feedstock; and
- 10 (c) due to the cost differences between natural gas and pure methane, Defendants'
 11 claims about the commercial viability – *i.e.*, the “in the money” characterization
 12 – of the MBP program were not true.

13 **F. May 10, 2018 Press Release, Slideshow, and Earnings Call**

14 120. On May 10, 2018, the Company reported its 1Q 2018 earnings and performance in both
 15 a press release and slideshow attached to its Form 8-K and held an earnings call.

16 121. The May 10, 2018 press release now included a statement about the Company’s success
 17 with yet another product, 1,3 butadiene (which is developed from 2,3 BDO), as well as updates about
 18 2,3 BDO and isobutanol.

19 *[The Company’s] Energy team demonstrated successful third party catalytic*
 20 *conversion of 2,3 BDO to 1,3 butadiene. The conversion efficiency exceeded both*
 21 *the Company’s financial model and synthetic rubber industry product quality*
 22 *expectations.*

* * *

23 *2,3 BDO yields are up 25% since last reported* and the rate of yield improvement
 24 is in line with [the Company’s] expectations and supports the Company’s plans to
 break ground on a 40,000 ton/year facility by year end;

25 *Isobutanol yields are again improving and are up about 40% since last reported.*
 26 This return to yield improvements for isobutanol was the result of the re-design of
 27 a promiscuous enzyme that was degrading product and making further optimization
 of the production pathway challenging;

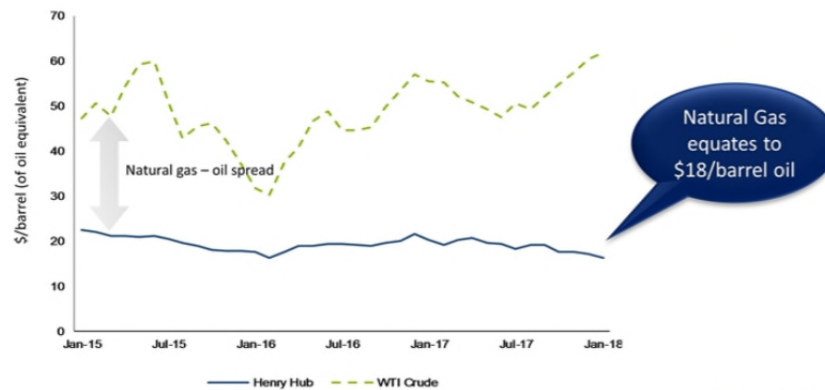
1 Partnering activity concerning Intrexon’s methane bioconversion platform is robust
 2 with multiple parties engaged. Potential partners include both strategic and
 financial companies[.]

3 [Emphasis added.]

4 122. Further, the slideshow (see slide immediately below) referenced the Company’s choice
 5 to purportedly emphasize the utilization of “natural gas” as a feedstock.

6 **Methane Upgrading – A 90 Year Effort**

7 Natural gas is an attractive “feedstock” for the production of liquid fuel and
 8 industrial starting materials. Natural gas is the **cheapest** readily available source of
 carbon and North America has 100+ years of reserves



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17 123. Thomas Shrader, the Company’s Vice President of Communications & Strategy, made
 18 the same points on that day’s earnings call, informing investors that:

19 [O]f the six products we have proven we can make and the three we have – on
 20 which we focus: isobutanol, 2,3-BDO and 1,4-BDO. As you can see, all are
 significant markets. 2,3-BDO is now considered our lead product because progress
 21 in the program was rapid, and *we reached profitable yields of 2,3-BDO* before
 isobutanol, despite starting much later.

22 * * *

23 For the quarter, we had several advances. *The major advance this quarter was*
 24 *about a 25% increase in the yields of 2,3-BDO, our lead product.*

25 [Emphasis added.]

26 124. Additionally, on the earnings call, Defendant Kirk added a new eye-popping TAM into
 27 the mix, valuing the isobutanol market at an astounding *\$900 billion*.

1 I think what that observation was really pointing up was just *the financial*
 2 *significance of being able to produce isobutanol*, which is 98% of the energy
 3 density of gasoline that you can transport through at precisely the same facility is
 4 actually where the small adjustment to our fuel injectors. *We could actually just*
 5 *use it as a gasoline substitute, assuming regulatory approval or you're in a*
 6 *market where that would allow that.* But the point is it's a great starting point for
 7 gasoline. *And the size – just the revenue size of that market, it's something like*
 8 *\$900 billion in total.* So we're very excited about this development.

9 [Emphasis added.]

10 125. The foregoing statements in ¶¶121-124 were materially false and misleading because,
 11 at the time they were made:

- 12 (a) the feedstock with which the Company had achieved its supposed MBP success
 13 was *pure methane*, not *natural gas*;
- 14 (b) the Company had *not* achieved the stated yields in its MBP products with
 15 *natural gas* as the feedstock; and
- 16 (c) due to the cost differences between natural gas and pure methane, Defendants'
 17 claims about the commercial viability – *i.e.*, the “in the money” characterization
 18 – of the MBP program were not true.

19 **G. August 9, 2018 Press Release, Slideshow, and Earnings Call**

20 126. On August 9, 2018, the Company released its 2Q 2018 results in a press release and
 21 slideshow attached to a Form 8-K and held an earnings call.

22 127. The press release repeated a number of familiar themes:

23 *2,3, BDO yields are up 22% since last reported* and continue to support the
 24 Company's stated plan to break ground on a 40,000 ton/year plant by year end;

25 Intrexon scientists continue to engineer the methanotrophic organism to improve
 26 the utilization of *natural gas* as a carbon source;

27 Intrexon remains engaged in advanced discussions with multiple strategic partners
 28 for the methane bioconversion platform[.]

[Emphasis added.]

128. Likewise, the slideshow (*see* slide immediately below) impressed upon viewers the
 astounding market size (TAM) of the end products that the Company's MBP program targeted.

intrexon's MBP Potential – Large Markets for Relatively Simple Products



- ✓ Targeting C4 or C5 products was viewed as an optimized point in the product-value vs. synthesis complexity landscape
- ✓ Isobutanol is attractive as a less corrosive, more potent, and more valuable gasoline additive relative to 2-carbon ethanol
- ✓ Expansion into specialty chemicals once major carbon flux pathways are optimized

Source: IHS Chemical, ICIS, Markets and Markets, MicroMarket Monitor, Grandview Research, Transparency Market Research
 1. Currently limited to \$80bn by regulations, IEA World Outlook 2016 data ; IEA World Energy Outlook 2016 data ; Market size for 1-butene and isobutene, the main applications for butylene

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intrexon

129. Further, on the earnings call held later that day, Defendant Walsh touted the second quarter's "scientific advances," including (a) increased 2,3 BDO yield that, "put this program further in the money," and showed "improved utilization of natural gas," and (b) an additional demonstration "of [the] commercial viability" of 1,3 butadiene. As Walsh stated:

In the second quarter, there were measurable scientific advances. For 2,3-BDO, we saw an additional 22% increase in yield, putting this program further in the money. Intrexon's scientists continue to engineer the organism to improve utilization of natural gas as a carbon source, improving the potential operating margin. Further utilizing our proprietary toolbox, our scientists have developed strains with improved utilization components present in methane such as ethane that are typically burnt in the off gas. Please note that the economics I previously mentioned since components other than methane are burnt in the off gas. *As we mentioned on our last call, we successfully converted 2,3-BDO into on specification 1,2-butadiene [sic²], which is the beginning point of synthetic rubber, and we did so at an efficiency of over 90%.* This milestone provides further evidence of commercial viability and has expanded our partnering effectiveness.

[Emphasis added.]

130. The foregoing statements in ¶¶127-129 were materially false and misleading because, at the time they were made:

² Defendant Walsh incorrectly refers to 1,3 butadiene here as 1,2 butadiene.

- 1 (a) the feedstock with which the Company had achieved its supposed MBP success
2 was *pure methane*, not *natural gas*;
- 3 (b) the Company had *not* achieved the stated yields in its MBP products with
4 *natural gas* as the feedstock; and
- 5 (c) due to the cost differences between natural gas and pure methane, Defendants'
6 claims about the commercial viability – *i.e.*, the “in the money” characterization
7 – of the MBP program were not true.

8 **H. November 8, 2018 Press Release, Slideshow, Earnings Call, and Form 10-Q**

9 131. On November 8, 2018, the Company released its 3Q18 results on Form 8-K in a press
10 release and slideshow, held an earnings call, and released a Form 10-Q.

11 132. In the press release, Defendants again praised their ability to successfully produce 2,3
12 BDO utilizing natural gas as a feedstock. As the release stated:

13 [The Company] continues discussions with several major energy companies
14 concerning partnering of its Methane Bioconversion Platform;

15 Site selection on [the Company's] first 2,3 BDO plant is on track for year end;

16 * * *

17 From [the Company's] methane bioconversion platform, *the Company now is*
18 *producing 2,3, BDO from natural gas at roughly 50% of the theoretical target*
19 *yield*, has demonstrated performance at 500X scale-up and has conducted sustained
production runs exceeding 1,000 hours[.]

20 [Emphasis added.]

21 133. The slideshow was substantially similar to the August 9, 2018 slideshow – especially
22 in repeating the outsized TAM the Company's MBP targeted – but it also provided investors an update
23 as to the Company's purported BDO advances.

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Q3 Advances

- Producing BDO from natural gas at roughly 50% of the theoretical final target yield
- Demonstrated performance at 500X scale-up
- Sustained production runs exceeding 1,000 hours without reduction in output



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11 134. On the earnings call later that day, Defendant Walsh further highlighted the Company's
12 2,3 BDO success. As Walsh stated:

13 Now I'd like to provide an update on our Methane Bioconversion Platform and pick
14 our progress against several key objectives. *First, in our lead program, 2,3-BDO,*
15 *we are now producing BDO from natural gas and roughly 50% of the theoretical*
16 *final target yield for our commercial scale facility and well above our target yield*
17 *to select the site and break ground for a 40,000-ton, 2,3-BDO capacity, small-*
18 *scale commercial plant.* This would result in approximately 26,000 tons of the
19 final product after the catalytic step to produce butadiene.

18 [Emphasis added.]

19 135. Later, that same day, Defendants filed with the SEC the Company's Form 10-Q for 3Q
20 2018. That Form 10-Q, while discussing a previously concluded SEC investigation, for the first time,
21 also warned of the *possibility* of future SEC investigations. As the Form 10-Q stated:

22 In September 2018, the Division of Enforcement informed the Company that it had
23 concluded its investigation of these matters and that the Division of Enforcement
24 does not intend to recommend enforcement action against the Company based on
25 the investigation.

25 *The Company may become subject to other claims, assessments and*
26 *governmental investigations from time to time in the ordinary course of business.*
27 Such matters are subject to many uncertainties and outcomes are not predictable
28 with assurance. The Company accrues liabilities for such matters when it is
probable that future expenditures will be made and such expenditures can be
reasonably estimated.

1 [Emphasis added.]

2 136. The foregoing statements in ¶¶132-134 were materially false and misleading because,
3 at the time they were made:

- 4 (a) the feedstock with which the Company had achieved its supposed MBP success
5 was *pure methane*, not *natural gas*;
- 6 (b) the Company had *not* achieved the stated yields in its MBP products with
7 *natural gas* as the feedstock; and
- 8 (c) due to the cost differences between natural gas and pure methane, Defendants’
9 claims about the commercial viability – *i.e.*, the “in the money” characterization
10 – of the MBP program were not true.

11 Moreover, the statements in ¶135 were materially false and misleading because they misrepresented
12 that the Company merely faced a “risk” of possible government investigations in the future, when in
13 fact, the Company was *already* under investigation by the SEC concerning Defendants’ inadequate
14 disclosures regarding its MBP program.

15 **I. February 28, 2019 Press Release**

16 137. On February 28, 2019, the Company released results for 4Q and FY 2018 on Form 8-
17 K via press release, yet again promoting the supposed success of its MBP in achieving yield in 2,3
18 BDO utilizing natural gas as a feedstock.

19 Intrexon’s methane bioconversion platform is being employed to produce 2,3 BDO
20 from *natural gas* and has achieved 80% of the goal for the first smallscale plant
operations;

21 Detailed engineering design for Intrexon’s first-of-a-kind small-scale methane
22 bioconversion facility to 2,3 BDO is currently being bid out, discussions with
23 partners for sites are ongoing. The overall schedule is still consistent as the sites
24 under consideration are brownfield which require less engineering time than the
original greenfield concept[.]

25 [Emphasis added.]

26 138. The foregoing statements in ¶137 were materially false and misleading because, at the
27 time they were made:

- 1 (a) the feedstock with which the Company had achieved its supposed MBP success
- 2 was *pure methane*, not *natural gas*;
- 3 (b) the Company had *not* achieved the stated yields in its MBP products with
- 4 *natural gas* as the feedstock; and
- 5 (c) due to the cost differences between natural gas and pure methane, Defendants’
- 6 claims about the commercial viability – *i.e.*, the “in the money” characterization
- 7 – of the MBP program were not true.

8 **J. March 1, 2019 Form 10-K**

9 139. On March 1, 2019, the Company filed its 2018 Annual Report on Form 10-K, reiterating
10 that,

11 [W]e are working to create novel, highly engineered bacteria *that utilize specific*
12 *energy feedstocks, typically pipeline grade natural gas*, to synthesize commercial
13 end products, such as isobutanol for gasoline blending, 2,3 Butanediol for
14 conversion to synthetic rubber and 1,4 Butanediol for polyester. In aggregate, the
value of such fuel and chemical products are significant, representing the potential
of billions of dollars in estimated market opportunity.

15 [Emphasis added.]

16 140. The Company’s 2018 Form 10-K also included another warning about the *possibility*
17 of “governmental investigations,” stating:

18 *We may become subject to other claims, assessments and governmental*
19 *investigations from time to time in the ordinary course of business.* Such matters
20 are subject to many uncertainties and outcomes are not predictable with assurance.
21 We accrue liabilities for such matters when it is probable that future expenditures
22 will be made and such expenditures can be reasonably estimated. We do not believe
that any such matters, individually or in the aggregate, will have a material adverse
effect on our business, financial condition, results of operations, or cash flows.

23 [Emphasis added.]

24 141. The foregoing statements in ¶139 were materially false and misleading because, at the
25 time they were made:

- 26 (a) the feedstock with which the Company had achieved its supposed MBP success
- 27 was *pure methane*, not *natural gas*;

- 1 (b) the Company had *not* achieved the stated yields in its MBP products with
 2 *natural gas* as the feedstock; and
 3 (c) due to the cost differences between natural gas and pure methane, Defendants'
 4 claims about the commercial viability – *i.e.*, the “in the money” characterization
 5 – of the MBP program were not true; and

6 Moreover, the statements in ¶140 were materially false and misleading because they represented that
 7 the Company merely faced a “risk” of possible government investigations in the future, when in fact,
 8 the Company was *already* under investigation by the SEC over Defendants’ inaccurate disclosures
 9 about its MBP program.

10 VII. LOSS CAUSATION

11 142. Defendants’ wrongful conduct, as alleged herein, directly and proximately caused the
 12 economic losses suffered by Plaintiff and members of the Class (defined herein). During the Class
 13 Period, Plaintiff and Class members purchased Precigen common stock at artificially inflated prices
 14 caused by Defendants’ misconduct. The price of the Company’s common stock declined significantly
 15 when the substantial problems and risks misrepresented and concealed by Defendants were disclosed
 16 and Defendants’ material misrepresentations and omissions were revealed to the market, causing
 17 investors’ losses.

18 143. Throughout the Class Period, investors had been unaware of the following material
 19 facts about Precigen that were known to Defendants throughout the Class Period:

- 20 (a) the feedstock with which the Company had achieved its supposed MBP success was
 21 *pure methane*, not *natural gas*;
 22 (b) the Company had *not* achieved the stated yields in its MBP products with *natural gas*
 23 as the feedstock;
 24 (c) due to the cost differences between natural gas and pure methane, Defendants’ claims
 25 about the commercial viability – *i.e.*, the “in the money” characterization – of the MBP
 26 program were not true; and
 27 (c) the Company was under investigation by the SEC over Defendants’ disclosures about
 28

1 the MBP program.

2 Following the multiple disclosures (discussed *supra*, §IV.E) leading up to the revelation of the full
3 truth, the market reacted negatively. As a result, Precigen’s common stock dropped from \$23.62 per
4 share at the close of the market on May 11, 2017, to \$3.58 at the close of the market on September 25,
5 2020, a drop of approximately 85%.

6 144. The timing and magnitude of the decline in the price of Precigen’s common stock,
7 following the corrective disclosures as alleged herein and referenced above, negates any inference that
8 the loss suffered by investors was caused by changed market conditions, macroeconomic or industry
9 factors, or other facts unrelated to Defendants’ fraudulent conduct. Defendants’ false and misleading
10 statements, as set forth above, proximately caused foreseeable losses to the members of the Class.

11 **VIII. NO SAFE HARBOR**

12 145. The federal statutory safe harbor provided for forward-looking statements under certain
13 circumstances does not apply to any of the allegedly false statements pled herein, as the statements
14 alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition,
15 to the extent any of the statements alleged to be false may be characterized as forward-looking, they
16 were not identified as “forward-looking statements” when made, and were unaccompanied by
17 meaningful cautionary statements that identified important factors that could cause actual results to
18 differ materially from those in the purportedly forward-looking statements.

19 146. Alternatively, to the extent that the statutory safe harbor is found to apply to any
20 forward-looking statements pleaded herein, Defendants are nonetheless liable for such statements
21 because, at the time each such statements were made, the speaker had actual knowledge that it was
22 materially false or misleading, and/or the statement was authorized or approved by an executive officer
23 of Precigen who knew that the statements were materially false or misleading when made.

24 **IX. CLASS ACTION ALLEGATIONS**

25 147. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure
26 23(a) and 23(b)(3) on behalf of a Class consisting of all those who purchased or otherwise acquired
27 shares of Precigen common stock between May 10, 2017 to September 25, 2020, inclusive (the “Class
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1 Period”), and were damaged thereby. Excluded from the Class are Defendants, Precigen’s current and
2 former officers, directors, parents, and subsidiaries, their immediate family members, legal
3 representatives, heirs, successors, or assigns of any such excluded person, and any entity in which
4 Defendants have or had a controlling interest.

5 148. The members of the Class are so numerous that joinder of all members is impracticable.
6 Throughout the Class Period, Precigen common stock was actively traded on the NYSE and then the
7 Nasdaq. While the exact number of Class members is unknown to Plaintiff at this time, and can be
8 ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands
9 of members in the proposed Class. Stock owners and other members of the Class may be identified
10 from records maintained by Precigen or its transfer agent and may be notified of the pendency of this
11 action by mail, using the form of notice similar to that customarily used in securities class actions.

12 149. Plaintiff’s claims are typical of the claims of other Class members, as all members of
13 the Class were similarly affected by Defendants’ wrongful conduct in violation of federal laws as
14 alleged herein.

15 150. Plaintiff will fairly and adequately protect Class members’ interests and has retained
16 competent counsel experienced in class actions and securities litigation. Plaintiff has no interests
17 antagonistic to, or in conflict with, those of the Class.

18 151. Common questions of law and fact exist as to all Class members and predominate over
19 any questions solely affecting individual Class members. Common questions include:

- 20 (a) whether Defendants violated the federal securities laws as alleged herein;
21 (b) whether Defendants made public statements during the Class Period that were
22 materially false, misleading, or incomplete or otherwise omitted material facts;
23 (c) whether the Individual Defendants caused Precigen to issue false and
24 misleading statements;
25 (d) whether Defendants acted knowingly or recklessly in issuing false and
26 misleading statements;
27 (e) whether the price of Precigen common stock during the Class Period was
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1 artificially inflated because of the Defendants' wrongful conduct as complained
2 of herein; and

3 (f) whether the members of the Class have sustained damages and, if so, what is
4 the proper measure of damages.

5 152. A class action is superior to all other available methods for the fair and efficient
6 adjudication of this action because joinder of all Class members is impracticable. Additionally, the
7 damages suffered by some individual Class members may be relatively small so that the burden and
8 expense of individual litigation make it impossible for them to individually redress the wrong done to
9 them. There will be no difficulty in the management of this action as a class action.

10 153. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-
11 on-the-market doctrine in that:

- 12 (a) Defendants made public misrepresentations and failed to disclose material facts
13 during the Class Period;
- 14 (b) the omissions and misrepresentations were material;
- 15 (c) Precigen's common stock is traded in an efficient market;
- 16 (d) Precigen's shares were liquid and traded with moderate to heavy volume during
17 the Class Period;
- 18 (e) Precigen traded on the NYSE and then the Nasdaq, both of which are highly
19 efficient stock markets;
- 20 (f) Precigen was covered by multiple securities analysts;
- 21 (g) the misrepresentations and omissions alleged would tend to induce a reasonable
22 investor to misjudge the value of Precigen's common stock; and
- 23 (h) Plaintiff and Class members purchased or acquired Precigen common stock
24 without knowledge of the omitted or misrepresented facts.

25 154. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
26 presumption of reliance upon the integrity of the market.

27 155. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of
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1 reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United*
2 *States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period
3 statements in violation of a duty to disclose such information, as detailed above.

4 **X. CAUSES OF ACTION**

5 **Violation of Section 10(b) of the Exchange Act and Rule 10b-5**
6 **Promulgated Thereunder (Against All Defendants)**

7 156. Plaintiff repeats and realleges each allegation contained above as if fully set forth
8 herein. This claim is asserted on behalf of all members of the Class against Precigen and the Individual
9 Defendants.

10 157. During the Class Period, Defendants, by their acts and omissions as alleged herein,
11 carried out a plan, scheme, and course of conduct which was intended to, and, throughout the Class
12 Period, did: (i) deceive the investing public, including Plaintiff and the other Class members; (ii)
13 artificially inflate and maintain the market price of Precigen common stock; and (iii) cause Plaintiff
14 and Class members to purchase and hold Precigen common stock at artificially inflated prices as
15 Defendants cashed out causing a sharp decrease in value.

16 158. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue
17 statements of material fact and/or omitted to state material facts necessary to make the statements not
18 misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and
19 deceit upon the purchasers of Precigen common stock in an effort to maintain artificially high market
20 prices for shares of Precigen common stock in violation of §10(b) of the Exchange Act and Rule 10b-
21 5 promulgated thereunder. Defendants are sued as primary participants in the wrongful conduct
22 charged herein.

23 159. Pursuant to the above plan, scheme, conspiracy, and course of conduct, each of the
24 Defendants participated directly or indirectly in the preparation and/or issuance of the materially false,
25 misleading, and incomplete statements detailed above.

26 160. By virtue of their positions at Precigen, Defendants had actual knowledge of the
27 materially false and misleading statements and material omissions alleged herein, and intended thereby
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1 to deceive Plaintiff and the other members of the Class; alternatively, Defendants acted with reckless
2 disregard for the truth in that they recklessly failed to ascertain and disclose such facts as would reveal
3 the materially false and misleading nature of the statements made, even though such facts were readily
4 available to Defendants.

5 161. Information showing that Defendants acted knowingly or with reckless disregard for
6 the truth is peculiarly within Defendants' knowledge and control. As Precigen's senior officers and/or
7 directors, the Individual Defendants had knowledge of the details of Precigen's internal affairs.

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

20 163. During the Class Period, Precigen common stock traded on an active and efficient
21 market. Plaintiff and the other members of the Class, relying on the materially false and misleading
22 statements described herein, purchased or otherwise acquired shares of Precigen common stock at
23 prices artificially inflated by Defendants' wrongful scheme and course of conduct. Had Plaintiff and
24 the other members of the Class known the truth, they would not have purchased or otherwise acquired
25 said securities or would not have purchased or otherwise acquired them at the inflated prices that were
26 paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of
27 Precigen common stock was substantially lower than the prices paid by Plaintiff and the other members
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1 of the Class. The market price of Precigen common stock declined sharply upon public disclosure of
2 the facts alleged herein, causing injury to Plaintiff and Class members. Plaintiff and the Class have
3 suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices
4 for the shares of Precigen common stock that they purchased during the Class Period, which inflation
5 was removed from its price as the true facts became known.

6 164. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and
7 the other members of the Class have suffered damages in connection with their purchases of Precigen
8 common stock during the Class Period.

9 165. By reason of the conduct alleged herein, Defendants violated Section 10(b) of the
10 Exchange Act and Rule 10b-5 promulgated thereunder.

11 **Violation of Section 20(a) of the Exchange Act**
12 **(Against the Individual Defendants)**

13 166. Plaintiff repeats and realleges each allegation contained above as if fully set forth
14 herein.

15 167. This Count is asserted on behalf of Plaintiff and all members of the Class against the
16 Individual Defendants for violations of Section 20(a) of the Exchange Act ("Section 20(a)"), 15 U.S.C.
17 §78t(a).

18 168. The Individual Defendants were and acted as controlling persons of Precigen within the
19 meaning of Section 20(a), as alleged herein. By virtue of their high-level positions with the Company,
20 participation in, and/or awareness of the Company's operations and/or intimate knowledge of the
21 Company's actual performance, these Defendants had the power to influence and control and did
22 influence and control, directly or indirectly, the decision-making of the Company, including the
23 content and dissemination of the various statements which Plaintiff contends are false and misleading.
24 Each of these Defendants was provided with, or had unlimited access to, copies of the Company's
25 reports, press releases, public filings, and other statements alleged by Plaintiff to be misleading prior
26 to and/or shortly after these statements were issued, and had the ability to prevent the issuance of the
27 statements or cause the statements to be corrected.

1 169. In addition, the Individual Defendants had direct involvement in the day-to-day
2 operations of the Company and, therefore, are presumed to have had the power to control or influence
3 the transactions giving rise to the securities violations as alleged herein and exercised the same.

4 170. As set forth above, Precigen and the Individual Defendants each violated §10(b) and
5 Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their control over
6 Precigen, the Individual Defendants are also liable for Precigen’s violation of Section 10(b) pursuant
7 to §20(a).

8 **XI. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief and judgment as follows:

10 A. Declaring the action to be a proper class action pursuant to Rule 23(a) and (b)(3) of the
11 Federal Rules of Civil Procedure on behalf of the Class defined herein;

12 B. Awarding all damages and other remedies available under the Exchange Act in favor
13 of Plaintiff and the members of the Class against Defendants in an amount to be proven at trial,
14 including interest thereon;

15 C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this
16 action, including attorneys’ fees and expert fees; and

17 D. Such other and further relief as the Court may deem just and proper.

18 **XII. JURY DEMAND**

19 Plaintiff demands a trial by jury.
20

21 DATED: May 18, 2021

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