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9 Chapter 7 Trustee

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11 **UNITED STATES BANKRUPTCY COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 In re  
14 TRAVERSA THERAPEUTICS, INC.,  
15 Debtor.

CASE NO. 12-05752-LT7  
CHAPTER 7  
ADV NO. \_\_\_\_\_

16 **COMPLAINT FOR:**

17 **BREACH OF FIDUCIARY DUTY;**  
18 **BREACH OF DUTY OF LOYALTY;**  
19 **AVOIDANCE AND RECOVERY OF**  
20 **FRAUDULENT TRANSFERS;**  
21 **UNFAIR COMPETITION; AND**  
22 **UNJUST ENRICHMENT**

23 RICHARD M KIPPERMAN, Chapter 7 Trustee  
24 for the estate of Traversa Therapeutics, Inc.  
25 Plaintiff,

26 v.  
27 CURT BRADSHAW, an individual,  
28 Defendant.

29 Plaintiff Richard M Kipperman, the Chapter 7 Trustee ("Plaintiff") for Traversa  
30 Therapeutics, Inc. ("Traversa"), alleges as follows:

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**GENERAL ALLEGATIONS**

1. On April 23, 2012, Traversa filed a voluntary Chapter 7 bankruptcy petition in this District. Traversa was engaged in the business of researching and developing biotechnology intellectual property. The Trustee is the duly appointed Chapter 7 Trustee for Traversa.
2. Defendant Curt Bradshaw (“Bradshaw”) was the Chief Scientific Officer for Traversa between the dates December 2009 until it shut down on March 9, 2012.
3. This Court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§ 157 and 1334 and General Order 312-D of the United States District Court for the Southern District of California.
4. Venue is proper in this District pursuant to 28 U.S.C. § 1409 because the bankruptcy case of the Debtor is pending in this District. Moreover, Plaintiff is informed and believes that Defendant resides in this District.
5. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (F) & (O).

**BACKGROUND**

6. Traversa was engaged in the business of researching and developing certain biotechnology intellectual property. In particular, Traversa was engaged in RNAi gene therapy research, which includes at least two technological means for introducing drugs to human cells at the molecular level. One of those means is through the use of a double-stranded RNA-binding domain (“DRBD”). The other is through use of a RiboNucleic Neutral (“RNN”). Traversa engaged in both DRBD and RNN research, which it dubbed “Tech 1” and “Tech 2” respectively.
7. At a November 28, 2011, meeting of Traversa’s Board of Directors, the Board of Directors voted to cancel its license with UCSD to use its RNN technology, thereby effectively ending its RNN (Tech 2) research program. The Trustee alleges on information and belief that Bradshaw and/or Steven S. Dowdy (“Dowdy”) argued in favor of having the Debtor cancel its license with UCSD. Dowdy was a shareholder of Traversa, and also served on its Scientific Advisory Board.
8. On March 1, 2012, while still employed at Traversa as its Chief Scientific Officer, Bradshaw accepted an invitation to attend a “naming party” which was being thrown by Dowdy.

1 Plaintiff alleges on information and belief that Bradshaw and Dowdy had already by that time  
2 formed a venture and/or partnership with the goal of engaging in RNAi research and  
3 development. The purpose of the naming party, believed to be held on March 18, 2012, was to  
4 arrive at a name for the new venture. At the naming party, the new venture was named Intrada  
5 Biologics, later to become Solstice Biologics ("Solstice"). Solstice engages in RNAi research.

6 9. On March 5, 2012, while still employed at Traversa as its Chief Scientific Officer,  
7 Bradshaw emailed Katherine Bowdish at PermeonBio, saying that he was traveling to San  
8 Francisco in a few weeks to meet investors. One of those investors was Corey Goodwin of  
9 VenBio, who ultimately invested in Solstice. Towards the end of March, 2012, Bradshaw and  
10 Dowdy traveled to San Francisco to meet with Mr. Goodwin for the purpose of soliciting venture  
11 capital funds for Solstice. Goodwin's venture capital firm and others ultimately contributed \$18  
12 million to Solstice on the strength of this and other presentations and communications by  
13 Goodwin and/or Bradshaw.

14 10. On Friday, March 9, 2012, Traversa ended its operations. The Trustee alleges on  
15 information and belief that at no time did Bradshaw inform Traversa's CEO or its Board of  
16 Directors of the funding opportunities and venture capital connections that Bradshaw and  
17 Dowdy were pursuing for themselves. Instead, the Trustee alleges on information and belief  
18 that Bradshaw sought to take advantage of Traversa's demise by proposing a buy-out of  
19 Traversa's lease and equipment.

20 11. Specifically, in a March 13, 2012, email from Traversa's CEO, Mike Lack, to its Board  
21 of Directors, Mr. Lack briefly discussed the so-called "Bradshaw proposal." The Bradshaw  
22 proposal consisted of an offer by Bradshaw to assume Traversa's real property lease. In  
23 exchange, Traversa would assign Bradshaw all of its equipment, and satisfy claims of existing  
24 creditors (*e.g.*, by negotiating concessions with them).

25 12. At the time, approximately one year was remaining on Traversa's lease, constituting  
26 a lease obligation of approximately \$289,845.99, according to a Proof of Claim filed by  
27 Traversa's landlord. During an examination of Bradshaw, he testified that he had not focused  
28 on the substantial rent obligation, and simply planned to sell the equipment (the sale of

1 equipment conducted under Mr. Lack's direction ultimately yielded approximately \$100,000 -  
2 \$140,000 according to Mr. Lack). However, Mr. Lack stated in his examination that he recalled  
3 Bradshaw wondering if it was "doable" to start a new company and assume the lease.

4 13. It was determined that Bradshaw's purchase of Traversa's assets would prove  
5 troublesome in light of Traversa's plan to file a Chapter 7 bankruptcy petition. Mr. Lack instead  
6 sought Bradshaw's assistance in connection with liquidating Traversa's assets between the  
7 dates March 12, 2012, and April 9, 2012. During that time, Bradshaw purchased some of  
8 Traversa's assets for himself, include a valuable "Mermade" RNA synthesizing unit at a steeply  
9 discounted price. Specifically, Bradshaw purchased the Mermade unit for \$1,000.00 despite the  
10 fact that a competing buyer was willing to purchase it for \$8,000.00.

11 14. During that same time period, Bradshaw was also paid a total of \$43,430.00 for his  
12 consulting services. The fee paid to Bradshaw was one and one-half times his normal full-time  
13 salary. However, Bradshaw did not work full-time, and did not maintain time records or submit  
14 invoices. Neither he nor Mr. Lack could quantify the amount of time Bradshaw spent, although  
15 Mr. Lack recalled that Bradshaw was at Traversa for "several days." For his part, the longest  
16 stint that Bradshaw could remember being at the premises was a four-hour length of time.

17 15. On April 23, 2012, Traversa filed its Chapter 7 bankruptcy petition. Bradshaw filed a  
18 claim in the amount of \$279,426.67 for "salary, COBRA, bonus, and 2 week notice per contract."

19 16. On June 20, 2012, Solstice signed a term sheet with VenBio for an \$18 million  
20 funding commitment for Solstice. Eight days later, on June 28, 2012, Solstice signed a Letter of  
21 Intent with UCSD for RNN technology. Bradshaw owns a 15 percent interest in Solstice.  
22 Solstice is using the MerMade that Bradshaw purchased.

23 **FIRST CLAIM FOR RELIEF**

24 **(Breach of Fiduciary Duty)**

25 17. Plaintiff incorporates the facts and allegations set forth in Paragraphs 1 through 16  
26 of this Complaint, inclusive, as though set forth fully herein.

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1 18. On and prior to March 9, 2012, Bradshaw was an officer of Traversa. As such,  
2 Bradshaw owed Traversa a fiduciary duty to refrain from doing anything that would injure the  
3 corporation or deprive it of opportunities while he was an officer.

4 19. Bradshaw breached this duty by (a) encouraging Traversa to cancel its RNN license  
5 with UCSD, (b) beginning a venture that would compete with Traversa and/or deprive it of the  
6 opportunities offered to the new venture, (c) failing to inform Traversa's officers, directors,  
7 and/or shareholders of the venture capital financing opportunities that he was seeking for his  
8 new venture, and failing to present those opportunities to Traversa, and/or (d) using property,  
9 research and/or information of Traversa's in furtherance of his own ends.

10 20. Between the dates March 12, 2012, and April 9, 2012, Bradshaw served as an agent  
11 of Traversa for the purpose of assisting and advising it primarily with respect to the liquidation of  
12 Traversa's property. As such, Bradshaw owed Traversa a fiduciary duty to act loyally for  
13 Traversa's benefit in all matters connected with the agency relationship. Bradshaw breached  
14 this fiduciary duty by purchasing property of Traversa at grossly discounted prices at a time  
15 when it was his duty to fully and fairly advise Traversa regarding the value of its property and  
16 then using the property for his own ends.

17 21. Bradshaw is liable for the return and/or disgorgement of all funds, property, and/or  
18 opportunities taken from Traversa and/or of which Traversa was deprived, or the value thereof.

19 **SECOND CLAIM FOR RELIEF**

20 **(Breach of Duty of Loyalty)**

21 22. Plaintiff incorporates the facts and allegations set forth in Paragraphs 1 through 21  
22 of this Complaint, inclusive, as though set forth fully herein.

23 23. At all relevant times, Bradshaw was an employee and an officer of Traversa. As  
24 such, Bradshaw owed Traversa a duty of loyalty.

25 24. Bradshaw breached this duty by (a) encouraging Traversa to cancel its RNN license  
26 with UCSD, (b) beginning a venture that would compete with Traversa and/or deprive it of the  
27 opportunities offered to the new venture, (c) failing to inform Traversa's officers, directors,  
28 and/or shareholders of the venture capital financing opportunities that he was seeking for his

1 new venture, and failing to present those opportunities to Traversa, and/or (d) using property,  
2 research and/or information of Traversa's in furtherance of his own ends.

3 25. Between the dates March 12, 2012, and April 9, 2012, Bradshaw served as an agent  
4 of Traversa for the purpose of assisting and advising it primarily with respect to the liquidation of  
5 Traversa's property. As such, Bradshaw owed Traversa a fiduciary duty to act loyally for  
6 Traversa's benefit in all matters connected with the agency relationship. Bradshaw breached  
7 this duty by purchasing property of Traversa at grossly discounted prices at a time when it was  
8 his duty to fully and fairly advise Traversa regarding the value of its property and then using the  
9 property for his own ends.

10 26. Bradshaw is liable for the return and/or disgorgement of all funds, property, and/or  
11 opportunities taken from Traversa and/or of which Traversa was deprived, or the value thereof.

12 **THIRD CLAIM FOR RELIEF**

13 **(Avoidance and Recovery of Fraudulent Transfers)**

14 27. Plaintiff incorporates the facts and allegations set forth in Paragraphs 1 through 16 of  
15 this Complaint, inclusive, as though set forth fully herein.

16 28. The Trustee alleges that the following transfers were made:

17 a. Bradshaw was paid a total of \$43,430.00 by Traversa between the dates March  
18 12, 2012, and April 9, 2012, after Traversa shut down. The fees paid to Bradshaw equaled one  
19 and one-half times his normal full-time salary. However, Bradshaw did not work full-time, did  
20 not maintain time records or submit invoices, and neither he nor Mr. Lack could quantify the  
21 amount of time Bradshaw spent.

22 b. Bradshaw purchased some of Traversa's physical assets, including the Mermade  
23 unit (for \$1,000 despite the fact that a competing buyer was willing to purchase it for \$8,000).

24 29. The Trustee alleges on information and belief that the foregoing transfers were made  
25 within two years before the date of Traversa's petition with actual intent to hinder, delay, or  
26 defraud any entity to which the debtor was or became, on or after the date that such transfer  
27 was made or such obligation incurred, indebted.

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1 35. The transfers herein alleged constitute fraudulent conveyances of an interest in  
2 property of Traversa pursuant to California Civil Code Section 3439.04 which may be set aside  
3 and recovered by the Trustee pursuant to Section 3439.07 of said Civil Code, which are  
4 incorporated in these proceedings by Section 544 of the Bankruptcy Code. The specific nature  
5 and amounts of the aforementioned transfers will be proven at trial, together with interest  
6 thereon at the legal rate from and after the respective dates of transfer.

7 **FIFTH CLAIM FOR RELIEF**

8 **(Avoidance and Recovery of Fraudulent Transfers)**

9 36. Plaintiff incorporates the facts and allegations set forth in Paragraphs 1 through 18  
10 of this Complaint, inclusive, and Paragraph 28 as though set forth fully herein.

11 37. The aforementioned transfers were made within the last four years, at a time when  
12 the claim of a creditor of Traversa's arose before the transfer was made, and Traversa received  
13 less than a reasonably equivalent value in exchange for the transfers and was insolvent on the  
14 date that the transfers were made or became insolvent as a result of the transfers.

15 38. The transfers herein alleged constitute fraudulent conveyances of an interest in  
16 property of Traversa pursuant to California Civil Code Section 3439.05 which may be set aside  
17 and recovered by the Trustee pursuant to Section 3439.07 of said Civil Code, which are  
18 incorporated in these proceedings by Section 544 of the Bankruptcy Code. The specific nature  
19 and amounts of the aforementioned transfers will be proven at trial, together with interest  
20 thereon at the legal rate from and after the respective dates of transfer.

21 **SIXTH CLAIM FOR RELIEF**

22 **(Unfair Competition)**

23 39. Plaintiff incorporates the facts and allegations set forth in Paragraphs 1 through 38  
24 of this Complaint, inclusive, as though set forth fully herein.

25 40. Defendant's acts, omissions, and practices as set forth herein constituted unlawful,  
26 unfair, and/or fraudulent business acts and practices within the meaning of California Business  
27 and Professions Code sections 17200 *et seq.*

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1 41. Traversa suffered injury in fact and lost funds and property as a result of Defendant's  
2 unlawful, unfair, and/or fraudulent practices.

3 42. As a direct and proximate result of the foregoing conduct, Defendant has been  
4 unjustly enriched. Plaintiff, on behalf of Traversa's estate, is entitled to restitution from  
5 Defendant as a result of his unlawful, unfair, and/or fraudulent acts alleged herein.

6 **SEVENTH CLAIM FOR RELIEF**

7 **(Unjust Enrichment)**

8 43. Plaintiff incorporates the facts and allegations set forth in Paragraphs 1 through 38  
9 of this Complaint, inclusive, as though set forth fully herein.

10 44. The Defendant was unjustly enriched as a result of the Defendant's wrongful  
11 conduct.

12 45. As a direct and proximate result of the Defendant's wrongful conduct, Plaintiff is  
13 entitled to restitution from Defendant, jointly and severally, on behalf of Traversa's estate.

14 WHEREFORE Plaintiff prays for judgment in his favor as follows:

15 ON THE FIRST, SECOND AND SEVENTH CLAIMS FOR RELIEF:

16 1. Against Defendant for disgorgement of all gains, profits, benefits, and  
17 advantages derived by Defendant's acts and omissions including but not limited to his interest in  
18 Solstice or the value thereof;

19 2. Interest thereon from the date of breach;

20 3. Costs of suit; and

21 4. Such other and further relief as the Court deems just and proper.

22 ON THE THIRD, FOURTH, AND FIFTH CLAIMS FOR RELIEF:

23 1. An order avoiding all fraudulent transfers of property of Traversa, the exact  
24 amount to be proven at trial;

25 2. Recovery by the Trustee of all said property transferred;

26 3. Interest thereon from the date said fraudulent transfers were made;

27 4. Costs of suit; and

28 5. Such other and further relief as the Court deems just and proper.

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ON THE SIXTH CLAIM FOR RELIEF:

1. Against Defendant for restitution;
- 2 Interest thereon from the date of breach;
3. Costs of suit; and
4. Such other and further relief as the Court deems just and proper.

LAW OFFICES OF KIT J. GARDNER

Dated: April 21, 2014

By: /s/ Kit J. Gardner  
Kit J. Gardner  
Counsel to Richard M Kipperman,  
Chapter 7 Trustee