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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 KIRK HIMMELBERG, Individually and On
11 Behalf Of All Other Similarly Situated,

12 Plaintiff,

13 v.

14 VAXART, INC., CEZAR ANDREI FLOROIU,
15 WOUTER W. LATOUR, M.D., STEVEN J.
16 BOYD, KEITH MAHER, M.D., and
ARMISTICE CAPITAL LLC,

17 Defendants.
18

No.

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

CLASS ACTION

DEMAND FOR JURY TRIAL

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1 Plaintiff Kirk Himmelberg, by and through his undersigned counsel, brings this action on
2 behalf of himself and others similarly situated against Defendants. Plaintiff alleges the following
3 based upon personal knowledge as to himself and his own acts and upon information and belief as to
4 all other matters. Plaintiff's information and belief is based on the ongoing independent investigation
5 of its undersigned counsel, which included a review of the Defendants' public documents,
6 conference calls and announcements made by Defendants, United States ("U.S.") Securities and
7 Exchange Commission ("SEC") filings, wire and press releases published by and regarding Vaxart,
8 Inc. ("Vaxart" or the "Company"), analysts' reports and advisories about the Company, and
9 information readily obtainable on the Internet.

10 I. INTRODUCTION

11 1. This is a securities class action on behalf of a class consisting of all other persons or
12 entities who purchased or otherwise acquired securities of Vaxart, Inc. ("Vaxart" or the "Company")
13 during the period from June 25, 2020 to July 25, 2020, inclusive (the "Class Period"), seeking to
14 recover damages caused by Defendants' violations of the federal securities laws and to pursue
15 remedies under remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the
16 "Exchange Act") and Rule 10b-5 promulgated thereunder, against the Company and certain of its top
17 officials.

18 2. The action arises from Defendants' fraudulent scheme to profit from artificially
19 inflating the Company's stock price by announcing false and misleading information concerning
20 Vaxart's oral COVID-19 vaccine candidate, including its purported involvement in "Operation Warp
21 Speed" ("OWS"), a program which commits the federal government to massive funding for the
22 development of COVID-19 vaccines.

23 3. Founded in March 2004 and headquartered in South San Francisco, California, Vaxart
24 is a clinical-stage company purportedly engaged in the discovery and development of vaccines for a
25 variety of diseases that would be administered orally, rather than by injection. To date, Vaxart has
26 never successfully developed a vaccine. Entering 2020, Vaxart had only 14-full time employees and
27 a market capitalization of \$17 million.

1 4. In early 2020, the Company began working on a vaccine for COVID-19. Throughout
2 2020, Vaxart has periodically announced positive news regarding these efforts. During that time,
3 Vaxart's stock price has dramatically increased. The Company's stock traded at just \$0.35 per share
4 at the beginning of 2020, but reached \$2.92 by close of the market on June 2, 2020.

5 5. Armistice Capital LLC ("Armistice") is a long-short equity hedge fund focused on the
6 health care and consumer sectors and long-time major shareholder of Vaxart. As of June 3, 2020,
7 Armistice held stock and warrants equaling approximately 30% of the outstanding stock. In addition,
8 Armistice's Managing Member and its founder, principal and owner, Stephen J. Boyd, as well as
9 Armistice's Managing Director, Keith Maher, M.D., serve as Directors on Vaxart's Board of
10 Directors.

11 6. On June 8, 2020, in furtherance of Defendants' scheme, Defendants amended
12 Armistice's existing warrant agreements, allowing Armistice to potentially exercise its warrants on
13 approximately 21 million shares of Vaxart immediately, which it could not have done under the
14 original warrant agreements. Over the next week, Defendants also issued millions of dollars in
15 favorable stock options to Vaxart's most senior executives.

16 7. On June 25, 2020, Vaxart announced that it had entered into a Memorandum of
17 Understanding with Attwill Medical Solutions Sterilflow, LP to enable production of a billion or
18 more tablet COVID-19 vaccine doses annually. In the press release, Vaxart's Chief Executive Officer,
19 Defendant Cezar Andrei Floroiu claimed the deal would "enable the large scale manufacturing and
20 ultimate supply of our COVID-19 vaccine for the US, Europe and other countries in need." The
21 announcement was favorably received, with Vaxart's stock price nearly doubling from opening at
22 \$3.61 per share to closing at \$6.26 on June 25, 2020.

23 8. The next day, on June 26, 2020, Vaxart issued a second press release entitled
24 "Vaxart's COVID-19 Vaccine Selected for the U.S. Government's Operation Warp Speed," claiming
25 its vaccine has been selected to participate in a non-human challenge study, organized and funded by
26 OWS. This announcement sent the price of Vaxart shares rocketing higher. In the press release,
27 Vaxart's Chief Executive Officer, Defendant Cezar Andrei Floroiu said, "We are very pleased to be
28 one of the few companies selected by Operation Warp Speed, and that ours is the only oral vaccine

1 being evaluated.” Cezar Andrei Floroiu added, “[O]ur vaccine is a room temperature-stable tablet, an
2 enormous logistical advantage in large vaccination campaigns.” As a result, the stock price jumped
3 from \$6.26 to \$8.04 after opening at \$11.49 with a high of \$14.30.

4 9. Taking full advantage of the amendments to the warrant agreements that Vaxart had
5 granted on June 8, 2020, Armistice exercised all its 20.8 million warrants. Then, between June 26th
6 and June 29th, during only two trading days (Friday, June 26 and Monday, June 29, 2020), Armistice
7 sold 27.6 million Vaxart shares, reducing its overall beneficial ownership in Vaxart from 29% to
8 0.2%, reaping profits of approximately \$200 million.

9 10. But on July 25, 2020, details emerged revealing Defendants’ deception concerning
10 their pump and dump scheme. In particular, on July 25, 2020, *The New York Times* published an
11 article entitled, “Corporate Insiders Pocket \$1 Billion in Rush for Coronavirus Vaccine,” covering
12 suspiciously timed stock bets that had generated significant profits for senior executives and board
13 members at companies developing vaccines and treatments. Vaxart was featured prominently in the
14 article, and it clarified “Vaxart is not among the companies selected to receive significant financial
15 support from Warp Speed.” In response to this news, the price of Vaxart shares dropped sharply
16 lower on July 27, 2020 from \$12.29 to \$11.16.

17 11. By this action, Plaintiff seeks redress for losses he and other Vaxart investors suffered
18 after purchasing common stock during the Class Period at artificially inflated prices.

19 II. JURISDICTION AND VENUE

20 12. This action arises under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§
21 78j(b), 78t(a), and 78t-1(a)), and Rule 10b-5 (17 C.F.R. § 240.10b-5) promulgated under the
22 Exchange Act.

23 13. This Court has jurisdiction over the subject matter of this action pursuant to Section
24 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

25 14. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15 U.S.C.
26 § 78aa) and 28 U.S.C. § 1391(b) and (c). At all relevant times, Vaxart conducted business in this
27 District and maintained its headquarters in this District at 385 Oyster Point Boulevard, Suite 9A,
28 South San Francisco, California 94080. In addition, many of the acts charged herein, including the

1 preparation and dissemination of materially false and misleading information, occurred in substantial
2 part in this District.

3 15. In connection with the acts alleged herein, Defendants, directly or indirectly, used the
4 means and instrumentalities of interstate commerce, including, but not limited to, the U.S. mails,
5 interstate telephone communications, and the facilities of national securities exchanges.

6 III. PARTIES

7 16. Plaintiff Kirk Himmelberg (“Mr. Himmelberg” or “Plaintiff”), as set forth in the
8 certification filed with this Complaint, purchased Vaxart common stock during the Class Period and
9 was damaged by Defendants’ conduct alleged herein.

10 17. Defendant Vaxart is a corporation organized under Delaware law and headquartered
11 at 385 Oyster Point Boulevard, Suite 9A, South San Francisco, California 94080. Vaxart’s stock
12 trades on the NASDAQ, which is an efficient market, under the symbol “VXRT.”

13 18. Defendant Cezar Andrei Floroiu (“Floroiu”) has served as a director of Vaxart since
14 April 2020. In June 2020, Vaxart appointed Floroiu as its new Chief Executive Officer.

15 19. Defendant Wouter W. Latour, M.D. (“Latour”) served as Vaxart’s President and
16 Chief Executive Officer from February 2018 to June 2020. He has also served as a member of its
17 Board of Directors from February 2018 to the present. Latour was appointed as Chairman of
18 Vaxart’s Board of Directors in December 2019 and continues to serve in that capacity. Before going
19 public, Latour held various executive positions at Vaxart’s predecessor entity, including President
20 and Chief Executive Officer and sat on its Board.

21 20. Defendant Steven J. Boyd (“Boyd”) has served as a director of Vaxart since October
22 2019. Since 2012, Boyd has also served as the Chief Investment Officer of Defendant Armistice.
23 Boyd is Armistice’s Managing Member and its founder, principal and owner.

24 21. Defendant Keith Maher, M.D. (“Maher”) has served as a director of Vaxart since
25 October 2019. He is a member of Vaxart’s Compensation Committee. He has also served as
26 Armistice’s Managing Director since 2019.

27 22. Defendants Boyd and Maher are referred to as the “Control Defendants”.
28

23. Defendants Floroiu and Latour are collectively referred to as the “Executive Defendants.”

24. Defendant Armistice Capital LLC (“Armistice”) is a hedge fund incorporated in Delaware. At relevant times hereto, it conducts and has conducted business in California in connection with its ownership of over 30% of the shares of Vaxart and its representation on and participation in the meetings of and actions of the Board of Directors of Vaxart by two of its principals, Defendants Boyd and Maher.

25. The Control Defendants and Executive Defendants, because of their positions with the Company, possessed the power and authority to control the contents of Vaxart’s reports to the SEC, as well as its press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. Each defendant was provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance, and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, each of these Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public, and that the positive representations which were being made were then materially false and/or misleading. The Control Defendants and Executive Defendants are liable for the false statements pleaded herein, as those statements were each “group-published” information and were the result of the collective actions of the Control Defendants and Executive Defendants.

IV. SUBSTANTIVE ALLEGATIONS

A. Background

26. At the end of 2019, Vaxart was a company with 14 employees. It has never successfully developed a drug or vaccine. With the COVID-19 pandemic, and the rush of the government to provide funding for and contracts to companies with promising vaccines and cures, Defendants saw an opportunity to cash in on the scientific naivety of investors and politicians.

27. Throughout early 2020, Defendants made overly optimistic statements about their work on a vaccine for COVID-19, and watched their stock increase from just \$0.35 at the beginning

1 of 2020 to above \$3.19 in May 2020 after the federal government announced Operation Warp Speed.
2 OWS promised to commit massive amounts of funding to companies developing COVID-19
3 vaccines.

4 28. Defendants saw the OWS announcement to further inflate their stock price with
5 misleading positive statements with the intent to sell shares immediately afterwards to make a profit .
6 . . a classic “pump and dump.”

7 29. On June 3, 2020, it was publicly reported that the federal government would provide
8 significant financing to seven companies selected for Operation Warp Speed. The identity of five of
9 those companies was disclosed at that time, but two were not. Vaxart was not one of the identified
10 Operation Warp Speed companies.

11 30. On June 8, 2020, in furtherance of Defendants’ scheme, Defendants amended
12 Armistice’s existing warrant agreements, allowing Armistice to potentially exercise all of its
13 warrants immediately, which it could not have done under the original warrant agreements. Over the
14 next week, Defendants also issued millions of dollars in favorable stock options to Vaxart’s most
15 senior executives.

16 **B. Defendants’ Materially False and Misleading Statements**

17 31. On June 25, 2020 Defendants issued a press release, entitled “**Vaxart, Inc. Signs**
18 **Memorandum of Understanding with Attwill Medical Solutions Sterilflow, LP, Enabling**
19 *Production of A Billion or More COVID-19 Vaccine Doses Per Year Through Large Scale*
20 *Lyophilization, Tableting and Coating*, which misleadingly suggested the Vaxart was close to
21 production of a vaccine, stating:

22 Vaxart, Inc. (“Vaxart” or the “Company”), a clinical-stage
23 biotechnology company developing oral vaccines that are administered
24 by tablet rather than by injection, announced today that it signed a
25 Memorandum of Understanding with Attwill Medical Solutions
26 Sterilflow, LP (AMS) affirming the parties’ intent to establish AMS as
27 a resource for lyophilization development and large scale manufacturing
28 including tableting and enteric coating for Vaxart’s oral COVID-19
vaccine. AMS will be assigning dedicated resources and equipment for
the scale up and commercial production of the vaccine upon entering a
formal agreement.

“We believe AMS’ experience coupled with its ability to manufacture a
billion or more doses per year would be a beneficial addition to our

1 group of CDMO partners and enable the large scale manufacturing and
2 ultimate supply of our COVID-19 vaccine for the US, Europe and other
3 countries in need,” said Andrei Floroiu, CEO of Vaxart Inc. “We believe
4 our oral vaccines, generated on our proven platform, have the potential
5 to offer superior protection against airborne viruses such as SARS-CoV-
2 by triggering both mucosal and systemic immunity while being
administered by a room temperature-stable tablet, an enormous
logistical advantage in large vaccination campaigns.”

6 On this news Vaxart’s stock price doubled from \$3.19 to \$6.26 per share.

7 32. On June 26, 2020 Defendants issued a press release misleadingly implying that the
8 federal government’s Operation Warp Speed had accepted Vaxart’s supposed vaccine as part of its
9 program. The press release, entitled “**Vaxart’s Covid-19 Vaccine Selected for the U.S.**
10 **Government’s Operation Warp Speed, OWS to Test First Oral COVID-19 Vaccine in Non-Human**
11 *Primates*, stated:

12 Vaxart, Inc., a clinical-stage biotechnology company developing oral
13 vaccines that are administered by tablet rather than by injection, today
14 announced that its oral COVID-19 vaccine has been selected to
15 participate in a non-human primate (NHP) challenge study, organized
16 and funded by Operation Warp Speed, a new national program aiming
17 to provide substantial quantities of safe, effective vaccine for Americans
18 by January 2021.

19 The study is designed to demonstrate the efficacy of Vaxart’s oral
20 COVID-19 vaccine candidate.

21 “We are very pleased to be one of the few companies selected by
22 Operation Warp Speed, and that ours is the only oral vaccine being
23 evaluated. SARS-CoV-2, the coronavirus that causes COVID-19, is
24 primarily transmitted by viral particles that enter through the mucosa –
25 nose, mouth or eyes – strongly suggesting that mucosal immunity could
26 serve as the first line of defense,” said Andrei Floroiu, Chief Executive
27 Officer of Vaxart Inc. “In addition, our vaccine is a room temperature-
28 stable tablet, an enormous logistical advantage in large vaccination
campaigns.”

On this news, Vaxart’s stock price jumped from \$6.26 to \$8.04 per share.

33. The statements referenced in ¶¶ 31-32 were materially false and/or misleading
because they misrepresented and failed to disclose material information pertaining to the Company’s
business and operations, which were known to Defendants or recklessly disregarded by them.
Specifically, Vaxart exaggerated the prospects of its COVID-19 vaccine candidate, including its
purported role or involvement in OWS. Contrary to Defendants’ statements, Vaxart’s COVID-19
vaccine candidate had no reasonable prospect for mass production and marketing and was not among

1 the companies selected to receive significant financial support from OWS to produce hundreds of
2 millions of vaccine doses. Instead, Vaxart's COVID-19 vaccine candidate was merely selected to
3 participate in preliminary U.S. government studies to determine potential areas for possible OWS
4 partnership and support. At the time of making the statements, those studies were ongoing, and no
5 determination had been made.

6 34. Immediately following Vaxart's press release, Defendant Armistice cashed out of
7 Vaxart. Taking full advantage of the amendments to the warrant agreements Defendants had granted
8 on June 8, 2020, Armistice exercised its warrants to buy nearly 21 million Vaxart shares for either 30
9 cents or \$1.10 a share. Then, between June 26th and June 29th, during only two trading days (Friday,
10 June 26 and Monday, June 29, 2020), Armistice sold 27.6 million Vaxart shares, reducing its overall
11 beneficial ownership in Vaxart from 29% to 0.2%, reaping profits of approximately \$200 million.

12 35. Vaxart's false statements also positioned Defendant Floroiu and other Vaxart insiders
13 for big pay-days as stock options granted in early June had already vested and accrued in value. For
14 example, when Defendant Floroiu became chief executive in mid-June, he received stock options
15 that were worth about \$4.3 million. A month later, those options were worth more than \$28 million.

16 **C. The Truth Emerges**

17 36. On July 25, 2020, the New York Times published an article revealing the misleading
18 nature of Defendants' statements. In fact, Vaxart was not one of the companies selected to receive
19 financial support from Operation Warp Speed to produce hundreds of millions of vaccine doses. The
20 company had never developed a vaccine, and its main funder profited by over \$200 million through
21 undisclosed stock options granted just prior to the announcement. In significant part the article read:

22 Corporate Insiders Pocket \$1 Billion in Rush for Coronavirus Vaccine

23 Well-timed stock bets have generated big profits for senior executives
24 and board members at companies developing vaccines and treatments.

25 On June 26, a small South San Francisco company called Vaxart made
26 a surprise announcement: A coronavirus vaccine it was working on had
27 been selected by the U.S. government to be part of Operation Warp
28 Speed, the flagship federal initiative to quickly develop drugs to combat
Covid-19.

Vaxart's shares soared. Company insiders, who weeks earlier had
received stock options worth a few million dollars, saw the value of

1 those awards increase sixfold. And a hedge fund that partly controlled
2 the company walked away with more than \$200 million in instant
profits.

3 The race is on to develop a coronavirus vaccine, and some companies
4 and investors are betting that the winners stand to earn vast profits from
5 selling hundreds of millions – or even billions – of doses to a desperate
6 public.

7 Across the pharmaceutical and medical industries, senior executives and
8 board members are capitalizing on that dynamic.

9 They are making millions of dollars after announcing positive
10 developments, including support from the government, in their efforts
11 to fight Covid-19. After such announcements, insiders from at least 11
12 companies – most of them smaller firms whose fortunes often hinge on
13 the success or failure of a single drug – have sold shares worth well over
14 \$1 billion since March, according to figures compiled for The New York
15 Times by Equilar, a data provider.

16 In some cases, company insiders are profiting from regularly scheduled
17 compensation or automatic stock trades. But in other situations, senior
18 officials appear to be pouncing on opportunities to cash out while their
19 stock prices are sky high. And some companies have awarded stock
20 options to executives shortly before market-moving announcements
21 about their vaccine progress.

22 The sudden windfalls highlight the powerful financial incentives for
23 company officials to generate positive headlines in the race for
24 coronavirus vaccines and treatments, even if the drugs might never pan
25 out.

26 Some companies are attracting government scrutiny for potentially
27 using their associations with Operation Warp Speed as marketing ploys.

28 For example, the headline on Vaxart’s news release declared: “Vaxart’s
Covid-19 Vaccine Selected for the U.S. Government’s Operation Warp
Speed.” But the reality is more complex.

Vaxart’s vaccine candidate was included in a trial on primates that a
federal agency was organizing in conjunction with Operation Warp
Speed. But Vaxart is not among the companies selected to receive
significant financial support from Warp Speed to produce hundreds of
millions of vaccine doses.

“The U.S. Department of Health and Human Services has entered into
funding agreements with certain vaccine manufacturers, and we are
negotiating with others. Neither is the case with Vaxart,” said Michael
R. Caputo, the department’s assistant secretary for public affairs.
“Vaxart’s vaccine candidate was selected to participate in preliminary
U.S. government studies to determine potential areas for possible
Operation Warp Speed partnership and support. At this time, those
studies are ongoing, and no determinations have been made.”

1 Some officials at the Department of Health and Human Services have
2 grown concerned about whether companies including Vaxart are trying
3 to inflate their stock prices by exaggerating their roles in Warp Speed, a
4 senior Trump administration official said. The department has relayed
5 those concerns to the Securities and Exchange Commission, said the
6 official, who spoke on the condition of anonymity.

7 * * *

8 Vaxart, though, is where the most money was made the fastest.

9 At the start of the year, its shares were around 35 cents. Then in late
10 January, Vaxart began working on an orally administered coronavirus
11 vaccine, and its shares started rising.

12 Vaxart's largest shareholder was a New York hedge fund, Armistice
13 Capital, which last year acquired nearly two-thirds of the company's
14 shares. Two Armistice executives, including the hedge fund's founder,
15 Steven Boyd, joined Vaxart's board of directors. The hedge fund also
16 purchased rights, known as warrants, to buy 21 million more Vaxart
17 shares at some point in the future for as little as 30 cents each.

18 Vaxart has never brought a vaccine to market. It has just 15 employees.
19 But throughout the spring, Vaxart announced positive preliminary data
20 for its vaccine, along with a partnership with a company that could
21 manufacture it. By late April, with investors sensing the potential for big
22 profits, the company's shares had reached \$3.66 — a tenfold increase
23 from January.

24 On June 8, Vaxart changed the terms of its warrants agreement with
25 Armistice, making it easier for the hedge fund to rapidly acquire the 21
26 million shares, rather than having to buy and sell in smaller batches.

27 One week later, Vaxart announced that its chief executive was stepping
28 down, though he would remain chairman. The new C.E.O., Mr. Floroiu,
had previously worked with Mr. Boyd, Armistice's founder, at the hedge
fund and the consulting firm McKinsey.

On June 25, Vaxart announced that it had signed a letter of intent with
another company that might help it mass-produce a coronavirus vaccine.
Vaxart's shares nearly doubled that day.

The next day, Vaxart issued its news release saying it had been selected
for Operation Warp Speed. Its shares instantly doubled again, at one
pointing hitting \$14, their highest level in years.

"We are very pleased to be one of the few companies selected by
Operation Warp Speed, and that ours is the only oral vaccine being
evaluated," Mr. Floroiu said.

Armistice took advantage of the stock's exponential increase – at that
point up more than 3,600 percent since January. On June 26, a Friday,
and the next Monday, the hedge fund exercised its warrants to buy nearly
21 million Vaxart shares for either 30 cents or \$1.10 a share – purchases

1 it would not have been able to make as quickly had its agreement with
2 Vaxart not been modified weeks earlier.

3 Armistice then immediately sold the shares at prices from \$6.58 to
4 \$12.89 a share, according to securities filings. The hedge fund's profits
5 were immense: more than \$197 million.

6 "It looks like the warrants may have been reconfigured at a time when
7 they knew good news was coming," said Robert Daines, a professor at
8 Stanford Law School who is an expert on corporate governance. "That's
9 a valuable change, made right as the company's stock price was about
10 to rise."

11 At the same time, the hedge fund also unloaded some of the Vaxart
12 shares it had previously bought, notching tens of millions of dollars in
13 additional profits.

14 By the end of that Monday, June 29, Armistice had sold almost all of its
15 Vaxart shares.

16 Mr. Boyd and Armistice declined to comment.

17 Mr. Floroiu said the change to the Armistice agreement "was in the best
18 interests of Vaxart and its stockholders" and helped it raise money to
19 work on the Covid-19 vaccine.

20 He and other Vaxart board members also were positioned for big
21 personal profits. When he became chief executive in mid-June, Mr.
22 Floroiu received stock options that were worth about \$4.3 million. A
23 month later, those options were worth more than \$28 million.

24 Normally when companies issue stock options to executives, the options
25 can't be exercised for months or years. Because of the unusual terms and
26 the run-up in Vaxart's stock price, most of Mr. Floroiu's can be cashed
27 in now.

28 Vaxart's board members also received large grants of stock options,
giving them the right to buy shares in the company at prices well below
where the stock is now trading. The higher the shares fly, the bigger the
profits.

"Vaxart is disrupting the vaccine world," Mr. Floroiu boasted during a
virtual investor conference on Thursday. He added that his impression
was that "it's OK to make a profit from Covid vaccines, as long as you're
not profiteering."

On this news, Vaxart's stock fell from \$12.29 to \$11.16. As this news has been digested by the
market, Vaxart's stock has fallen to as low as \$8.90 on August 4, 2020.

V. CLASS ALLEGATIONS

37. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil

Procedure 23(a) and 23(b)(3) on behalf of a Class consisting of all those who purchased or otherwise

CLASS ACTION COMPLAINT - 11

No.

010941-11/1334874 V1



HAGENS BERMAN

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1 acquired securities of Vaxart between June 25, 2020 and July 25, 2020, inclusive, and who were
2 damaged thereby (the “Class”). Excluded from the Class are Defendants herein, the officers and
3 directors of the Company at all relevant times, members of their immediate families and their legal
4 representatives, heirs, successors or assigns and any entity in which Defendants have or had a
5 controlling interest.

6 38. The members of the Class are so numerous that joinder of all members is
7 impracticable. Throughout the Class Period, Vaxart shares were actively traded on the NASDAQ.
8 While the exact number of Class members is unknown to Plaintiff at this time and can only be
9 ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of
10 members of the Class. Class members who purchased Vaxart common stock may be identified from
11 records maintained by Vaxart or its transfer agent(s) and may be notified of this class action using a
12 form of notice similar to that customarily used in securities class actions.

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

16 40. Plaintiff will fairly and adequately protect Class members’ interests and have retained
17 competent counsel experienced in class actions and securities litigation.

18 41. Common questions of law and fact exist as to all Class members and predominate
19 over any questions solely affecting individual Class members. Among the questions of fact and law
20 common to the Class are whether:

- 21 (a) the federal securities laws were violated by Defendants’ acts as alleged herein;
22 (b) Defendants made statements to the investing public during the Class Period
23 that were false, misleading or omitted material facts;
24 (c) Defendants acted with scienter; and
25 (d) Class members suffered compensable damages.

26 42. A class action is superior to all other available methods for the fair and efficient
27 adjudication of this action because joinder of all Class members is impracticable. Additionally, the
28 damage suffered by some individual Class members may be relatively small so that the burden and

1 expense of individual litigation make it impossible for such members to individually redress the
2 wrong done to them. There will be no difficulty in the management of this action as a class action.

3 **VI. UNDISCLOSED ADVERSE FACTS**

4 43. The market for Vaxart's securities was an open, well-developed and efficient market
5 at all relevant times. As a result of these materially false and misleading statements and failures to
6 disclose described herein, Vaxart's securities traded at artificially inflated prices during the Class
7 Period. Plaintiff and the other members of the Class purchased or otherwise acquired Vaxart's
8 securities relying upon the integrity of the market price of the Company's securities and market
9 information relating to Vaxart and have been damaged thereby.

10 44. During the Class Period, Defendants materially misled the investing public, thereby
11 inflating the price of Vaxart's securities, by publicly issuing false and misleading statements and
12 omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not
13 false and misleading. Said statements and omissions were materially false and misleading in that
14 they failed to disclose material adverse non-public information and misrepresented the truth about
15 the Company, as well as its business, accounting, financial operations and prospects, as alleged
16 herein.

17 45. At all relevant times, the material misrepresentations and omissions particularized in
18 this Complaint directly or proximately caused or were a substantial contributing cause of the
19 damages sustained by Plaintiff and the other members of the Class. As described herein, during the
20 Class Period, Defendants made or caused to be made a series of materially false and misleading
21 statements about Vaxart's financial well-being and prospects.

22 46. These material misstatements and omissions had the cause and effect of creating in
23 the market an unrealistically positive assessment of the Company and its financial well-being and
24 prospects, thus causing the Company's securities to be overvalued and artificially inflated at all
25 relevant times. Defendants' materially false and misleading statements made during the Class Period
26 resulted in Plaintiff and the other members of the Class purchasing the Company's securities at
27 artificially inflated prices, thus causing the damages complained of herein.

28

VII. LOSS CAUSATION

1
2 47. During the Class Period, as detailed herein, Defendants engaged in a scheme to
3 deceive the market and a course of conduct that artificially inflated the prices of Vaxart’s securities
4 and operated as a fraud or deceit on Class Period purchasers of Vaxart’s securities by failing to
5 disclose to investors that the Company’s financial results were materially misleading and
6 misrepresented material information. When Defendants’ misrepresentations and fraudulent conduct
7 were disclosed and became apparent to the market, the prices of Vaxart’s securities fell precipitously
8 as the prior inflation came out of the Company’s stock price. As a result of their purchases of
9 Vaxart’s securities during the Class Period, Plaintiff and the other Class members suffered economic
10 loss.

11 48. By failing to disclose the true state of the Company’s financial statements, investors
12 were not aware of the true state of the Company’s financial status. Therefore, Defendants presented a
13 misleading picture of Vaxart’s business practices and procedures. Thus, instead of truthfully
14 disclosing during the Class Period the true state of the Company’s business, Defendants caused
15 Vaxart to conceal the truth.

16 49. Defendants’ false and misleading statements had the intended effect and caused
17 Vaxart’s common stock to trade at artificially inflated levels throughout the Class Period. The stock
18 price drops discussed herein caused real economic loss to investors who purchased the Company’s
19 securities during the Class Period.

20 50. The decline in the price of Vaxart’s common stock after the truth came to light was a
21 direct result of the nature and extent of Defendants’ fraud finally being revealed to investors and the
22 market. The timing and magnitude of Vaxart’s common stock price declines negates any inference
23 that the loss suffered by Plaintiff and the other Class members was caused by changed market
24 conditions, macroeconomic or industry factors, or Company-specific facts unrelated to the
25 Defendants’ fraudulent conduct. The economic loss suffered by Plaintiff and the other Class
26 members was a direct result of Defendants’ fraudulent scheme to artificially inflate the prices of
27 Vaxart’s securities and the subsequent decline in the value of Vaxart’s securities when Defendants’
28 prior misrepresentations and other fraudulent conduct were revealed.

1 **VIII. SCIENTER ALLEGATIONS**

2 51. As alleged herein, Defendants acted with scienter in that Defendants knew that the
3 public documents and statements issued or disseminated in the name of the Company during the
4 Class Period were materially false and misleading; knew that such statements or documents would be
5 issued or disseminated to the investing public; and knowingly and substantially participated or
6 acquiesced in the issuance or dissemination of such statements or documents as primary violations of
7 the federal securities laws.

8 52. As set forth herein, Defendants, by virtue of their receipt of information reflecting the
9 true facts regarding Vaxart, their control over, receipt and/or modification of Vaxart’s allegedly
10 materially misleading statements and omissions, and/or their positions with the Company which
11 made them privy to confidential information concerning Vaxart, participated in the fraudulent
12 scheme alleged herein.

13 **IX. THE PRESUMPTION OF RELIANCE**

14 53. At all relevant times, the market for Vaxart’s common stock was efficient for the
15 following reasons, among others:

- 16 (a) Vaxart’s stock met the requirements for listing, and was listed and actively
17 traded on the NASDAQ, a highly efficient and automated market;
- 18 (b) As a regulated issuer, Vaxart filed periodic reports with the SEC and the
19 NASDAQ;
- 20 (c) Vaxart regularly communicated with public investors via established market
21 communication mechanisms, including through regular dissemination of press releases on the
22 national circuits of major newswire services and through other wide ranging public
23 disclosures, such as communications with the financial press and other similar reporting
24 services; and
- 25 (d) Vaxart was followed by numerous securities analysts employed by major
26 brokerage firms who wrote reports which were distributed to those brokerage firms’ sales
27 force and certain customers. Each of these reports was publicly available and entered the
28 public market place.

XI. CLAIMS AGAINST DEFENDANTS

COUNT I

**Violation of Section 10(b) of The Exchange Act
And SEC Rule 10b-5 Promulgated Thereunder
(Against All Defendants)**

58. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein. This claim is asserted on behalf of all members of the Class against all Defendants.

59. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did (i) deceive the investing public, including Plaintiff and the other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Vaxart securities; and (iii) cause Plaintiff and the other members of the Class to purchase Vaxart securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

60. These Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Vaxart securities in violation of § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. Defendants are sued as primary participants in the wrongful and illegal conduct charged herein. The Individual Defendants are also sued herein as controlling persons of Vaxart, as alleged herein.

61. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Vaxart securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Vaxart's finances and business prospects.

1 62. By virtue of their positions at Vaxart, Defendants had actual knowledge of the
2 materially false and misleading statements and material omissions alleged herein and intended
3 thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants
4 acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such
5 facts as would reveal the materially false and misleading nature of the statements made, although
6 such facts were readily available to Defendants. Said acts and omissions of Defendants were
7 committed willfully or with reckless disregard for the truth. In addition, each Defendant knew or
8 recklessly disregarded that material facts were being misrepresented or omitted as described above.

9 63. Information showing that Defendants acted knowingly or with reckless disregard for
10 the truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or
11 directors of Vaxart, the Individual Defendants had knowledge of the details of Vaxart's internal
12 affairs.

13 64. The Control Defendants and Executive Defendants are liable both directly and
14 indirectly for the wrongs complained of herein. Because of their positions of control and authority,
15 the Individual Defendants were able to and did, directly or indirectly, control the content of the
16 statements of Vaxart. As officers and/or directors of a publicly-held company, the Individual
17 Defendants had a duty to disseminate timely, accurate, and truthful information with respect to
18 Vaxart's businesses, operations, future financial condition and future prospects. As a result of the
19 dissemination of the aforementioned false and misleading reports, releases and public statements, the
20 market price of Vaxart securities was artificially inflated throughout the Class Period. In ignorance
21 of the adverse facts concerning Vaxart's business and financial condition which were concealed by
22 Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Vaxart
23 securities at artificially inflated prices and relied upon the price of the securities, the integrity of the
24 market for the securities and/or upon statements disseminated by Defendants, and were damaged
25 thereby.

26 65. During the Class Period, Vaxart securities were traded on an active and efficient
27 market. Plaintiff and the other members of the Class, relying on the materially false and misleading
28 statements described herein, which the Defendants made, issued or caused to be disseminated, or

1 relying upon the integrity of the market, purchased or otherwise acquired shares of Vaxart securities
2 at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members
3 of the Class known the truth, they would not have purchased or otherwise acquired said securities, or
4 would not have purchased or otherwise acquired them at the inflated prices that were paid. At the
5 time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Vaxart
6 securities was substantially lower than the prices paid by Plaintiff and the other members of the
7 Class. The market price of Vaxart securities declined sharply upon public disclosure of the facts
8 alleged herein to the injury of Plaintiff and Class members.

9 66. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of
10 the market, they paid artificially inflated prices for Vaxart securities, which inflation was removed
11 from its price when the true facts became known. Plaintiff and the Class would not have purchased
12 Vaxart securities at the prices they paid, or at all, if they had been aware that the market price had
13 been artificially and falsely inflated by these Defendants' misleading statements.

14 67. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and
15 the other members of the Class suffered damages attributable to the material misstatements and
16 omissions alleged herein in connection with their purchases of Vaxart securities during the Class
17 Period.

18 68. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly
19 or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated
20 thereunder.

21 **COUNT II**
22 **For Violations of Section 20(a) of The Exchange Act**
(Against the Control Defendants and Executive Defendants)

23 69. Plaintiff repeats and realleges each and every allegation contained above as if fully set
24 forth herein.

25 70. This Count is asserted on behalf of all members of the Class against the Control
26 Defendants and Executive Defendants, for violations of Section 20(a) of the Exchange Act, 15
27 U.S.C. § 78t(a).

1 71. The Control Defendants and Executive Defendants were and acted as controlling
 2 persons of Vaxart within the meaning of Section 20(a) of the Exchange Act as alleged herein. By
 3 virtue of their high-level positions with the Company, participation in and/or awareness of the
 4 Company's operations and/or intimate knowledge of the Company's actual performance, the
 5 Individual Defendants had the power to influence and control and did influence and control, directly
 6 or indirectly, the decision-making of the Company, including the content and dissemination of the
 7 various statements which Plaintiff contends are false and misleading. Each of the Individual
 8 Defendants was provided with or had unlimited access to copies of the Company's reports, press
 9 releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or
 10 shortly after these statements were issued, and had the ability to prevent the issuance of the
 11 statements or cause the statements to be corrected.

12 72. In addition, each of the Control Defendants and Executive Defendants had direct
 13 involvement in the day- to-day operations of the Company and, therefore, is presumed to have had
 14 the power to control or influence the particular transactions giving rise to the securities violations as
 15 alleged herein and exercised the same.

16 73. As set forth above, the Control Defendants and Executive Defendants each violated §
 17 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their
 18 controlling positions, the Control Defendants and Executive Defendants are liable pursuant to § 20(a)
 19 of the Exchange Act. As a direct and proximate result of these Defendants' wrongful conduct,
 20 Plaintiff and the other members of the Class suffered damages in connection with their purchases of
 21 the Company's securities during the Class Period.

22 **XII. PRAYER FOR RELIEF**

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

- 24 A. Declaring the action to be a proper class action pursuant to Rule 23(a) and (b)(3) of
 25 the Federal Rules of Civil Procedure on behalf of the Class defined herein;
- 26 B. Awarding all damages and other remedies available under the Exchange Act in favor
 27 of Plaintiff and all members of the Class against Defendants in an amount to be proven at trial,
 28 including interest thereon;

1 C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this
2 action, including attorneys' fees and expert fees; and

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

4 **XIII. JURY DEMAND**

5 Plaintiff demands a trial by jury.

6
7 Dated: August 24, 2020

HAGENS BERMAN SOBOL SHAPIRO LLP

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24 *Attorneys for Plaintiff Kirk Himmelberg*

CERTIFICATION PURSUANT TO FEDERAL SECURITIES LAW

I, Kirk Himmelberg, make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 (“Securities Act”) and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) as amended by the Private Securities Litigation Reform Act of 1995:

1. I have reviewed a complaint alleging securities fraud against Vaxart, Inc. (VXRT) and various of its executives, adopt its allegations and authorize its filing on my behalf.

2. I did not acquire the security that is the subject of this action at the direction of Plaintiff’s counsel in order to participate in this private action or any other litigation under the federal securities laws.

3. I am willing to serve as a representative party on behalf of a Class of investors who purchased or otherwise acquired Vaxart securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.

4. To the best of my current knowledge, the attached sheet lists all of my transactions in Vaxart securities during the Class Period as specified in the Complaint.

5. My transactions during the Class Period in the securities that are the subject of this action are set forth in the Chart attached hereto.

6. During the three-year period preceding the date on which this Certification is signed, I have not served or sought to serve as a representative party on behalf of a class under the federal securities laws.

7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such

reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed Aug 24, 2020 | 11:02 AM PDT
(Date)

DocuSigned by:
Kirk Himmelberg
04323DEDD2044EA...

(Signature)

Kirk Himmelberg
(Type or Print Name)

Kirk Himmerberg Vaxart, Inc. (VXRT) Transactions

Class Period 06/25/20 - 07/25/20

PURCHASES

Date	Shares	Share Price
06/30/20	9,900	\$8.4400
06/30/20	100	\$8.4300
07/14/20	12,929	\$16.2500
07/14/20	4	\$16.2200
07/14/20	300	\$16.2100
07/14/20	1,600	\$16.2300
07/14/20	2,902	\$16.2400
07/14/20	453	\$16.2700
07/14/20	812	\$16.2600
07/14/20	1,600	\$16.2300
07/16/20	1,006	\$15.7800
07/16/20	200	\$15.7700
07/16/20	798	\$15.7699
07/16/20	2,296	\$15.7900
07/16/20	1,006	\$15.7800
07/17/20	7,900	\$16.4000
07/17/20	22,100	\$16.3600
07/23/20	5,000	\$13.6300
07/23/20	5,700	\$13.5200

SALES

Date	Shares	Share Price
07/15/20	39,000	\$14.8600