

1 ROBBINS GELLER RUDMAN
 & DOWD LLP
 2 SHAWN A. WILLIAMS (213113)
 DANIEL J. PFEFFERBAUM (248631)
 3 ALAINA L. GILCHRIST (335807)
 Post Montgomery Center
 4 One Montgomery Street, Suite 1800
 San Francisco, CA 94104
 5 Telephone: 415/288-4545
 415/288-4534 (fax)
 6 shawnw@rgrdlaw.com
 dpfefferbaum@rgrdlaw.com
 7 agilchrist@rgrdlaw.com

- and -

8 JUAN CARLOS SANCHEZ (301834)
 PATTON L. JOHNSON (320631)
 9 655 West Broadway, Suite 1900
 San Diego, CA 92101
 10 Telephone: 619/231-1058
 619/231-7423 (fax)
 11 jsanchez@rgrdlaw.com
 pjohnson@rgrdlaw.com

12 Lead Counsel for Lead Plaintiff

13 [Additional counsel appear on signature page.]

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

17 BIAO WANG, Individually and on Behalf of)
 18 All Others Similarly Situated,)
 19 Plaintiff,)
 20 vs.)
 21 ZYMERGEN INC., et al.,)
 22 Defendants.)

Case No. 5:21-cv-06028-PCP
 SECOND AMENDED CLASS ACTION
 COMPLAINT FOR VIOLATIONS OF THE
 FEDERAL SECURITIES LAWS
DEMAND FOR JURY TRIAL

23
24 [REDACTED]

1 Lead Plaintiff and Class Representative Biao Wang (“Wang”) and Plaintiff West Palm
2 Beach Firefighters’ Pension Fund (“WPBFPF”) (collectively, “Plaintiffs”), individually, and on
3 behalf of all others similarly situated, by and through their attorneys, allege the following upon
4 information and belief, except as to those allegations concerning Plaintiffs, which are alleged upon
5 personal knowledge. Plaintiffs’ information and belief are based upon, among other things, their
6 counsel’s investigation, which includes, without limitation: (a) review and analysis of regulatory
7 filings made by Zymergen Inc. (“Zymergen” or the “Company”) with the United States Securities
8 and Exchange Commission (“SEC”); (b) review and analysis of press releases, earnings call
9 transcripts and media reports issued and disseminated by Zymergen; (c) review of other publicly
10 available information concerning Zymergen, including transcripts of Zymergen presentations at
11 investor conferences, reports issued by analysts and articles in the financial press; and (d) review
12 and analysis of evidence obtained during ongoing discovery to date.

13 **I. SUMMARY OF AMENDMENT**

14 1. This Second Amended Class Action Complaint for Violations of the Federal
15 Securities Laws (“SAC”) contains new allegations that (i) re-plead control claims against
16 defendants previously dismissed from this action alleging control of Zymergen, (ii) add control
17 claims based on the control of certain board-member defendants alleged to be primary violators,
18 (iii) add new defendants closely related to defendants previously named and alleges control claims
19 against them, and (iv) allege liability pursuant to the doctrine of *respondeat superior* against the
20 employer or principal of certain defendants.

21 2. First, based on discovery obtained to date, the SAC bolsters the allegations that the
22 Controlling Stockholders (defined below) controlled Zymergen. The SAC alleges that the
23 Controlling Stockholders possessed and exercised control over Zymergen’s day-to-day
24 management and operations through formal and informal methods and that the Controlling
25 Stockholders were necessary for, and exerted control over, the IPO process and the contents of the
26 Registration Statement.

27 3. Second, the SAC adds control claims against the Controlling Stockholders based
28 on their control over certain defendants they placed on the Zymergen’s Board (defined below).

1 These members of the Board are alleged to be primary violators and discovery has shown they
2 acted at the direction and behest of the Controlling Stockholders.

3 4. Third, the SAC adds as defendants the venture capital funds' investment
4 management companies (*i.e.*, SB Investment Advisers (US) Inc., DCVC Management Co, LLC,
5 and True Venture Management, L.L.C.) and alleges control claims against these defendants. In
6 addition to the venture funds previously named, each of the Controlling Stockholders also operated
7 through these investment management companies, thus these new defendants are also subject to
8 liability as control persons.

9 5. Lastly, the SAC adds an additional theory of vicarious liability under the doctrine
10 of *respondeat superior* against the Controlling Stockholders for violations of the securities laws
11 committed by their employees or agents.

12 **II. NATURE OF THE ACTION AND OVERVIEW**

13 6. This is a Class action on behalf of persons and entities that purchased or otherwise
14 acquired Zymergen common stock pursuant and/or traceable to the registration statement and
15 prospectus (collectively, the "Registration Statement") issued in connection with the Company's
16 April 2021 initial public offering ("IPO" or "Offering"). Plaintiffs pursue claims against
17 Defendants under the Securities Act of 1933 ("Securities Act").

18 7. Zymergen integrates computational and manufacturing technologies to design,
19 engineer and optimize microbes for industrial applications. The Company developed a platform
20 that treats the genome as a search space, using proprietary machine learning algorithms and
21 advanced automation to identify genetic changes that improve the economics for its customers'
22 bio-based products for a range of industries, including electronics, consumer care, chemicals,
23 materials, agriculture and pharmaceuticals. In addition, Zymergen's platform is used to discover
24 novel molecules used to enable unique material properties. The Company was incorporated in
25 Delaware on April 24, 2013.

26 8. The Company reported that it partnered with Nature to design, develop, and
27 commercialize bio-based breakthrough products that deliver extraordinary value to customers in a
28 broad range of industries, including electronics, consumer care and agriculture. Zymergen

1 reported that its goal was to create new products with a proprietary platform that unlocked the
2 design and manufacturing efficiency of biological processes with technology's ability to rapidly
3 iterate and control diverse functions. Zymergen called this process biofacturing and claimed it
4 allowed the Company to create better products faster, cheaper and more sustainably than
5 traditional chemistry by engineering microbes to make novel biomolecules that are the key
6 ingredients in those products.

7 9. Zymergen completed its IPO on April 22, 2021. On April 23, 2021, the Company
8 filed its prospectus on Form 424B4 with the SEC, which forms part of the Registration Statement.
9 In the IPO, the Company sold approximately 18,549,500 shares of common stock at a price of
10 \$31.00 per share, raising proceeds of approximately \$575 million. The Company received
11 proceeds of approximately \$529.9 million from the Offering, net of approximately \$40.3 million
12 of underwriting discounts and commissions and \$4.9 million of Offering costs. The proceeds from
13 the IPO were purportedly to be used for working capital and other general corporate purposes,
14 including the continued investment in commercializing Zymergen's existing products, launching
15 products in its pipeline and furthering the development of its biofacturing platform and technology.

16 10. Following the completion of the IPO, on April 22, 2021, Zymergen's stock began
17 trading on the NASDAQ under the stock symbol "ZY." The Company had approximately
18 100.4 million shares of common stock outstanding and a market capitalization of approximately
19 \$3 billion upon completion of the IPO. On April 29, 2021, the Company's stock price traded as
20 high as \$52 per share, increasing market capitalization to approximately \$5.2 billion.

21 11. As detailed herein, the Registration Statement was inaccurate and misleading,
22 contained untrue statements of material facts, omitted to state facts necessary to make the
23 statements made not misleading and omitted to state material facts required to be stated therein.
24 The untrue statements of material facts and omissions concerned the Company's biofacturing
25 platform; the Company's ability to create better products faster, cheaper and more sustainably
26 using the biofacturing platform; the product development process; the development status of 11
27 products in the Company's product pipeline; the market opportunity for those products; and when
28 those products would generate revenue.

1 12. The representations in the Registration Statement detailed below were materially
2 misleading because, as the Company disclosed on August 3, 2021 and November 3, 2021,
3 Zymergen was unable to produce products that could be sold at a profit when it created,
4 manufactured and distributed the products on its own. In addition, the representations were
5 materially misleading because Defendants failed to disclose that several key target customers had
6 technical issues implementing Hyaline, the Company’s first and only product to be launched at the
7 time of the IPO, into their manufacturing processes or that there was only a “hypothetical” near-
8 term market for Hyaline due to there being “no hit product yet in the foldable display market.”
9 Indeed, the Company abandoned Hyaline and another optical film product because there was a
10 smaller near-term market opportunity than represented in the Registration Statement and
11 abandoned all of the consumer care products because those products could not be sold at a profit
12 when Zymergen created, manufactured and distributed them on its own. As a result, Zymergen
13 did not generate product revenue in 2021 and 2022, as it represented in the Registration Statement.

14 13. Defendants represented that Zymergen’s biofacturing platform could create better
15 products faster, cheaper and more sustainably than chemical and materials companies; that the
16 demand for innovative materials had never been greater; and that synthetic biology companies like
17 Zymergen were a better alternative to chemical and materials companies that struggled to innovate
18 because they used a limited molecular palette, had substantial capital expenditures and were among
19 the planet’s worst industrial polluters.

20 14. Eleven Zymergen products were highlighted in the Registration Statement: three
21 optical film products and one bio-based epoxy product for the electronics industry; four consumer
22 care products, including a naturally derived insect repellent; and three agricultural products.
23 Defendants represented that these products were in various stages of development and described
24 the development process, representing that: (a) Zymergen’s business development personnel
25 worked with customers to define a set of properties for a material that the customers would find
26 valuable; then (b) designed and developed engineered microbes that manufactured the novel
27 biomolecule that would be a key ingredient in a breakthrough product; then (c) had Contract
28 Manufacturing Organizations (“CMOs”) manufacture the product; and finally (d) used

1 Zymergen’s sales force and marketing capabilities to contract with customers and sell the product
2 to them.

3 15. In describing the product development process, Defendants highlighted Hyaline,
4 the first and only product launched by Zymergen at the time of the IPO. They represented Hyaline
5 was launched in December 2020, to customers in the electronic industry, which began the expected
6 6- to 18-month product qualification process with multiple customers. Defendants emphasized the
7 importance of the qualification process in Zymergen’s target markets and represented that Hyaline
8 (and other products) would generate revenue after customers completed all aspects of the
9 qualification process and decided to place an order for the product.

10 16. Defendants represented that Hyaline was an optical film designed for electronics
11 companies to use for display touch sensors in personal devices and other applications and would
12 allow customers to make robust foldable touchscreens and high density flexible printed circuits.
13 Defendants represented that Hyaline was expected to generate revenue in the second half of 2021,
14 just a few months after the completion of the IPO, and that Zymergen’s global direct sales force
15 and a team of application sales engineers were working with customers on the sales qualification
16 process for Hyaline wherein customers would be able to validate the product and qualify it as a
17 standard component in their final electronic devices.

18 17. Defendants also represented that other optical film products would generate
19 revenue following the 6- to 18-month qualification process and that the four consumer care
20 products and three agricultural products would generate revenue upon launch because a product
21 qualification process was unnecessary.

22 18. Defendants represented that Zymergen would grow its business in several ways and
23 that it generally targeted products that could support annual sales of greater than \$150 million.
24 Defendants assured investors that the market opportunity addressable by Zymergen’s biofacturing
25 platform was enormous and diverse – at least \$1.2 trillion across 20 separate industries. They
26 represented that the market opportunity for the three industries being pursued with its 11 pipeline
27 products – electronics, consumer care and agriculture – was approximately \$150 billion, including
28

1 the foldable display market for Hyaline being over \$1 billion in 2020, and the market for insect
2 repellent being over \$1.5 billion.

3 19. The representations about Zymergen's biofacturing platform; the Company's
4 ability to create better products faster, cheaper and more sustainably; the product development
5 process; the development status of the 11 products in the product pipeline; the market opportunity
6 for those products; and when those products would generate revenue were particularly important
7 to investors given the Company's precarious financial condition. Zymergen reported just
8 \$15.4 million of revenue in 2019, and a net loss of \$236.8 million. In 2020, Zymergen reported
9 just \$13.3 million of revenue and a net loss of \$262.2 million. The increasing net losses caused
10 the Company to be insolvent as of December 31, 2020, with an accumulated deficit of
11 \$773.7 million. The recurring losses and accumulated deficit meant Zymergen needed to raise
12 equity or debt to fund its operations until the Company could generate sufficient revenues to fund
13 its operations. That, in turn, caused the Company's auditors to note that there was substantial
14 doubt about the Company's ability to continue operating as a going concern.

15 20. The Risk Factors contained in the Registration Statement were also materially
16 inaccurate and misleading. Defendants represented that various risks "could," "would" or "might"
17 negatively impact Zymergen "if" they occurred. These representations were materially inaccurate
18 and misleading because the warned-of risks had already occurred and were negatively impacting
19 Zymergen at the time of the IPO.

20 21. Beginning on August 3, 2021, *less than four months after the completion of the*
21 *IPO*, the Company revealed numerous material adverse facts that informed investors the
22 Registration Statement contained untrue statements of material facts and omitted material facts.
23 On that date, Zymergen issued a press release and held a conference call to provide a business
24 update regarding its commercial product pipeline and financial forecast. The Company reported
25 that: (i) there were issues with its commercial products pipeline that would impact the Company's
26 delivery timeline and revenue projections; (ii) it was clear the commercial opportunity for the
27 Company's first product, Hyaline, was less than expected; (iii) Zymergen's Board of Directors
28 (the "Board") had initiated a series of deep dives into the Company's product pipeline and

1 development process; (iv) the Board anticipated that the roadmap and timelines for Zymergen’s
2 follow-on products could also be impacted; (v) as a result of the foregoing, the Company no longer
3 expected product revenue in 2021, and only expected immaterial product revenue in 2022; and
4 (vi) without a firm pipeline of customers and visibility on commitments, the Company’s
5 projections beyond 2022, were highly uncertain.

6 22. The Company provided details stating that, through its receipt of periodic updates
7 regarding the Company’s progress toward its goals, the Board had learned of “significant
8 execution challenges within the organization.” The Board had identified several contributing
9 factors to the revisions of its plan for product delivery timelines and revenues. First, *during the*
10 *quarter that the IPO was completed*, several key target customers encountered technical issues in
11 implementing Hyaline into their manufacturing processes, resulting in a delay in the commercial
12 ramp of Hyaline. Second, the total addressable market for foldable display applications, the market
13 for Hyaline, was in an earlier stage than previously expected, with emerging data indicating a
14 smaller near-term market opportunity, with scaled demand pushed out in time and growing more
15 slowly than anticipated. Indeed, the Company admitted that there was no near-term market for
16 Hyaline and that the market was just “theoretical” because there was “no hit product yet in the
17 foldable display market.” Third, the Company’s commercial teams did not have significant insight
18 into the customer qualification process and into their customers and users, which resulted in
19 Zymergen’s forecasts overestimating near-term demand. As a result, the Company reported it was
20 already making substantial changes in the commercial team.

21 23. Defendant Jay Flatley (“Flatley”), the Company’s acting Chief Executive Officer
22 (“CEO”), who replaced Defendant Josh Hoffman (“Hoffman”) after Hoffman was abruptly
23 terminated on August 2, 2021, acknowledged the obvious seriousness of the numerous unexpected
24 adverse disclosures, stating: “*I want to perhaps state the obvious that we’re taking this situation*
25 *extremely seriously.*” Flatley said that as soon as the Board learned of the problems, the Board
26 and management immediately started to work to fully understand the issues and began developing
27 a plan to address them, including the formation of dedicated committees, including a Strategic
28 Oversight Committee, which was working with expert advisors to conduct an in-depth review of

1 the Company's operational, financial, product and commercialization efforts to facilitate the
2 development of an updated strategic plan. That work was focused on: (i) a deep dive into the
3 Company's sales forecasting process to examine how the initial forecast was developed, where the
4 issues arose and how to improve the process going forward; (ii) the retention of a number of
5 outside experts to examine the robustness of the products coming out of the pipeline and their
6 readiness for full commercialization; and (iii) digging into the Company's long-term market
7 opportunities to ensure the product pipeline was aligned with industry trends and customer
8 demand. The Company was also developing a plan to reduce and align expenses with the change
9 in the Company's revenue expectations.

10 24. In short, Flatley told investors that just about everything in the Registration
11 Statement concerning the development, commercial opportunity and sale of the 11 products in the
12 Company's pipeline was not true and that Zymergen was now in the process of determining which
13 products and markets the Company would target in the future. In addition, Flatley acknowledged
14 Zymergen had not previously operated with transparency and openness, stating that the Company
15 would conduct a cultural assessment to ensure that there would be broad-based accountability
16 across the organization and would operate with transparency and openness. He said that the Board
17 and management were focused on reestablishing the credibility of the leadership team and the
18 Company and that Hoffman had been terminated, effective immediately, as part of the effort to
19 reestablish the credibility of the leadership team and the Company.

20 25. The Company never claimed this material adverse information did not exist, or was
21 not known or knowable, at the time of the IPO. Indeed, the Company admitted the technical issues
22 several key customers encountered implementing Hyaline into their manufacturing processes
23 (which delayed the commercial ramp of the product and caused Zymergen to no longer expect any
24 product revenue in 2021, and only immaterial product revenue in 2022) were occurring during the
25 quarter the Company completed the IPO.

26 26. Nor did the Company claim that the emerging data on the total addressable market
27 for foldable display applications (which indicated a smaller near-term market opportunity that was
28 growing less rapidly than anticipated) did not exist, or was not known or knowable, at the time of

1 the IPO. Other adverse disclosures show that the data did exist at the time of the IPO. Flatley's
2 admission on August 3, 2021, that there was no market for Hyaline and that it was just "theoretical"
3 because there was "no hit product yet in the foldable display market" establishes that there was no
4 market for Hyaline at the time of the IPO.

5 27. In addition, the Company admitted it did not have significant insight into the
6 customer qualification process or their customers and users at the time of the IPO, which resulted
7 in the Company's forecasts overestimating near-term demand. As a result, Zymergen was: (i)
8 making substantial changes in its commercial teams; (ii) conducting a deep dive into the
9 Company's sales forecasting process to examine how the initial forecasts were developed, where
10 the issues arose and how to improve that process going forward; and (iii) examining the robustness
11 of the products coming out of the Company's pipeline and their readiness for full
12 commercialization.

13 28. The Company also revealed that there were issues with the long-term opportunities
14 for its products, reporting that Zymergen was digging into the Company's long-term market
15 opportunities to ensure the product pipeline was aligned with industry standards and customer
16 demand and that, with the assistance of a top-tier consulting firm, the Company was doing a full
17 assessment of Zymergen's target markets and the fit of its products into the pipeline of those
18 markets, including an exploration of adjacent opportunities that could possibly provide new
19 revenue sources.

20 29. Other disclosures on August 3, 2021, also demonstrate that the adverse information
21 about Hyaline, the total addressable market for foldable display applications, the commercial
22 teams' lack of significant insight into the customer qualification process and their customers and
23 users and the resulting overestimated forecast of near-term demand for Zymergen products existed
24 at the time of the IPO, including that: (i) Zymergen would conduct a cultural assessment to ensure
25 there would be broad-based accountability across the organization; (ii) Zymergen was focused on
26 reestablishing the credibility of the leadership team and the Company; (iii) Hoffman had been
27 terminated as part of the effort to reestablish the credibility of the leadership team and the
28 Company; and (iv) the Company would operate with transparency and openness in the future.

1 30. The reaction of analysts to the unexpected material adverse disclosures indicates
2 that they believed the adverse information existed at the time of the IPO. Analysts were stunned
3 by the numerous adverse disclosures, questioned the Company’s credibility during the August 3,
4 2021 earnings call and issued reports after the earnings call, in which they downgraded the
5 Company’s stock and questioned when the adverse information was known.

6 31. During the earnings call, one analyst stated the disclosures were “[o]bviously[] a
7 disappointment for everybody” and “very surprising.” Another analyst asked: “[H]ow can we
8 have any confidence whatsoever in anything that’s been put out there in terms of numbers or . . .
9 the market opportunity?” Flatley acknowledged the lack of credibility was more than justified,
10 responding: “[T]otally fair that you question the credibility of any forecast we give you today.”

11 32. After the earnings call, analysts issued reports in which they downgraded Zymergen
12 and also questioned the Company’s credibility. William Blair & Company analyst Matt Larew
13 (“Larew”) issued a report in which he downgraded Zymergen stock and wrote: “[*G*iven the abrupt
14 and significant about-face just months after the IPO, we believe the company has destroyed its
15 credibility with investors.” In addition, he questioned how the adverse information about the
16 smaller near-term market opportunity for the foldable display market was not known at the time
17 of the IPO, writing:

18 ***In our view, what is more confusing and concerning is commentary on***
19 ***the total addressable market for foldable display applications, which suggests a***
20 ***smaller near-term market opportunity that is growing more slowly than***
21 ***anticipated. Frankly, we are not quite sure how the data could have changed so***
22 ***much over such a short time (again, the company’s IPO filings were published***
23 ***less than four months ago), and at this point the company does not have enough***
24 ***data to quell our concerns or give us any sense of what the company’s actual***
25 ***pipeline might look like following the in-depth review of the company’s***
26 ***operational, financial, product, and commercialization efforts.***

27 33. Multiple government agencies, including the SEC, requested information from the
28 Company related to the unexpected adverse disclosures on August 3, 2021. Defendants failed to
disclose this material adverse information in Zymergen’s earnings releases or during the
Company’s earnings calls. Instead, this material adverse information was buried in the Company’s
3Q21 Report on Form 10-Q, filed with the SEC on November 15, 2021.

1 34. Other facts strongly infer that the adverse information revealed on August 3, 2021,
2 existed at the time of the IPO. The August 3, 2021 adverse disclosures were made just a little more
3 than three months after the completion of the IPO on April 22, 2021. Many of the adverse
4 disclosures related to the Company's most important product, Hyaline, the first and only product
5 in the launch phase of the product pipeline and the primary product featured in the Registration
6 Statement. The impacts of the adverse disclosures on Zymergen's business were devastating in
7 magnitude, scope and duration. No product revenues would be generated in 2021, only immaterial
8 product revenues would be generated in 2022, and projections beyond 2022 were "highly
9 uncertain." As investors would learn on November 3, 2021, six of the 11 products featured in the
10 Registration Statement, including Hyaline, would be discontinued and never generate any revenue
11 for the Company. Flatley admitted that dramatic steps were taken to operationally restructure and
12 transform the Company. The Company's lenders required Zymergen to pay down its loan, shorten
13 the maturity date and deposit the remaining balance of the loan into a blocked account. Zymergen
14 laid off hundreds of employees; recorded millions of dollars of restructuring, severance and
15 impairment expenses; and was forced to develop a plan to conserve cash.

16 35. Following these material adverse disclosures, the Company's stock price
17 plummeted \$26.58, or 75%, from \$34.83 on August 3, 2021, to \$8.25 on August 4, 2021, on
18 unusually large trading volume of more than 21.7 million shares. The decline wiped out more than
19 \$2.7 billion of Zymergen's market capitalization.

20 36. Investors learned more adverse news in the following months. On September 23,
21 2021, Zymergen announced it was terminating approximately 120 employees as part of a
22 preliminary phase of the Company's plan to reduce costs to align with the delayed revenue ramp
23 up previously disclosed on August 3, 2021. The Company also disclosed that it would incur an
24 estimated \$4.5 million of severance and employee-related restructuring costs related to the
25 reduction in force.

26 37. On September 30, 2021 and October 13, 2021, articles appeared in the financial
27 press likening Zymergen's implosion to that of Theranos and reporting that Hoffman used
28 exaggerated financial figures and made overly optimistic projections about the Company's

1 capabilities, both internally and externally. On October 13, 2021, *Barron's* published an article
2 titled "The Inside Story of How SoftBank-Backed Zymergen Imploded Four Months After Its
3 \$3 Billion IPO" and reported, in part:

4 According to a former senior-level employee at Zymergen, Hoffman used
5 exaggerated financial figures and made overly optimistic projections about the
6 company's capabilities, both internally and externally. The former employee – who
7 retains a vested interest in the company – recalls Hoffman's response when he was
8 confronted about this behavior: "*Never underestimate the power of the greater
9 fool.*"

10 38. On October 21, 2021, Zymergen announced a second reduction in force of
11 approximately 100 employees, which would result in approximately \$4.2 million of severance and
12 employee-related restructuring costs. In addition, the Company reported that it expected to incur
13 impairment charges of \$15 million for certain manufacturing equipment as a result of its
14 restructuring activities and that it might incur additional restructuring and impairment charges in
15 4Q21, including lease expenses.

16 39. On October 21, 2021, Zymergen also reported that it had amended its Credit
17 Agreement after its lender notified the Company on August 16, 2021, that it was in default of the
18 material adverse change section of the Amended and Restated Credit Agreement and Guaranty.
19 The amended Credit Agreement required Zymergen to: (i) shorten the term of the Credit
20 Agreement by moving the maturity date from December 19, 2024 to June 30, 2022; (ii) increase
21 the amount of the liquidity covenant; (iii) make a \$41 million payment, including a \$35 million
22 principal prepayment; and (iv) deposit the remaining outstanding balance of the loan plus accrued
23 interest through the maturity date in a blocked account controlled by the Administrative Agent,
24 which was subject to release from the blocked account upon the Administrative Agent's
25 completion of due diligence to its reasonable satisfaction regarding the Company's anticipated
26 operating costs and budget through the maturity date.

27 40. Investors also learned that Jed Dean, a co-founder of Zymergen and the Company's
28 Vice President of Operations and Engineering, was stepping down effective October 31, 2021.

41. On November 3, 2021, Zymergen revealed that it was discontinuing Hyaline, the
main product featured in the Registration Statement, and all but one of the electronics film program

1 products. It also revealed that all of the consumer care program products, including the insect
2 repellent product featured in the Registration Statement, were being discontinued. Thus, the
3 Company revealed that *six of the 11 products highlighted in the Registration Statement,*
4 *including its main product, had been discontinued* and would not generate any revenue for the
5 Company.

6 42. The Company also revealed that its strategy of creating, manufacturing and
7 distributing products on its own was untenable. Flatley acknowledged that was the reason
8 Zymergen discontinued all of the consumer care products, and he admitted there was “no chance”
9 the consumer care insect repellent product featured in the Registration Statement could be
10 profitable given the costs of manufacturing and distribution.

11 43. The Company also revealed it would have run out of cash in 3Q21 had it not raised
12 \$529.9 million from the IPO. Zymergen reported that its cash had declined from \$588 million as
13 of June 30, 2021, to \$496.2 million as of September 30, 2021, and that the Company reported a
14 net loss of \$283.6 million for the nine months ending September 30, 2021.

15 44. On November 3, 2021, Zymergen also failed to disclose that government agencies,
16 including the SEC, had requested information from the Company related to the unexpected adverse
17 disclosures on August 3, 2021. That material adverse information was buried in the Company’s
18 3Q21 Report on Form 10-Q filed with the SEC on November 15, 2021.

19 45. On December 9, 2021, *Seeking Alpha* published an article titled “Zymergen: Total
20 Chaos.” The opening paragraph succinctly explained the dramatic change at Zymergen since the
21 IPO, which caused Class members to suffer millions of dollars in damages. It was reported that
22 Zymergen went from launching Hyaline and preparing to rapidly scale up production and revenue,
23 to a Company that had abandoned Hyaline and other products and was dramatically cutting
24 headcount and cash burn in an effort to avoid bankruptcy.

25 46. During a presentation at a January 10, 2022 JPMorgan Healthcare Conference,
26 Flatley acknowledged that over the last five months Zymergen had taken dramatic steps to
27 operationally restructure and transform the business, including the discontinuation of a significant
28 number of programs and a reduction in the Company’s headcount from approximately 900 to 500.

1 He also acknowledged that the negative financial impact on Zymergen would continue for at least
2 another year and possibly longer, stating that the Company thought it would begin to have product
3 revenue in the 2023 timeframe.

4 47. Zymergen’s stock price has not recovered since the material adverse disclosures on
5 August 3, 2021, closing at \$3.84 on February 24, 2022.

6 48. As a result of Defendants’ wrongful acts and omissions and the precipitous decline
7 in the market value of the Company’s securities, Plaintiffs and other Class members have suffered
8 significant losses and damages.

9 **III. JURISDICTION AND VENUE**

10 49. The claims asserted herein arise under and pursuant to §§11 and 15 of the Securities
11 Act (15 U.S.C. §§77k and 77o).

12 50. This Court has jurisdiction over the subject matter of this action pursuant to 28
13 U.S.C. §1331, and §22 of the Securities Act (15 U.S.C. §77v).

14 51. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(b). A
15 substantial part of the events or omissions giving rise to the claims herein occurred in this District
16 as Zymergen’s principal place of business is in Emeryville, California. Many of the other
17 Defendants reside in Northern California.

18 52. In connection with the acts, transactions and conduct alleged herein, Defendants
19 directly and indirectly used the means and instrumentalities of interstate commerce, including the
20 United States mail, interstate telephone communications and the facilities of a national securities
21 exchange.

22 **IV. PARTIES**

23 **A. Plaintiffs**

24 53. Biao Wang (“Wang”) is the Court-appointed Lead Plaintiff (ECF No. 69) and Class
25 Representative (ECF No. 194), and as set forth in the certification previously filed with the Court
26 (ECF No. 35-3), purchased Zymergen common stock pursuant or traceable to the Registration
27 Statement issued in connection with the Company’s IPO. Wang suffered damages as a result of
28

1 the federal securities laws violations, the untrue statements of material facts contained in the
2 Registration Statement and the omissions of material facts from the Registration Statement.

3 54. Plaintiff West Palm Beach Firefighters' Pension Fund ("WPBFPP"), as set forth in
4 the certification previously filed with the Court (ECF No. 43-2), purchased Zymergen common
5 stock pursuant or traceable to the Registration Statement issued in connection with the Company's
6 IPO. WPBFPP is a pension fund based in West Palm Beach, Florida that provides retirement
7 benefits for firefighters. As of September 30, 2021, WPBFPP managed total assets in excess of
8 \$306 million on behalf of over 466 current employees, retirees and beneficiaries. WPBFPP
9 suffered damages as a result of the federal securities laws violations, the untrue statements of
10 material facts contained in the Registration Statement and the omissions of material facts from the
11 Registration Statement.

12 **B. Company Defendants**

13 55. Defendant Zymergen Inc. ("Zymergen" or the "Company") is incorporated under
14 the laws of Delaware with its principal executive offices located in Emeryville, California.
15 Following its IPO, Zymergen's shares traded on the NASDAQ under the stock symbol "ZY." On
16 July 25, 2022, Zymergen announced that it entered into an agreement with Ginkgo Bioworks
17 Holdings, Inc. ("Ginkgo"), a Delaware corporation, providing for a merger where Zymergen
18 would become a wholly-owned subsidiary of Ginkgo. On October 19, 2022, the merger was
19 completed and Zymergen stopped trading on the NASDAQ. On October 3, 2023, Zymergen filed
20 a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.¹ Ginkgo is Zymergen's
21 successor in interest.²

22 _____
23 ¹ As a result of the bankruptcy filing, this litigation is currently stayed as to Defendant
Zymergen. ECF No. 218.

24 ² The July 25, 2022 press release announcing Ginkgo's merger stated that the transaction
25 would be "Ginkgo's largest acquisition to date and is expected to significantly enhance Ginkgo's
26 platform." Part of the benefits for Ginkgo were stated as "Ginkgo plans to integrate Zymergen's
27 core automation and software technologies for scaling strain engineering capacity into its
28 Foundry," and "Ginkgo customers will also benefit from the expansion of Ginkgo's library of
biological assets." The merger was an all-stock transaction where Zymergen's shareholders
received 0.9179 shares of Ginkgo common stock, which valued Zymergen at \$231.8 million or
less than 8% of its market capitalization at Zymergen's IPO price. At the time of the merger the
directors of the Board of Zymergen were all replaced by three Ginkgo employees, and Zymergen's
SECOND AMENDED CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL

1 56. Defendant Josh Hoffman (“Hoffman”) was, at all relevant times, the CEO, director
2 and co-founder of the Company and signed or authorized the signing of the Company’s
3 Registration Statement filed with the SEC. Hoffman was terminated on August 2, 2021.

4 57. Defendant Enakshi Singh (“Singh”) was, at all relevant times, the Chief Financial
5 Officer (“CFO”) of the Company and signed or authorized the signing of the Company’s
6 Registration Statement filed with the SEC. Defendant Steven Chu (“Chu”) was a director of the
7 Company and signed or authorized the signing of the Company’s Registration Statement filed with
8 the SEC.

9 58. Defendant Jay T. Flatley (“Flatley”) was a director of the Company and signed or
10 authorized the signing of the Company’s Registration Statement filed with the SEC. Flatley
11 replaced Hoffman as CEO of the Company until the merger with Ginkgo.

12 59. Defendant Christine M. Gorjanc (“Gorjanc”) was a director of the Company and
13 signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

14 60. Defendant Travis Murdoch (“Murdoch”) was a director of the Company and signed
15 or authorized the signing of the Company’s Registration Statement filed with the SEC.

16 61. Defendant Matthew A. Ocko (“Ocko”) was a director of the Company and signed
17 or authorized the signing of the Company’s Registration Statement filed with the SEC.

18 62. Defendant Sandra E. Peterson (“S. Peterson”) was a director of the Company and
19 signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

20 63. Defendant Zach Serber (“Serber”) was the Chief Science Officer, a director and co-
21 founder of the Company and signed or authorized the signing of the Company’s Registration
22 Statement filed with the SEC.

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24
25 then CEO and CFO also ceased service as officers of the Company. After the consummation of
26 the merger, on November 14, 2022, Ginkgo’s CEO, Jason Kelly, discussed the benefits to Ginkgo
27 of the acquisition at Ginkgo’s 3Q22 earnings call, including stating that “the faster time line here
28 means that Zymergen brought in more cash, and we can get to work right away on the potential
upside opportunities. So at close, Zymergen is coming in with over \$100 million in cash even
after paying all the transaction-related expenses, including severance, bonus acceleration, adviser
fees and insurance premia. So you can think of that as a truly net cash number.”

1 64. Defendant Rohit Sharma (“Sharma”) was a director of the Company and signed or
2 authorized the signing of the Company’s Registration Statement filed with the SEC.

3 65. Defendants Hoffman, Singh, Chu, Flatley, Gorjanc, Murdoch, Ocko, S. Peterson,
4 Serber and Sharma are hereinafter collectively referred to as the “Individual Defendants.”

5 66. The Individual Defendants had a duty to promptly disseminate accurate and truthful
6 information in the Registration Statement and to correct any previously issued statements that were
7 materially misleading or untrue. The Individual Defendants had access to the adverse undisclosed
8 information about the Company’s business, products, pipeline and market opportunity and other
9 adverse facts that rendered the positive representations made or adopted by the Company
10 materially false and misleading, as detailed herein. The Individual Defendants were able to and
11 did control the content of the Registration Statement and other public statements pertaining to the
12 Company. Each of the Individual Defendants was provided with copies of the documents alleged
13 herein to be misleading prior to or shortly after their issuance and/or had the ability and/or
14 opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the
15 Individual Defendants was responsible for the accuracy of the Registration Statement and is
16 therefore liable as controlling persons for the representations contained therein.

17 **C. The Underwriter Defendants**

18 67. Defendant J.P. Morgan Securities LLC (“J.P. Morgan”) served as an underwriter
19 for the Company’s IPO. In the IPO, J.P. Morgan agreed to purchase 5,750,345 shares of the
20 Company’s common stock, including the over-allotment option. J.P. Morgan received an
21 underwriting fee of \$12,478,249.

22 68. Defendant Goldman Sachs & Co. LLC (“Goldman Sachs”) served as an
23 underwriter for the Company’s IPO. In the IPO, Goldman Sachs agreed to purchase 5,750,345
24 shares of the Company’s common stock, including the over-allotment option. Goldman Sachs
25 received an underwriting fee of \$12,478,249.

26 69. Defendant Cowen and Company, LLC (“Cowen”) served as an underwriter for the
27 Company’s IPO. In the IPO, Cowen agreed to purchase 2,411,435 shares of the Company’s
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1 common stock, including the over-allotment option. Cowen received an underwriting fee of
2 \$5,232,814.

3 70. Defendant BofA Securities, Inc. (“BofA”) served as an underwriter for the
4 Company’s IPO. In the IPO, BofA agreed to purchase 2,040,445 shares of the Company’s
5 common stock, including the over-allotment option. BofA received an underwriting fee of
6 \$4,427,766.

7 71. Defendant UBS Securities LLC (“UBS”) served as an underwriter for the
8 Company’s IPO. In the IPO, UBS agreed to purchase 2,040,445 shares of the Company’s common
9 stock, including the over-allotment option. UBS received an underwriting fee of \$4,427,766.

10 72. Defendant Lazard Frères & Co. LLC (“Lazard”) served as an underwriter for the
11 Company’s IPO. In the IPO, Lazard agreed to purchase 556,485 shares of the Company’s common
12 stock, including the over-allotment option. Lazard received an underwriting fee of \$1,207,572.

13 73. Defendants J.P. Morgan, Goldman Sachs, Cowen, BofA, UBS and Lazard are
14 hereinafter collectively referred to as the “Underwriter Defendants.” As detailed herein, the
15 material adverse disclosures by Zymergen on August 3, 2021; September 23, 2021; October 21,
16 2021; November 3, 2021; November 15, 2021; and January 10, 2022, along with the other facts
17 alleged, show that the Underwriter Defendants failed in their “gatekeeping” role to ensure the
18 correctness of the Registration Statement. They failed to conduct a reasonable due diligence
19 investigation, including the verification of information provided by Zymergen, which resulted in
20 the Registration Statement being inaccurate and misleading, containing untrue statements of
21 material facts and omitting material facts.

22 **D. Controlling Stockholder Defendants**

23 74. Defendants SVF Excalibur (Cayman) Limited and SVF Endurance (Cayman)
24 Limited, both incorporated in the Cayman Islands, and Defendant SoftBank Vision Fund (AIV
25 M1) L.P., a Delaware limited partnership (collectively, the “SoftBank Funds”),³ are venture capital
26 funds managed by Defendant SB Investment Advisers (US) Inc. (“SBIA,” and together with the
27

28 ³ The SoftBank Funds are feeder funds that fall under the SoftBank Vison Fund I umbrella.

1 SoftBank Funds, the “SoftBank Defendants”).⁴ SBIA is a Delaware corporation, with its principal
2 office and place of business is in Menlo Park, CA., and a registered investment adviser with the
3 SEC.

4 75. Defendants Data Collective II, L.P. and DCVC Opportunity Fund, L.P.
5 (collectively, the “DCVC Funds”), both Delaware limited partnerships, are venture capital funds
6 managed by DCVC Management Co, LLC (“DCVC,” and together with the DCVC Funds, the
7 “DCVC Defendants”). DCVC is a Delaware limited liability company, with its principal office
8 and place of business is in Palo Alto, CA., and a registered exempt reporting advisor with the SEC.

9 76. Defendants True Ventures IV, L.P., True Ventures Select I, L.P., True Ventures
10 Select II, L.P., True Ventures Select III, L.P., True Ventures Select IV, L.P., all Delaware limited
11 partnerships, are venture capital funds managed by True Venture Management, L.L.C. (“True
12 Ventures,” and together with the True Venture Funds, the “True Venture Defendants”). True
13 Ventures is a Delaware limited liability company, with its principal office and place of business is
14 in Palo Alto, CA., and a registered exempt reporting advisor with the SEC.

15 77. The SoftBank Defendants, the DCVC Defendants and the True Venture Defendants
16 are referred herein as the “Controlling Stockholders.”

17 **V. CONTROL ALLEGATIONS AGAINST THE CONTROLLING**
18 **STOCKHOLDERS**

19 **A. The Controlling Stockholders’ Controlled Zymergen**

20 78. Prior to and at the time of the IPO, the Controlling Stockholders possessed, and
21 exercised, the power to control Zymergen, including the ability to control day-to-day management
22 and operations of Zymergen, as well as the IPO and contents of the Registration Statement.

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27 ⁴ SB Investment Advisers (US) Inc. had sub-advisory agreements with SB Investment
28 Advisers (UK) Limited concerning the management of the SoftBank Funds, and their investment
in Zymergen.

1 **1. The Controlling Stockholders Controlled Zymergen Through**
2 **Their Ownership of Zymergen Securities**

3 79. The Controlling Stockholders owned the majority of the outstanding shares of
4 Zymergen prior to the IPO (59.49% of preferred shares and 50.17% of total shares), which gave
5 them power to control Zymergen individually and collectively.

6 80. Prior to the IPO, the SoftBank Defendants, through the SoftBank Funds, invested
7 approximately \$404 million into Zymergen, owning 32.61% of the Company (and making the
8 SoftBank Defendants Zymergen's largest shareholder). The SoftBank Defendants owned 39.07%
9 of Zymergen's preferred shares, which had preferential rights and allowed them to control
10 Zymergen. For their investments, the SoftBank Defendants received a Board seat and the right to
11 be on every Board committee (*i.e.*, audit, compensation, etc.). Dipchand "Deep" Nishar ("Nishar")
12 was initially placed on Zymergen's Board from 2016 to 2020 before the SoftBank Defendants
13 appointed Murdoch in his place. At the IPO all preferred shares were converted into common
14 stock, and at the close of trading on the first day, the SoftBank Defendants' position was worth
15 over \$1 billion, or a return on investment of approximately a 150%.

16 81. Prior to the IPO, the DCVC Defendants were Zymergen's initial seed investors in
17 2015, and ultimately invested approximately \$44.2 million through the DCVC Funds. DCVC is
18 jointly owned by Ocko and Zachary Bogue ("Bogue") and, as reported to the SEC, is controlled
19 by Ocko, Bogue, the COO, Spencer Punter ("Punter"), and the Chief Legal Officer, Ryan Ward
20 ("Ward"). The DCVC Defendants received a seat on Zymergen's Board as a condition of its
21 investment and appointed Ocko to that seat. The DCVC Defendants were Zymergen's largest
22 investor until the SoftBank Defendants' investment in October 2016. The DCVC Defendants had
23 a management rights agreement with Zymergen that allowed them to directly control many aspects
24 of Zymergen and receive inside information. The DCVC Defendants' early investment gave them
25 special influence over Zymergen and many of its Board members. Through these rights obtained
26 in its early investment, the DCVC Defendants were able to negotiate and maintain significant
27 control over Zymergen. At the time of the IPO, the DCVC Defendants beneficially owned 9.03%
28 of Zymergen and 10.81% of the preferred shares, making them the second largest shareholder. On

1 the first day of trading, the DCVC Defendants’ position was worth over \$230 million, or a return
2 on investment of approximately 530%.

3 82. Prior to the IPO, the True Venture Defendants were an initial seed investor and
4 continued to invest in Zymergen eventually investing approximately \$75 million prior to the IPO.
5 True Ventures is owned by Jon Callaghan (“Callaghan”) and Phil Black (“Black”), and reports to
6 the SEC that they are controlled by Callaghan, Black, CFO Ulrike Kellmerit (“Kellmerit”), and
7 COO Jim Stewart (“Stewart”). The True Venture Defendants received a seat on Zymergen’s
8 Board as a condition of its investment and placed its employee, Sharma in that seat. The True
9 Venture Defendants also were granted management rights and, as an early investor, had leverage
10 to maintain its significant control even after subsequent rounds of investment. At the time of the
11 IPO the True Venture Defendants beneficially owned 8.52% of Zymergen and 9.61% of the
12 preferred stock, making them the third largest shareholder. At the close of trading on the first day
13 of the IPO, the True Venture Defendants’ \$75 million investment was valued at approximately
14 \$246 million, or a return on investment of approximately a 230%.

15 83. As shown in the table below, whether calculated just by the preferred stock that had
16 preferential rights or including common stock, at the IPO, the Controlling Stockholders owned a
17 majority of the shares outstanding:

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Stock Type	Outstanding as of March 31, 2021	SoftBank Defendants	DCVC Defendants	True Venture Defendants	Controlling Stockholders' Ownership Percentage
Series A	7,332,750	-	3,146,733	1,002,144	56.58%
Series A-1	8,719,611	-	2,014,506	1,576,798	41.19%
Series B	14,081,522	7,818,079	1,684,397	1,374,470	77.24%
Series C	24,700,286	17,664,099	294,401	1,472,007	78.67%
Series D	13,259,111	1,119,726	223,945	1,119,725	18.58%
Total Preferred Stock	68,093,280	26,601,904	7,363,982	6,545,144	59.49%
Common Stock	13,473,832	-	-	408,317	3.03%
Total Including Common Stock	81,567,112	26,601,904	7,363,982	6,953,461	50.17%

84. At the time of the IPO, all Zymergen's outstanding preferred stock was converted into common stock. The Controlling Stockholders' preferred stock was converted into over 40 million shares of common stock, more than double the number of shares issued in the IPO, giving the Controlling Stockholders an ownership of approximately 41% of the outstanding shares. After the IPO the SoftBank Defendants owned 26.34%, the DCVC Defendants owned 7.29%, and the True Venture Defendants owned 7.20%.

85. As an additional condition of their investments, each of the Controlling Stockholders required that Zymergen indemnify both their individual representative serving on the Board, *i.e.*, Defendants Murdoch, Sharma, and Ocko, and the Controlling Stockholders themselves (including "the partners, members, officers, directors and stockholders of each [Controlling Stockholder], legal counsel, accountants and investment managers for each [Controlling Stockholder], any underwriter (as defined in the Act) for such [Controlling Stockholder] and each Person, if any, who controls such [Controlling Stockholder]") from certain securities claims arising from their role as members of the Board (including the claims asserted in this litigation).

1 **2. The Controlling Stockholders Possessed the Right to and**
2 **Exercised Control of Zymergen's Operations and Management**

3 86. Pursuant to contractual rights obtained in exchange for their investments, implicit
4 or explicit agreements with Zymergen executives, as well as personal and professional
5 relationships with Zymergen executives, the Controlling Stockholders had the right to and dictated
6 significant aspects of the day-to-day operations of Zymergen and exercised control over the
7 conduct of its executives, as well as the IPO and contents of the Registration Statement.

8 87. Zymergen's governance documents required that 2 out of the 3 Controlling
9 Stockholders' approval was required for most business matters. For example, the Controlling
10 Stockholders approval was required for any budget or business plan, executive level hiring,
11 granting of stock or options, and entering or exiting a line of business or incurring debt. The
12 Controlling Stockholders also individually held control of Zymergen through protective
13 provisions, such as antidilutive protections, and Zymergen's inability to amend the governing
14 documents without their consent.

15 88. The Controlling Stockholders also entered into a voting agreement that they would
16 vote their shares together on certain key issues, including that at each election of a Controlling
17 Stockholders' Board seat they would vote for each of the other Controlling Stockholders' nominee
18 and that only upon the agreement of the Controlling Stockholders could its representative be
19 removed. The Controlling Stockholders' rights were incorporated into Zymergen's certificate of
20 incorporation and investor rights agreement. Thus, each of the Controlling Stockholders' had the
21 ability to single-handedly preserve its seat, and agreed to preserve each other Controlling
22 Stockholders' seat as well. Notably, no other Zymergen investor had Board seats, even though
23 there were significant large investors in the Series D round just prior to the IPO.

24 89. The Controlling Stockholders also controlled the day-to-day management of
25 Zymergen through their complete control of the Audit Committee. In the lead up to the IPO, the
26 Audit Committee was comprised of Defendants Murdoch, Ocko, and Sharma. Each of the
27 Controlling Stockholders had an additional employee/partner attend Audit Committee meetings:
28 SBIA CFO, Navneet Govil; True Ventures CFO Kellmerit; and DCVC founder Bogue all

1 attended. In addition, all of the Company documents used to facilitate the Audit Committee
2 meetings were provided to the Controlling Stockholders and analyzed by their respective teams.
3 The Controlling Stockholders participated in the Company's material financial decisions,
4 including, for example, the decision to delay the 2019 audited financial results until September
5 2020 in order to close the Series D investments without a going concern qualification.

6 90. Through their complete control of the Audit Committee, the Controlling
7 Stockholders exercised their ability to control Zymergen's management by putting in place
8 processes and controls designed to give the Audit Committee control over the Company's financial
9 statements, the Company's auditors, and its internal audit function. The Audit Committee also
10 provided oversight to the Company's risk mitigation strategies and internal control framework.
11 The Audit Committee is independent of all other organizations within the Company, and was
12 responsible for the disclosure controls in connection with financial reporting to the public,
13 including in the Registration Statement that was filed with the SEC.

14 91. The Controlling Stockholders also possessed and exercised their power to appoint
15 a new independent director to the Board. In 2019, Zymergen's Board established an ad hoc
16 committee to identify possible independent Board member candidates, which included Defendant
17 Ocko and Nishar from SBIA. The addition of an independent director (*i.e.*, not representatives of
18 the Controlling Stockholders, the founders, or the CEO) required authorization from the majority
19 of the preferred shareholders. As the majority of the preferred shares were owned by the
20 Controlling Stockholders, these Board members were also approved directly by the Controlling
21 Stockholders. Ocko and Nishar nominated Flatley and S. Peterson, and Murdoch, Ocko, and
22 Sharma each unanimously approved electing them to the Board. Defendant Flatley was elected
23 on September 16, 2019 to Zymergen's Board as an independent director and attended Board
24 meetings prior to January 2020. Defendant S. Peterson was elected to the Board as an independent
25 director on December 13, 2019. Ongoing emails, text message, and records of phone calls show
26 that Ocko retained his significant influence over Flatley and S. Peterson throughout all relevant
27 times.

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1 92. Electing an additional independent Board member was necessary for the Company
2 to proceed with the IPO in 2021. Because of SoftBank’s large ownership share, Murdoch was
3 deemed an affiliated director and could not remain on the Audit Committee following the IPO
4 under NASDAQ and SEC rules. Increasing the size of the Board (to nine), as well as the addition
5 of an independent director required authorization from the majority of the preferred shareholders.
6 On March 1, 2021, the Controlling Stockholders directed the appointment of Defendant Gorjanc,
7 unanimously approving her as a ninth Board member and new member of the Audit Committee.
8 The Controlling Stockholders thus held power over the governance of Zymergen and the functions
9 necessary for the Company to conduct its IPO.⁵

10 93. The True Venture Defendants also exercised control over Zymergen through a
11 personal relationship between defendant Singh and DCVC employee Stewart. Stewart was
12 considered a “mentor” to Singh and sat in on Audit Committee meetings guiding the CFO’s
13 approach to issues, including the IPO. Stewart was instrumental in Singh’s elevation to CFO just
14 before the IPO when other directors and executives viewed her as unqualified for the position.
15 Stewart “steer[ed] the ship” of Zymergen’s Audit Committee and was considered the “most
16 knowledgeable person on it.” For example, Stewart helped Singh structure the finance
17 organization, gave advice on audit committee matters, and guided her on which insurance company
18 to choose for Zymergen’s Director & Officer coverage going into the IPO. Even after the IPO,
19 when the True Venture Defendants lost their rights to observe Board and committee meetings,
20 Stewart continued to attend Audit Committee meetings and advise Singh.⁶

21 94. The SoftBank Defendants also placed Murdoch on the Compensation Committee.
22 In this role, Murdoch exercised significant control over the compensation of directors, officers,
23 and employees. The SoftBank Defendants paid close attention to compensation, especially in 2020

24 _____
25 ⁵ The SoftBank Defendants did not allow Murdoch to be removed from the Audit Committee
until just days before the IPO and after the Registration Statement was already filed.

26 ⁶ In connection with the IPO, as mentioned above, all the preferred shares were converted to
27 common stock, and the preferred shareholders (the majority of which were the Controlling
28 Stockholders) gave up their preferential control rights over Zymergen. Thus, Stewart being still
allowed to attend Audit Committee meetings as a mentor demonstrates the power to influence and
control Defendant Singh.

1 and leading up to the IPO when Zymergen continued to miss revenue targets and was burning
2 through cash. Demonstrating their control of Zymergen, the SoftBank Defendants made multiple
3 objections to other directors and executives plans and shaped hiring, compensation, and bonuses
4 compensation policies and activities. For example, on February 17, 2021, Nishar pressed Murdoch
5 on the executives' failure to achieve performance goals and he reported that "we reduced the award
6 to Josh [Hoffman] by 1M."

7 95. Ocko, a joint owner of the DCVC Defendants, served on Zymergen's Technology
8 & Science Committee, which was formed in February 2020, to monitor management's direction
9 and investment in research and development and technology initiatives. This committee oversaw
10 a review of Zymergen's product development process, demonstrating Ocko's control over the very
11 issues and businesses that are the subjects of the alleged false and misleading statements and
12 omissions. The SoftBank Defendants also had the right to have Murdoch serve or designate
13 someone else as a member of the Technology & Science Committee, but did not. As Nishar
14 explicitly told Defendant Hoffman and Hoffman shared with Defendant Flatley such unexercised
15 rights were insurance for the SoftBank Defendants, which they used to ensure their control over
16 Zymergen.

17 96. Ocko was also a board member of a company called Pivot Bio, Inc. ("Pivot Bio").
18 Zymergen was performing research and development for Pivot Bio on Pivot Bio's agricultural
19 product. Pivot Bio controlled the project with little room for input from Zymergen, and paid
20 Zymergen a fixed fee. However, in the Registration Statement Zymergen touted this same product
21 as its lead agricultural product, ZYM0301, and did not disclose its secondary role in the product
22 development. Thus, Ocko, who was a member of Zymergen's Science & Technology Committee
23 and Audit Committee, as well as a board member of Pivot Bio, had significant control over this
24 business relationship.

25 97. Sharma was also a board member of a company called Enveda Therapeutics, Inc.
26 ("Enveda"). At the time of the IPO, Enveda was in discussions with Zymergen about a research
27 contract. Thus, Sharma also had significant control over this business relationship.

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1 98. DCVC publicly touted what it considered to be its instrumental role in Zymergen's
 2 early development. For example, on October 10, 2016, DCVC published in an article after the
 3 Series B investment in the Company titled "Bringing Zymergen to Scale: Enabling Engineering
 4 Biology with AI & Robotics." The article detailed how the DCVC Defendants viewed the role of
 5 the Controlling Stockholders to drive results and described its intimate involvement in multiple
 6 aspects of Zymergen's day-to-day operations:

7 We're pleased that this success attracted the support of SoftBank, which
 8 brings Deep Nishar to join us on the Zymergen Board. Both SoftBank as a
 company and Deep as a person have track records of *driving category-killer results*.

9 * * *

10 DCVC is pleased that *we were able to contribute materially to Zymergen's*
 11 *current and ongoing success*. From day one, we were involved in technology
 12 strategy, helping analyze and decide on software and systems implementations,
 13 providing expert knowledge from our Equity Partners (our network of world-class
 technologists, scientists, and entrepreneurs who share in common in our firm's
 results) and key introductions from across our portfolio of other cutting edge
 companies.

14 *We played a hands-on role in recruiting key employees, delivered critical*
 15 *Fortune 500 customers from initial introduction through making sure they*
 16 *signed contracts, advised on important intellectual property and patent issues*
 17 *based on decades of experience, and offered management unyielding support and*
a sounding board while still delivering frank and constructive advice. At elite
 gatherings of both research and industry leaders we host, we made sure Zymergen
 had a chance to recruit talent, make alliances, and pitch customers.

18 * * *

19 And, *DCVC played an essential and active role in assembling the participants* for
 20 and then closing this current round of funding.

21 3. The Controlling Stockholders Had Access to Zymergen's 22 Employees and Inside Information

23 99. Each Controlling Stockholder had access to inside information and inspection
 24 rights. They had rights to all Board material, including the budget and business plan, all financial
 25 statements, all books and records, including rights to discuss the business affairs, finances, and
 26 accounts with any Zymergen officer upon request. Each held, and exercised, the right to have
 27 another one of their employees or affiliates observe every Board meeting and every Board
 28 committee meeting. The Controlling Stockholders exercised these rights on an ongoing basis up
 to and through the IPO in order to assess the risks of their investments in Zymergen and to value

1 their investment in the Company at fair value, which they were required to do. Valuing Zymergen
2 required a thorough understanding of, among other things, Zymergen’s financial position, business
3 operation, and sales prospects.

4 100. The Controlling Stockholders had the power to and did require Zymergen’s
5 executives, including Singh and Hoffman, to attend conferences conducted by the Controlling
6 Stockholders (including their consultants) to answer questions and discuss inside information
7 essential to the valuation process, including commercial updates, operational performance, market
8 development, and Zymergen’s competitive and strategic outlook. The information the Controlling
9 Stockholders received was shared across their own funds and affiliates with no regard for
10 distinctions between legal entities.⁷

11 101. In 2020, Zymergen was on track to breach the terms of its \$100 million credit
12 agreement with Perceptive Credit Holdings II, LP because it did not have sufficient funds
13 (primarily attributable to Zymergen’s failure to generate revenue). The Controlling Stockholders
14 were heavily involved in re-negotiating the terms and amendments to this credit agreement. The
15 credit agreement also acknowledges the Controlling Stockholders’ control, providing that a
16 “Change of Control” from these Controlling Stockholders would be considered an event of default.
17 The agreement for this credit facility was amended several times, including in February 2021,
18 which also required the Controlling Stockholders’ approval.

19 102. The Controlling Stockholders also received updates regarding Zymergen’s sales
20 pipeline, Zymergen’s repeated failure to meet its stated product development targets, and the
21 technical difficulties Zymergen was experiencing. In 2019, Zymergen’s sales goals for 2020
22 included \$221 million in revenue. However, by 3Q19, the Controlling Stockholders were
23 informed this was not achievable. On December 30, 2019, Hoffman wrote to Nishar, Ocko and
24

25
26 ⁷ Even Zymergen disregarded any legal distinction between the Controlling Stockholders’
27 affiliates with respect to information sharing. Zymergen’s contracts and governance documents
28 also treat the SoftBank Defendants, the DCVC Defendants, and the True Venture Defendants as
single entities, even though they are made up of multiple different entities. The Registration
Statement does the same.

1 Sharma that they needed more financing, saying that revenue by 2023 would be \$300 million at
2 gross margins of 50%. Ocko instructed Hoffman on how to position Zymergen to new investors.

3 103. Based on its access to internal information, SoftBank wrote down its investment in
4 Zymergen [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 [REDACTED] These decisions were all made based on Zymergen’s inside projections and budgeting
10 and stood in stark contrast to the revenue expectations set forth in the Registration Statement.

11 104. The Controlling Stockholders played a critical role in Zymergen’s desperate efforts
12 during 2020 to raise additional capital. Term sheets were signed with a potential outside investor,
13 Novo Holdings, but funding fell through because Novo Holding asked for downside protections.
14 International investors such as Singapore’s sovereign wealth fund, GIC, and the UK’s Ballie
15 Gifford, both agreed to invest in Zymergen, and Zymergen represented in this financing round that
16 it expected to launch an IPO process in the second half of 2021. The Series D financing round
17 went from July 2020 through to November 2020, and each of the Controlling Stockholders were
18 involved in these efforts. For example, Stewart gave Sharma comments to discuss with the Board
19 on Ballie Gifford’s term sheet, and Ocko attempted to find investors for the financing. The
20 Controlling Stockholders approved and amended the governance documents, which were written
21 with the express intent to conduct an IPO. Demonstrating how desperate Zymergen was for
22 additional funding, the SoftBank Defendants gave up their rights to have an IPO at two times the
23 price of the their Series C shares in exchange for GIC and Ballie Gifford’s investment.

24 105. As part of the Series D financing, the SoftBank Defendants initially agreed to invest
25 \$12.5 million for every \$100 million Zymergen raised. But after they reviewed the September
26 2020 Board materials, the SoftBank Defendants [REDACTED]

27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 [REDACTED] Conceding SoftBank’s control, Hoffman informed the other Board members that
6 Zymergen would proceed to close the lower amount and amend the Series D purchase agreement.

7 106. Through their virtually unfettered access to inside information, the Controlling
8 Stockholders possessed the information showing that the representations in the Registration
9 Statement, concerning, among other things, Hyaline, Zymergen’s products in development, and
10 platform capabilities were false and misleading. For example, Zymergen’s executives made
11 presentations to the Board that showed Hyaline was a floundering product, unable to generate
12 revenue, and plagued with manufacturing problems and technical issues that Zymergen had not
13 solved.

14 107. On February 20, 2020, the Board was told that Zymergen estimated \$6 to \$20
15 million in Hyaline revenue in 2020. At the April 20, 2020 Board meeting, this goal was reduced
16 to \$4-\$10 million; and at the September 16, 2020 Board meeting this was reduced further to \$4-
17 \$6 million. At each meeting the reasons for the delay in revenue, technical issues encountered,
18 and sales prospects were discussed in depth. At the December 16, 2020 Board meeting executives
19 admitted there would be no sales of Hyaline in 2020.

20 108. With cash running out and no revenue materializing, the Board collectively made
21 the decision to bring Zymergen public at the December 16, 2020 Board Meeting. Notably, this
22 was only a few weeks from Zymergen’s close of its Series D financing. The IPO would then be
23 put on a very aggressive track with Zymergen conducting a roadshow on January 12, 2023 at the
24 J.P. Morgan Healthcare Conference and filing the Registration Statement confidentially on
25 January 25, 2023. The Controlling Stockholders were involved in every step of this process.

26 109. Leading up to the IPO, the Controlling Stockholders received constant updates from
27 Zymergen concerning the IPO and the Registration Statement process, directly from executives
28 and other Board members or from Board meetings that Murdoch, Ocko, and Sharma attended. For

1 example, Ocko regularly discussed Zymergen issues over the phone or through text with Hoffman.
2 On February 8, 2021, the Board was given an update on the IPO, including financials, Hyaline
3 expected revenue, information about an upcoming analyst day, and dry runs executives had done
4 with analysts, who were mostly affiliated with the Underwriter Defendants. On March 16, 2021,
5 J.P. Morgan gave an update on the IPO, including the Testing the Waters discussions, messaging
6 with institutional investors, and investors' reaction to the messaging. Murdoch, Ocko, and Sharma
7 circulated presentations to the Controlling Stockholders from Zymergen, its Board and the
8 Underwriter Defendants. Nishar forced himself into meetings over other Board member's
9 objections. The Controlling Stockholders even received sensitive information concerning demand,
10 pricing, and IPO investors. Hoffman allowed the underwriters to provide Nishar with the status
11 of the IPO directly.

12 110. The Controlling Stockholders also received preferential treatment concerning IPO
13 matters. For example, the SoftBank Defendants used their rights to receive a favorable, non-
14 market, lockup agreement from the Underwriter Defendants, including a clause the SoftBank
15 Defendants insisted on that allowed them to pledge their Zymergen shares as collateral during the
16 180 day lockup. Such a transaction is typically, and was for other investors, prohibited.

17 **4. The Controlling Stockholders Controlled the Registration** 18 **Statement**

19 111. Each Controlling Stockholder formally authorized the IPO. In order to issue the
20 common stock (including any conversions from preferred shares) or amend Zymergen's
21 governance documents for the IPO, the Controlling Stockholders authorization was needed.
22 Zymergen's IPO required that the Controlling Stockholders give up their rights they obtained as
23 Zymergen's significant early investors, including rights to Board seats, information and control
24 over the management of the Company, and various other rights they had as preferential owners of
25 preferred shares.

26 112. On April 5, 2021, Zymergen sought the Controlling Stockholders' authorization for
27 the IPO. Their unanimous consent authorized a 1 for 3 reverse stock split, anti-takeover measures,
28 the conversion of Zymergen to a public corporation, necessary compensation matters and, most

1 importantly, the amendment of the governance documents. Acting as the majority of the preferred
2 shareholders, and on behalf of themselves, each of the Controlling Stockholders signed the action
3 by written consent, effectively authorized the IPO, without which the IPO would not have
4 occurred. The authorization was executed by Karen Ellerbe for the SoftBank Defendants, Bogue
5 for the DCVC Defendants, and Stewart for the True Venture Defendants.

6 113. Each Controlling Stockholder was also involved in the drafting of the Registration
7 Statement, which was a joint undertaking between Zymergen, the Underwriter Defendants, and
8 the Controlling Stockholders. Zymergen's general counsel provided drafts of the Registration
9 Statement to the Controlling Stockholders' directors requesting comments, with the Controlling
10 Stockholders other employees sending their comments back directly. All the Controlling
11 Stockholders reviewed drafts and redlines and provided their comments and input.

12 114. Jason Pontin ("Pontin"), a DCVC employee prior to and during the IPO, was
13 retained as a consultant by Zymergen for IPO positioning, narrative and media relations. Pontin
14 was the lead drafter of the Registration Statement and was in the IPO working group, he received
15 comments on the Registration Statement and determined whose edits to accept and reject. Pontin
16 shared drafts of the Form S-1 with the DCVC Defendants and asked for their comments. Thus,
17 the DCVC Defendants had direct control over the contents of the Registration Statement. Pontin
18 also consulted directly with Zymergen executives, including Defendant Hoffman and Singh, on
19 the Form S-1, roadshows, other IPO related matters, and had inside information to the underwriting
20 process and IPO decision making. Pontin signed-off on the drafts filed with the SEC, and also
21 worked to formulate the positioning with Zymergen's counsel Freshfields and underwriter counsel
22 Wilson Sonsini.

23 115. Each of the Controlling Stockholders also had the ability to prevent the issuance of
24 the alleged false and misleading statements or cause the statements to be corrected. The
25 Controlling Stockholders were requested to sign off on filing the Registration Statement, and
26 provide their consent.

27 116. After the IPO, Ocko thanked the SoftBank Defendants and the True Venture
28 Defendants, acknowledging their joint effort to bring about the IPO in an April 2021 tweet:

1 I want to thank our friend @drorberman, the 1st institutional VC to take this
2 seriously, & our friends at @trueventures – major co-investors & essential allies
every step of the way . . .

3 * * *

4 last but definitely not least @deepnishar, @tbmurdoch & SoftBank for capital
5 muscle & advice when it was essential

6 **B. The Controlling Stockholders Each Controlled Their Respective
7 Representative on Zymergen’s Board of Directors**

8 117. As a condition of their investment in Zymergen, each of the Controlling
9 Stockholders received a seat on Zymergen’s Board. Each Controlling Stockholder appointed an
10 employee or partner to Zymergen’s Board: Murdoch (SoftBank Defendants); Ocko (DCVC
11 Defendants); and Sharma (True Venture Defendants).

12 118. Each of the Controlling Stockholders is an investment advisor and has a fiduciary
13 duty to their own investors, *i.e.*, investors in the SoftBank Funds, True Venture Funds, and DCVC
14 Funds, respectively.⁸ Each Controlling Stockholder, through its partners and employees, has a
15 duty of undivided loyalty and utmost good faith to their clients and investors, which required them
16 to ensure that each decision made by their representatives concerning the management and
17 operation of Zymergen was made in the best interest of the SoftBank Defendants, DCVC
18 Defendants, and True Venture Defendants’ investors, respectively. The Controlling Stockholders
19 ensured that they could control that their employee’s or partner’s decisions to act in the best interest
20 of the Controlling Stockholders (not Zymergen’s). The Controlling Stockholders each exercised
21 control over the Individual Defendants they respectively appointed to Zymergen’s Board (and each
of those Individual Defendants are alleged to be primary violators of §11).

22 119. Murdoch was a SBIA employee who received a base salary, a cash bonus, [REDACTED]

23 [REDACTED]

24

25 _____

26 ⁸ In particular, the SoftBank Defendants are required under SEC Rule 206(4)-6 to adopt and
27 implement written policies and procedures to ensure that the SoftBank Defendants voted
28 Zymergen’s securities “in the best interest of clients.” 17 CFR § 275.206(4)-6. Their SEC filing
on Form ADV states that the “Proxy Policy seeks to ensure that SoftBank Investment Advisers
votes proxies (or similar instruments) in the best interest of the relevant Funds, including where
there may be material conflicts of interest in voting proxies.”

1 [REDACTED] The SoftBank Defendants controlled
2 Murdoch through the employer-employee relationship and by providing financial incentives to
3 work in the interest of the SoftBank Defendants.⁹

4 120. Sharma is a True Venture employee. He received a salary and carried interest in
5 the True Venture Funds that invested in Zymergen. The True Venture Defendants controlled
6 Sharma through the employer-employee relationship and by providing financial incentives to work
7 in the interest of the True Venture Defendants.

8 121. Ocko was appointed by the DCVC Defendants to sit on Zymergen's Board and was
9 controlled by the DCVC Defendants in his capacity as a member of the Zymergen Board. The
10 DCVC Defendants, respectively, were controlled by Ocko, Bogue, Punter, and Ward. Ocko had
11 financial incentives that he would receive from the DCVC Defendants if Zymergen was a
12 successful investment.

13 122. Defendants Murdoch and Sharma lacked authority to act in their capacity as
14 Zymergen Board Members without approval from their employers, SoftBank Defendants and True
15 Venture Defendants, respectively. Murdoch and Sharma relayed relevant information to their
16 employers and sought approval for their actions as members of Zymergen's Board.

17 123. The SoftBank Defendants' investment into Zymergen was overseen by Nishar who
18 initially held the Zymergen Board seat. Following the substitution of Murdoch, Nishar directed
19 Murdoch in his role as member of the Board. Nishar was responsible for the Zymergen investment
20 through the IPO, after which another SBIA managing partner, Vikas Parekh, became responsible.
21 Murdoch was a relatively junior employee at SBIA and had no authority on major decisions.

22 124. The True Venture Defendants' investment into Zymergen was overseen by
23 Callaghan, Black, Kellmerein, and Stewart. Rohit reported to these individuals and was required
24 to receive explicit authorizations on every major decision.

25
26 _____
27 ⁹ After the IPO, in May 2021, Murdoch resigned from SBIA. However, SBIA entered into
28 an advisory agreement with Murdoch whereby he would continue to provide information about
Zymergen to SBIA and follow their direction. The SoftBank Defendants maintained their control
over Murdoch until October 2021 when they closed out their advisory relationship with Murdoch.

1 125. The DCVC Defendants' investment into Zymergen was overseen by Ocko, Bogue,
2 and Punter. The DCVC Funds appointed Ocko to its Zymergen Board seat, and even though he is
3 a control person of the DCVC Funds, in his capacity as a Zymergen Board member, he is also
4 controlled by Bogue, Punter, and Ward as control persons of DCVC. In other words, Ocko wore
5 two hats, as a control person for DCVC and as an agent of the DCVC Funds.

6 126. The Controlling Stockholders explicitly and implicitly required that all information
7 shared with or learned by Murdoch, Ocko, or Sharma about Zymergen was shared with the
8 Controlling Stockholders and its employees. Each provided their respective Controlling
9 Stockholder with Zymergen's Board and Board Committee materials and inside information
10 concerning Zymergen. Each Controlling Stockholder directed that Zymergen's executives and
11 officers provide information to employees of the Controlling Stockholders concerning, among
12 other things, Zymergen's financial performance and outlook, product development and pipeline
13 management, and personnel decisions. During the IPO process, these Defendants shared drafts of
14 the Form S-1 for the Controlling Stockholders' comments and provided highly sensitive
15 information concerning IPO demand, pricing, and investors. The Controlling Stockholders were
16 even provided the underwriters' models and analysis.

17 127. Because Murdoch and Sharma lacked authority without instruction and approval
18 from their employers, other directors and officers at Zymergen would communicate directly with
19 their superiors, including Nishar (SoftBank Defendants) and Stewart or Black (True Venture
20 Defendants). With respect to DCVC Defendants, even though Ocko was one of two DCVC
21 founders, Zymergen's other directors and executives would go directly to Bogue and include him
22 in the decision-making process, as Bogue, in addition to Punter and Ward, also controlled DCVC.

23 128. With respect to the IPO, Murdoch, Ocko, and Sharma acted in the best interest of
24 their respective Controlling Stockholders, and it was only with the authorization of the Controlling
25 Stockholders that they allowed the IPO to be completed. Each of these Defendants signed the
26 Registration Statement only after being authorized to do so by their respective Controlling
27 Stockholders, and would not have signed it if the Registration Statement was not approved by the
28 Controlling Stockholders.

1 **VI. ALLEGATIONS OF *RESPONDEAT SUPERIOR* LIABILITY**

2 129. Each Controlling Stockholder is vicariously liable as principals for their respective
3 agent, Murdoch, Ocko, or Sharma, under the doctrine of *respondeat superior*. The conduct that
4 makes Murdoch, Ocko, and Sharma liable under Plaintiffs' Securities Act claims occurred while
5 they were employees or agents of the Controlling Stockholders. Murdoch and Sharma were
6 employees of the SoftBank Defendants and True Venture Defendants, respectively. Ocko was the
7 DCVC Funds' agent to serve as a Zymergen Board member. Leading up to and throughout the
8 IPO, the scope of Controlling Stockholders' agent-principal relationship with these Defendants
9 included their directorships, managing Zymergen, doing what is necessary to carry out the IPO,
10 and signing the Registration Statement.

11 130. As agents of the Controlling Stockholders, Murdoch, Ocko, and Sharma acted as
12 representatives of the Controlling Stockholders acting on their behalf. These Individual
13 Defendants were appointed to the Board in their capacity as agents of the Controlling Stockholders.
14 These Individual Defendants were required to share all information they learned and discuss issues
15 with their principals and negotiate with Zymergen on behalf of the Controlling Stockholders. Even
16 though certain decisions benefited Zymergen or shareholders at large, Murdoch, Ocko, and Sharma
17 each only voted and made decisions that were to the Controlling Stockholders' and their funds'
18 benefit. Their decision to commence the IPO process and filing of the Registration Statement was
19 in line with Zymergen's decision to do so because Zymergen was quickly running out of cash, and
20 without revenue assured from Hyaline (or any other product), it was in the best interest of the
21 Controlling Stockholders and their funds to have Zymergen conduct the IPO.

22 131. Murdoch, Ocko, and Sharma were each motivated, at least in part, by a purpose to
23 serve the Controlling Stockholders. Each had carried interest tied to the performance of the
24 Controlling Stockholders' funds that invested in Zymergen. Each also had relationship incentives,
25 Murdoch and Sharma as employees, and Ocko as a partner of the Controlling Stockholders.

26 132. Acting as a Board member, controlling portfolio companies, and signing
27 registration statements were acts within the scope of Murdoch, Ocko, and Sharma and the
28 Controlling Stockholders' agency relationship. For the five years leading up to the IPO and during

1 the IPO, each of these Defendants served on multiple boards for the Controlling Stockholders,
2 protecting their investments and working toward the venture capital funds' exits at maximized
3 rates of return. Murdoch served on the boards of Karius, Inc. and Guardant Health, AMEA, Inc.
4 Ocko served on the boards of Atomwise, Inc., Embark Trucks, Inc., Fortem Technologies, Inc.,
5 Halter Inc., Jupiter Intelligence, Inc., Pivot Bio, Inc., Primer Technologies, Inc., Supply, Inc.
6 (Reach Labs), Rocket Lab, Inc.¹⁰ and Agility Robotics, Inc. Sharma was a board member of Seurat
7 Technologies, Inc., Avidbots Corp., Iceye Oy, Prellis Biologices, Inc., Aurora Insight, Inc.,
8 Diligent Robotics, Inc., Bear Flag Robotics, Inc., Fauna Bio Incorporated, Scythe Robotics, Inc.,
9 Fixaposition AG, Dextrous Robotics, Inc., Enveda Therapeutics, Inc., Vanti Analytics, Ltd., and
10 Alberta Innovates.

11 **VII. SUBSTANTIVE ALLEGATIONS**

12 **A. Description of Zymergen and Completion of the IPO**

13 133. Zymergen integrates computational and manufacturing technologies to design,
14 engineer and optimize microbes for industrial applications. The Company developed a platform
15 – the biofacturing platform – that treats the genome as a search space, using proprietary machine
16 learning algorithms and advanced automation to identify genetic changes that improve the
17 economics for its customers' bio-based products for a range of industries, including chemicals,
18 materials, agriculture and pharmaceuticals. In addition, Zymergen's platform is used to discover
19 novel molecules used to enable unique material properties. The Company was incorporated in
20 Delaware on April 24, 2013.

21 134. Zymergen uses a process it calls "biofacturing" to create products that purportedly
22 combine the design and manufacturing efficiency of biological processes with technology's ability
23 to rapidly iterate and control diverse functions. Its first product is called Hyaline, an optical film
24 designed for electronics companies to use for display touch sensors, which would purportedly
25 enable customers to make foldable touchscreens and high density flexible printed circuits. Hyaline
26
27

28 ¹⁰ Ocko has signed registration statements for Rocket Lab, Inc.

1 was launched in December 2020, but has not generated revenue because it is still in its qualification
2 process with customers.

3 135. On January 25, 2021, Zymergen confidentially submitted a draft Registration
4 Statement on Form S-1 to the SEC that did not specify the number of securities to be issued or
5 proceeds to be raised.

6 136. On February 22, 2021, the SEC sent a letter to Hoffman that included comments on
7 the January 25, 2021 confidentially submitted draft Registration Statement, and requests for
8 information. The SEC asked Hoffman to identify the third party that prepared the market data
9 referenced in the draft Registration Statement in support of representations that the market
10 opportunity addressable by Zymergen's biofacturing platform was enormous and diverse – at least
11 \$1.2 trillion in 20 separate industries, including \$150 billion in the electronics, consumer care and
12 agricultural industries. The SEC also asked for information about Hyaline, including a description
13 of the process in place to convert from a non-bio-produced molecule sourced from a third party to
14 a bio-produced molecule in 2022. The SEC asked for support for the representations that
15 Zymergen planned to develop and commercialize product breakthroughs in about half the time and
16 at one-tenth the cost of traditional processes.

17 137. On March 8, 2021, Freshfields Bruskhaus Deringer US LLP ("Freshfields")
18 responded to the SEC's February 22, 2021 letter on behalf of Zymergen, and Zymergen filed an
19 amendment to the Registration Statement on Form S-1 with the SEC. In the letter, Freshfields
20 stated that the amended Registration Statement included revisions to address some of the
21 comments in the February 22, 2021 letter and also provided information in response to the
22 February 22, 2021 letter. Freshfields informed the SEC that the data regarding the Company's
23 market opportunity were management's estimates based on a bottom-up, industry-by-industry,
24 application-by-application analysis of IHS Markit and similar data. Freshfields described how
25 Zymergen purportedly estimated the market opportunity and also wrote that the Company
26 consulted industry experts to corroborate market analyses, especially where less granular market
27 data were available.

28

1 138. On March 22, 2021, the SEC sent Hoffman another letter providing comments and
2 requesting information about the draft Registration Statement submitted on March 9, 2021. The
3 SEC asked Hoffman to amend the disclosures about Hyaline to describe approximately how long
4 Zymergen anticipated the Hyaline qualification process to take and when the Company expected
5 to begin generating revenue from Hyaline. The SEC also asked Zymergen to disclose when the
6 Company estimated it would begin generating revenue from the other ten products included in the
7 pipeline.

8 139. On March 23, 2021, Zymergen filed its Registration Statement on Form S-1 with
9 the SEC, which forms part of the Registration Statement. In this Registration Statement, the
10 Company proposed a maximum offering of \$100 million.

11 140. On March 26, 2021, Freshfields sent a letter to the SEC responding to the SEC's
12 March 22, 2021 letter; and Zymergen filed Amendment No. 1 to the Registration Statement, which
13 forms part of the Registration Statement. The amended Registration Statement included revisions
14 made in response to the letter received from the SEC on March 22, 2021.

15 141. On April 14, 2021, Zymergen filed Amendment No. 2 to the Registration
16 Statement, which forms part of the Registration Statement, and increased the proposed maximum
17 offering to \$484.8 million, proposing to register 15.64 million shares to be sold for \$31.00 per
18 share.

19 142. On April 21, 2021, the Company filed its final amendment to the Registration
20 Statement with the SEC on Form S-1MEF, which forms part of the Registration Statement. The
21 sole purpose of the amendment was to increase the number of shares to be registered by 2,909,500.
22 The Registration Statement was declared effective the same day.

23 143. On April 22, 2021, the Company's stock began publicly trading on the NASDAQ
24 under the stock symbol "ZY."

25 144. On April 23, 2021, the Company filed its April 21, 2021 prospectus on
26 Form 424B4 with the SEC, which forms part of the Registration Statement. In the IPO, the
27 Company sold approximately 18,549,500 shares of common stock at a price of \$31.00 per share.
28 The Company received proceeds of approximately \$529.9 million from the Offering, net of

1 underwriting discounts and commissions of \$40.3 million, and approximately \$4.9 million of
2 offering costs. The proceeds from the IPO were purportedly to be used for working capital and
3 other general corporate purposes, including the continued investment in commercializing its
4 existing products, launching products in its pipeline and furthering the development of its
5 biofacturing platform and technology.

6 **B. The Materially Misleading Representations Contained in the**
7 **Registration Statement**

8 145. The Registration Statement was negligently prepared and, as a result, contained
9 untrue statements of material facts or omitted to state other facts necessary to make the statements
10 made not misleading and was not prepared in accordance with the rules and regulations governing
11 its preparation.

12 146. Under applicable SEC rules and regulations, the Registration Statement was
13 required to disclose known trends, events or uncertainties that were having, or were reasonably
14 likely to have, an impact on the Company's continuing operations.

15 147. As detailed herein, the untrue statements of material facts and omissions concerned
16 the Company's biofacturing platform; the Company's ability to create better products faster,
17 cheaper and more sustainably using the biofacturing platform; the product development process;
18 the development status of 11 products in the Company's product pipeline; the market opportunity
19 for those products; and when those products would generate revenue. The following
20 misrepresentations were included throughout the Registration Statement, including in the
21 Prospectus Summary, Management's Discussion and Analysis of Financial Condition and Results
22 of Operations and the Business sections.

23 148. All of the representations in the Registration Statement detailed below were
24 materially misleading because, as the Company disclosed on August 3, 2021 and November 3,
25 2021, Zymergen was unable to produce products that could be sold at a profit when it created,
26 manufactured and distributed the products on its own. In addition, the representations were
27 materially misleading because Defendants failed to disclose that several key target customers had
28 technical issues implementing Hyaline into their manufacturing processes or that there was only a

1 “hypothetical” near-term market for Hyaline due to there being “no hit product yet in the foldable
2 display market.” Indeed, the Company abandoned Hyaline and another optical film product
3 because there was a smaller near-term market opportunity than represented in the Registration
4 Statement and abandoned all of the consumer care products because those products could not be
5 sold at a profit when Zymergen created, manufactured and distributed them on its own. As a result,
6 Zymergen did not generate product revenue in 2021 and 2022, as it represented in the Registration
7 Statement.

8 149. In the Registration Statement, Defendants represented that Zymergen partnered
9 with Nature to design, develop and commercialize bio-based breakthrough products that delivered
10 extraordinary value to customers in a broad range of industries, including films designed for
11 electronics companies to use in new categories of smart devices. Defendants represented that
12 Zymergen created these products with a proprietary platform that unlocked the design and
13 manufacturing efficiency of biological processes with technology’s ability to rapidly iterate and
14 control diverse functions. Defendants called this process “biofacturing” and represented that it
15 would create better products faster, cheaper and more sustainably than traditional chemistry.
16 Indeed, Defendants represented that Zymergen’s goal was to launch products in about half the time
17 and at one-tenth of the cost of what traditional chemical and materials companies could deliver.

18 We partner with Nature to design, develop, and commercialize bio-based
19 breakthrough products that deliver extraordinary value to customers in a broad
20 range of industries. Our first innovations include films designed for electronics
21 companies to use in new categories of smart devices, including rollable tablets and
22 naturally derived UV protection. Our goal is to create new products with a
23 proprietary platform that unlocks the design and manufacturing efficiency of
24 biological processes with technology’s ability to rapidly iterate and control diverse
25 functions. ***We call our process biofacturing and we expect it will create better
26 products faster, cheaper and more sustainably than traditional chemistry by
27 engineering microbes to make novel biomolecules that are the key ingredients in
28 those products. Our goal is to launch our products in about half the time and
1/10th of the cost of what traditional chemicals and materials companies can
deliver, which would allow us to address a wide array of commercial applications.
Based on our experience and expectations with our first four products which are
electronic films and insect repellent products, and subject to any regulatory
requirements, which could lead to longer timelines and increased cost, we
estimate the timelines and costs of launching our products to be roughly five
years and \$50 million.*** We founded Zymergen in the belief that biofacturing will
lead to better products with better economics and a better world.

1 150. Defendants represented that the demand for innovative materials had never been
2 greater and that synthetic biology companies like Zymergen were a better alternative to chemical
3 and materials companies that struggled to innovate because those companies used a limited
4 molecular palette, had substantial capital expenditures and were among the planet's worst
5 industrial polluters.

6 ***The demand for innovative materials has never been greater.***

7 Human civilization is material. The materials in the things we use, the
8 clothes we wear, the rooms where we live, the vehicles that take us from place to
9 place, as well as the inputs that grow the food we eat, are the products of a half
dozen chemical building blocks invented over the last several decades, mostly
derived from cracking hydrocarbons.

10 We believe the chemicals and materials companies that make these
11 materials have struggled to innovate because they employ a limited molecular
12 palette and have substantial capital expenditures. In addition, they are among the
13 planet's worst industrial polluters. Recently, synthetic biology companies
14 suggested a better alternative, where microorganisms are coaxed to produce
15 chemicals, but most synthetic biology companies have struggled to manufacture
16 novel molecules at industrial scales. ***Yet while the traditional chemical industry
is stagnant and synthetic biology companies have disappointed, the demand for
materials that solve important problems and are environmentally sustainable has
never been greater.***

17 151. Defendants represented that Zymergen's biofacturing process, by contrast, created
18 better products faster, cheaper and more sustainably.

19 ***Biofacturing creates better products faster, cheaper and more sustainably.***

20 Biofacturing is the design, development and commercialization of bio-
21 based breakthrough products, economically, at industrial scale, where
22 microorganisms create the biomolecules that are the key ingredients in those
23 products. A traditional chemical factory's tons of steel and concrete are
24 functionally replaced by a tiny, flexible, easily reproduced, but incredibly valuable
25 engineered cell. Our goal is to make our biomolecules by fermentation, where all
26 biofacturing reactions occur inside the engineered cell in standard fermentation
27 vats, rather than the expensive, purpose-built chemical plants used in synthetic
28 chemistry. However, in some cases, so that we may achieve commercial launch
faster, we may initially launch products using molecules that are first produced with
non-fermentation based methods, which is a strategy we refer to as "Launch
Acceleration." Additionally, since cells naturally make tens of thousands of
different molecules, their genetic pathways can be reprogrammed to carry out any
number of biofacturing reactions, and they can produce a vast array of biomolecules
with unique properties that petrochemicals do not possess. ***Our pioneering
biofacturing process is designed to flexibly and cost effectively create products
with unique characteristics that possess the diversity and power of Nature's own
inventions, such as adhesives stronger than leading products on the market, or
an optical film as clear and thin as a dragonfly's wing.***

1 152. In the Registration Statement, Defendants described the product development
 2 process, representing that Zymergen business development personnel: (i) worked with customers
 3 to define a set of properties for a material that the customers would find valuable; then (ii) designed
 4 and developed engineered microbes that manufacture the novel biomolecule that would be a key
 5 ingredient in a breakthrough product; then (iii) had CMOs manufacture the product; and finally
 6 (iv) used Zymergen’s sales force and marketing capabilities to contract with customers and sell
 7 the product to them.

8 Our product development journey starts with our business development
 9 personnel working with a customer to define a set of properties for a material that
 10 our customer would find highly valuable. We then design and develop engineered
 11 microbes that manufacture the novel biomolecule that will be the key ingredient in
 12 a breakthrough product. Next, we leverage Contract Manufacturing Organizations
 (“CMOs”) to manufacture the product for us. Finally, once we have launched our
 13 product, we use our own sales force and marketing capabilities to contract with
 14 customers and sell our products to them.

15 153. Defendants included a chart titled “First product launched, with a rich pipeline of
 16 future launches,” depicting the stage of development for the 11 products under development,
 17 including four products in the electronics market, four products in the consumer care market and
 18 three products in the agricultural market.

19 **First product launched, with a rich pipeline of
 20 future launches**



21 154. In describing the product development process, Defendants highlighted Hyaline,
 22 the first and only product launched by Zymergen, and represented that it was launched in

1 December 2020, to customers in the electronic industry, which began the expected 6- to 18-month
2 product qualification process with multiple customers. Defendants emphasized the importance of
3 the qualification process in Zymergen's target markets and represented that Hyaline (and other
4 products) would generate revenues only after customers completed all aspects of the qualification
5 process and decided to place an order for the product.

6 ***[T]hrough our global direct sales force and a team of application sales engineers,***
7 ***we launched our first product Hyaline in December 2020 to customers in the***
8 ***electronics industry, beginning the expected 6-18 month product qualification***
9 ***process with customers. We have not yet generated revenue from product sales***
10 ***(except for nominal revenue related to the sale of samples of Hyaline). We are***
11 ***currently in the qualification process on Hyaline with multiple customers,***
including sampling and discussions on commercial terms with some of them.
Given the importance of this qualification process in our current target markets,
we anticipate that, even after we have launched a product, we will only generate
revenue after customers have completed all aspects of the qualification process
for that product and decided to place an order for our product.

12 155. Defendants represented that Hyaline was an optical film designed for electronics
13 companies to use for display touch sensors in personal devices and other applications and would
14 allow customers to make robust foldable touchscreens and high density flexible printed circuits.
15 Defendants also represented that Zymergen was converting to a fermentation-produced molecule
16 for Hyaline and developing commercial scale processes so the Company could produce the
17 molecule through fermentation at sufficient volumes and costs to support commercial
18 manufacturing. Defendants represented that Zymergen expected this process to be complete in
19 2022.

20 ***Hyaline is the first in a franchise of optical films, designed for electronics***
21 ***companies to use for display touch sensors in personal devices and other***
22 ***applications. Hyaline will allow our customers to make robust foldable***
23 ***touchscreens and high density flexible printed circuits. Hyaline uses a***
24 ***biomolecule that was identified through our biofacturing platform. In order to***
25 ***accelerate product launch and meet customer demand, we launched Hyaline with***
26 ***a non-fermentation produced biomolecule sourced from a third party. We are in***
the process of converting to a fermentation-produced molecule for Hyaline by using
a microbe that has a demonstrated ability to produce the molecule through
fermentation. We are currently developing commercial scale processes so we can
produce the molecule through fermentation at sufficient volumes and costs to
support commercial manufacturing. We expect this process to be complete in
2022.

1 156. In addition to Hyaline, Defendants represented that Zymergen had ten other
2 products in development, including additional optical film products planned to be launched in 2022
3 and 2023; four consumer care products, including insect repellent; and three agricultural products.

4 *We have 10 other products in development, consisting of three in*
5 *electronics, four with consumer care applications and three in agriculture.*
6 *ZYM0107, which we plan to launch in 2022, is the next product in our films*
7 *franchise and is a high-performance optical film like Hyaline. ZYM0101,*
8 *planned for launch in 2023, is a breakthrough film for flexible electronics, which*
9 *is designed to be used to build foldable and rollable phones and personal devices,*
10 *as insulation for antennas to deliver 5G data speeds and as a coating for*
11 *transparent monitors. Our consumer products include ZYM0201, a naturally*
12 *derived non-DEET insect repellent, and we plan on partnering to create a*
13 *microbial alternative to synthetic nitrogen fertilizer. We expect our biofacturing*
14 *platform to be an engine of innovation and revenue generation, as we seek to*
15 *develop new products in the same or adjacent sectors. We are also pursuing new*
16 *markets for future growth.*

17 157. Defendants represented that Hyaline was expected to generate revenue in the
18 second half of 2021, just a few months after the completion of the IPO, and that Zymergen's global
19 direct sales force and a team of application sales engineers were working with customers on the
20 sales qualification process for Hyaline, wherein customers would be able to validate the product
21 and qualify it as a standard component in their final electronic devices. Defendants also
22 represented that other optical film products would generate revenue following the 6- to 18-month
23 qualification process and that consumer care and agricultural products would generate revenue
24 upon launch because a product qualification process was not necessary.

25 *Following the launch of Hyaline, our global direct sales force and a team*
26 *of application sales engineers are now working with customers on the sale*
27 *qualification process in which customers are able to validate the product and*
28 *qualify it as a standard component in their final electronic devices. During this*
time, we are providing customers with samples of our products to be tested for
use in their own products so they can determine whether to purchase our product.
Based on our experience to date since the launch of Hyaline in December 2020,
we expect the sale qualification process of our products (including Hyaline) to
last 6-18 months, or longer, depending on the customer and end device
requirements. We only generate revenue after customers have completed all
aspects of the qualification process for that product and decided to place an order
for our product, which is typically done on a purchase order basis rather than a long-
term contractual commitment. In the case of Hyaline, we expect to begin
generating revenue in the second half of 2021, which will be prior to the time we
expect to convert the nonfermentation produced biomolecule to the fermentation-
produced molecule, which we expect to occur in 2022. We do not expect our
estimated revenue from Hyaline to be meaningfully impacted by the conversion
to the fermentation-produced molecule. We expect other electronics products,
including ZYM0101, which we expect to launch in 2023, to follow a similar 6-18

1 *month qualification process following which we expect to generate revenue. For*
2 *many of our consumer care and agriculture products, including ZYM0201 which*
3 *we expect to launch in 2023, a product qualification process will not be similarly*
4 *necessary because we intend to launch and sell those products directly to the end-*
5 *user and expect to generate revenue upon launch. For our other products in*
6 *development for which we do not currently have an anticipated launch date, we*
7 *cannot predict when we expect to begin generating revenue from such products.*

8 158. Defendants represented that Zymergen would grow its business in several ways and
9 that it generally targeted products that could support annual sales of greater than \$150 million.

10 We plan to grow our business in several ways. *First, we plan to grow as*
11 *we increase the market penetration of our launched products. Next, we plan to*
12 *grow by launching additional products in our chosen verticals of electronics,*
13 *consumer care and agriculture and by continuing to add new products to our*
14 *pipeline in these verticals. Finally, we plan to grow by entering new markets. We*
15 *plan to partner with industry leaders to enter these markets, as we believe this*
16 *approach de-risks and accelerates our time to product launch. Today, we are*
17 *working with various industry leaders and our strategy is to enter into partnerships*
18 *with these leaders in the future.*

19 *We generally target products with a market opportunity that if successful,*
20 *at scale, could support annual sales of greater than \$150 million. We also expect*
21 *that some portion of those products could be breakthrough products, but it is very*
22 *hard in the materials market to predict beforehand which products those would be.*
23 *In the long term, our goal is to launch multiple breakthrough products every year.*
24 *We believe that our strategy will drive strong future revenue growth as our*
25 *revenues from launched products increase and revenues from new product*
26 *launches stack on top of each other.*

27 159. In addition, Defendants assured investors that the market opportunity addressable
28 by Zymergen's biofacturing platform was enormous and diverse – at least \$1.2 trillion across 20
separate industries. They represented the market opportunity for the three industries being pursued
with its 11 pipeline products – electronics, consumer care and agriculture – was approximately
\$150 billion, including the display market for Hyaline being over \$1 billion in 2020, and the
market for insect repellent being over \$1.5 billion.

The market opportunity addressable by our biofacturing platform is
enormous and diverse. Our bottom-up, industry-by-industry, application-by-
application, analysis suggests that our total market opportunity is at least
\$1.2 trillion across 20 separate industries for our potential products, all ripe for
disruption, and that the market opportunity of the first three industries we will
pursue, electronics, consumer care and agriculture, is approximately
\$150 billion. In particular, we estimate that the display market alone for Hyaline
was over \$1 billion in 2020 and according to Transparency Market Research, the
global market for insect repellents is over \$1.5 billion across sprays and other
traditional formats. In addition, our consumer survey, which asked 2,750 adults
between 18 and 65 years of age in the United States and an additional 6,000
consumers in five global markets as a follow up about their concerns about insects,

1 their current behavior with insect protection and their interest in better insect
2 repellent products, found that *consumer need to repel insects is global, big and*
3 *likely to get bigger with current solutions being unsatisfactory, suggesting that*
4 *there is a large latent demand for better products and therefore we believe that*
5 *the true market opportunity is much larger. We anticipate deploying our*
6 *innovation engine to create decades of disruptive breakthrough products using a*
7 *rigorous discipline to select new opportunities where there's demand for new*
8 *materials, where bio-based products have an advantage and where industries*
9 *rapidly adopt new products.*

10 160. The representations about Zymergen's biofacturing platform, the products created,
11 their development status, market opportunity and when those products would generate revenue
12 were particularly important to investors given the Company's precarious financial condition.
13 Zymergen reported just \$15.4 million of revenue in 2019, and a net loss of \$236.8 million. In
14 2020, Zymergen reported just \$13.3 million of revenue and a net loss of \$262.2 million. The
15 increasing net losses caused the Company to be insolvent as of December 31, 2020, with an
16 accumulated deficit of \$773.7 million. The recurring losses and accumulated deficit meant
17 Zymergen needed to raise equity or debt to fund its operations until the Company could generate
18 sufficient revenues to fund its operations. That, in turn, caused the Company's auditors to note
19 there was substantial doubt about the Company's ability to continue operating as a going concern.

20 The Company has incurred net losses since inception and anticipates net
21 losses and negative operating cash flows for the near future. For the year ended
22 December 31, 2020, the Company had a net loss of \$262.2 million, and as of
23 December 31, 2020, the Company had an accumulated deficit of \$773.7 million.
24 At December 31, 2020, the Company had \$210.2 million of unrestricted cash and
25 cash equivalents. While the Company has signed a number of initial customer
26 contracts, revenues have been insufficient to fund operations. Accordingly, the
27 Company has funded the portion of operating costs exceeding revenues through a
28 combination of proceeds raised from equity and debt issuances. The Company's
operating costs include the cost of developing and commercializing products as
well as providing research services. As a consequence, the Company will need to
raise additional equity and debt financing that may not be available, if at all, at
terms acceptable to the Company to fund future operations.

Based on the Company's current business plan that was approved by the
Board of Directors, its existing cash and cash equivalents, are not expected to be
sufficient to meet anticipated cash requirements for the next 12 months. Instead
the Company is evaluating plans to restrict spending in order to meet current
contract and operating commitments.

In the event that unforeseen circumstances arise that result in additional cash
outflows, the Company has at its disposal a number of cost-cutting measures that it
could initiate under these circumstances.

1 The accompanying consolidated financial statements have been prepared
2 assuming that the Company will continue as a going concern, which contemplates
3 the realization of assets and the settlement of liabilities and commitments in the
4 normal course of business. Due to the substantial doubt about the Company's
5 ability to continue operating as a going concern and the material adverse change
6 clause in the loan agreement with its lender, the amounts due as of December 31,
7 2019 and December 31, 2020, have been classified as current in the consolidated
8 financial statements. The lender has not invoked the material adverse change clause
9 as of the date of issuance of these financial statements. The accompanying
10 consolidated financial statements do not reflect any other adjustments relating to
11 the recoverability and reclassification of assets and liabilities that might be
12 necessary if the Company is unable to continue as a going concern. The Company
13 is subject to various covenants related to the credit and guaranty agreement entered
14 into on December 19, 2019 (Note 9) and given the substantial doubt about the
15 Company's ability to continue as a going concern there is a risk that it may not meet
16 its covenants in the future.

17 **C. The Materially Misleading Risk Factors in the Registration Statement**

18 161. The Registration Statement also contained inaccurate and materially misleading
19 "Risk Factors" warning investors that Zymergen's business "could be," "might be" or "would be"
20 harmed by various risks "if" they occurred. These Risk Factors were inaccurate and materially
21 misleading because the warned-of risks had already occurred and were adversely impacting
22 Zymergen's business at the time of the IPO.

23 162. Each of the risk warnings was materially misleading because, at the time of the
24 IPO, there was only a "hypothetical" near-term market for Hyaline (the Company's first and only
25 product to be launched at the time of the IPO) due to there being "no hit product yet in the foldable
26 display market" and because several key target customers had technical issues implementing
27 Hyaline into their manufacturing processes. In addition, the risk warnings were misleading
28 because the Company was unable to produce products that could be sold at a profit when it created
and distributed the product on its own. Thus, the warned-of risks were already adversely and
materially affecting Zymergen's current business operations. Indeed, the Company abandoned
Hyaline and another optical film product because there was a smaller near-term market opportunity
than represented in the Registration Statement, and abandoned all of the consumer care products
because those products could not be sold at a profit when Zymergen created, manufactured and
distributed them on its own.

1 163. Defendants represented that Zymergen’s business, results of operations and
2 financial condition “may be” adversely and materially affected “if” the Company was unable to
3 use its biofacturing platform to successfully identify and develop pipeline products into
4 commercially viable products faster and cheaper than traditional materials.

5 *We may not be successful in our efforts to use our proprietary*
6 *biofacturing platform to build a pipeline of products.*

7 *A key element of our strategy is to use our experienced management,*
8 *engineering and scientific teams to build a pipeline of products through our*
9 *biofacturing platform and develop those pipeline products into commercially*
10 *viable products faster and cheaper than traditional materials. Although our*
11 *R&D efforts to date have resulted in potential pipeline products, we may not be*
12 *able to continue to identify and develop additional pipeline products through the*
13 *use of our biofacturing platform.*

14 *Even if we are successful in continuing to build our product pipeline*
15 *through the use of our biofacturing platform, not all potential pipeline products*
16 *we identify will be suitable for development and use in commercial products.*
17 Machine learning and automation, generally, remain in the early stages of
18 development. Although we expect machine learning and automation to improve
19 over time, the operation of our biofacturing platform will continue to require
20 significant human interaction which introduces risks of error and requires us to
21 recruit highly skilled employees in a competitive market. Identifying and
22 developing commercially viable pipeline products may require us to make
23 continued advancements in our biofacturing platform to lower costs, reduce
24 development time or otherwise more quickly identify pipeline products[.] See the
25 risk factor titled “–Even if we are successful in expanding our biofacturing
26 platform, rapidly changing technology and extensive competition in the synthetic
27 biotech and petrochemical industries could make the products we are developing
28 and producing obsolete or non-competitive unless we continue to develop and
manufacture new and improved products and pursue new market opportunities.”.
*If we are unable to use our biofacturing platform to successfully identify and
develop pipeline products, our business, results of operations and financial
condition may be adversely and materially affected.*

164. Similarly, Defendants represented that “if” Zymergen experienced problems or
delays in developing pipeline products, the Company “may” be subject to unanticipated costs,
including the loss of customers; Zymergen “may” not be able to solve development problems or
develop a commercially viable product at all; and “if” the Company did not successfully manage
new product development processes, revenue growth from new pipeline products “may” be
prevented or delayed and business and operating results “may” be harmed.

*It is difficult to predict the time and cost of development of our pipeline
products, which are produced by or based on a relatively novel and complex
technology and are subject to many risks, any of which could prevent or delay*

1 *revenue growth and adversely impact our market acceptance, business and*
 2 *results of operations.*

3 *We have concentrated our R&D efforts to date on a select number of*
 4 *pipeline products based on technical feasibility and market opportunity. We*
 5 *launched our first product Hyaline in December 2020, beginning the expected 6-*
 6 *18 month product qualification process with customers. We have not yet*
 7 *generated revenue from product sales (except for nominal revenue related to the*
 8 *sale of samples of Hyaline). We have 10 other products in development,*
 9 *consisting of three in electronics, four with consumer applications and three in*
 10 *agriculture.*

11 * * *

12 *If we experience problems or delays in developing our pipeline products, we may*
 13 *be subject to unanticipated costs, including the loss of customers. Additionally,*
 14 *even after the incurrence of significant costs to develop a product, we may not be*
 15 *able to solve development problems or develop a commercially viable product at*
 16 *all. If we do not achieve the required technical specifications or successfully*
 17 *manage our new product development processes, or if development work is not*
 18 *performed according to schedule, then our revenue growth from new pipeline*
 19 *products may be prevented or delayed, and our business and operating results*
 20 *may be harmed.*

21 165. Defendants also represented that the success of Zymergen’s business relied heavily
 22 on the performance of its products and the development of new products at lower costs and faster
 23 development timelines and that Zymergen’s business and results of operations “will be” adversely
 24 affected “if” the Company was unable to successfully transition into becoming a biofactorer of
 25 new products and create novel products at lower costs and on accelerated development timelines.

26 *The success of our business relies heavily on the performance of our*
 27 *products and developing new products at lower costs and faster development*
 28 *timelines.*

To date our revenue has primarily been derived from relationships with partners where we seek to test and validate the ability of our biofacturing platform to improve or optimize our clients’ products through biofacturing. However, *our future profitability will depend on our ability to successfully execute and maintain a sustainable business model and generate continuous streams of revenue through the sale of our products across industries. We launched our first product Hyaline in December 2020, beginning the expected 6-18 month product qualification process with customers.* We have not yet generated revenue from product sales (except for nominal revenue related to the sale of samples of Hyaline). *We are currently in the qualification process on Hyaline with multiple customers, including sampling and discussions on commercial terms with some of them. Given the importance of this qualification process in our current target markets, we anticipate that, even after we have launched a product, we will only generate revenue after customers have completed all aspects of the qualification process for that product and decided to place an order for our product.* Our current business model is premised on innovating and producing new products rapidly and at lower costs than traditional methods and achieving results that may

1 only be obtained through leveraging biology. While we may launch bio-based
 2 versions of existing products or existing molecules that are too expensive to utilize
 3 in products today, biofacturing of previously unavailable, superior molecules and
 4 materials is key to our long-term success. However, *if we are unable to
 successfully transition into becoming a biofacturer of new products and create
 novel products at lower costs and on accelerated development timelines, our
 business and results of operations will be adversely affected.*

5 166. Defendants represented that Zymergen’s business, financial condition and results
 6 of operations “may be” adversely affected “if” the Company’s products contained defects or were
 7 delayed.

8 *Our products, or the end products of which they are components, could
 9 have defects or errors, which may give rise to claims against us or delays in
 production and adversely affect our business, financial condition and results of
 operations.*

10 Some applications of our technology or products are components of end
 11 products and therefore our success is tied to the success of such end products. *We
 12 cannot assure you that material performance problems, defects, errors or delays
 will not arise in our products or the end products in which they are components,
 13 and as we commercialize our products, these risks may increase.* We expect to
 14 provide warranties that our products will meet performance expectations and will
 be free from defects. The costs incurred in correcting any defects or errors may be
 substantial and could adversely affect our operating margins.

15 In manufacturing our products, we depend upon third parties for the supply
 16 of our instruments and various components, many of which require a significant
 17 degree of technical expertise to produce. If our suppliers fail to produce our product
 18 components to specification or provide defective products to us and our quality
 control tests and procedures fail to detect such errors or defects, or if we or our
 suppliers use defective materials or workmanship in the manufacturing process, the
 reliability and performance of our products will be compromised.

19 *If our products or the end products of which they are components, contain
 20 defects or are delayed, we may experience:*

- 21 • a failure to achieve market acceptance for our products or expansion of our
 products sales;
- 22 • the development of new technology rendering our products, or the end
 products of which they are components, obsolete;
- 23 • loss of customer orders and delay in order fulfilment;
- 24 • damage to our brand reputation;
- 25 • increased warranty and customer service and support costs due to product
 26 repair or replacement;
- 27 • product recalls or replacements;
- 28 • inability to attract new customers and collaboration opportunities;

- 1 • diversion of resources from our manufacturing and R&D departments into
2 our service department; and
- 3 • legal and regulatory claims against us, including product liability claims,
4 which could be costly, time consuming to defend, result in substantial
5 damages and result in reputational damage.

6 **D. August 3, 2021: Zymergen Discloses Numerous Facts Demonstrating**
7 **the Registration Statement Was Inaccurate and Materially**
8 **Misleading, Causing the Company's Stock Price to Decline 75%**

9 167. After the market closed on August 3, 2021, less than four months after the
10 completion of the IPO, the Company revealed numerous facts informing investors the Registration
11 Statement contained untrue statements of material facts and omitted material facts. On that date,
12 Zymergen issued a press release and held a conference call to provide a business update regarding
13 its commercial product pipeline and financial forecast.

14 168. The Company reported: (i) there were issues with its commercial products pipeline
15 that would impact the Company's delivery timeline and revenue projections; (ii) the Company no
16 longer expected product revenue in 2021 and only expected immaterial product revenue in 2022;
17 (iii) during the quarter, several key target customers encountered technical issues in implementing
18 Hyaline into their manufacturing processes, resulting in a delay in the commercial ramp up of
19 Hyaline; (iv) the Company was working to strengthen its commercial team to ensure the reliability
20 and robustness of the sales pipeline qualification and forecast process; (v) the Company was
21 evaluating emerging data on the total addressable market for foldable display applications,
22 indicating a smaller near-term market opportunity that was growing less rapidly than anticipated,
23 as well as its impact on Zymergen's sales forecast; (vi) the Company would conduct a full
24 reexamination of all Zymergen target markets to determine if a shift in market focus was
25 appropriate; (vii) the Zymergen's Board of Directors had formed dedicated committees, including
26 a Strategic Oversight Committee, and was working with outside experts to conduct an in-depth
27 review of the Company's operational, financial, product and commercialization efforts to facilitate
28 the development of an updated strategic plan; (viii) the Company would conduct a cultural
assessment to ensure that there would be broad-based accountability across the organization and
that the Company would operate with transparency and openness; (ix) the Company was focused

1 on reestablishing the credibility of the leadership team and the Company; (x) Hoffman, the
 2 Company's CEO, had been terminated, effective immediately, as part of the effort to reestablish
 3 the credibility of the leadership team and the Company; and (xi) the Company was developing a
 4 plan to reduce and align expenses with the change in the Company's revenue expectations.

5 169. In the press release, Zymergen reported the following:

6 *Zymergen recently became aware of issues with its commercial product*
 7 *pipeline that will impact the Company's delivery timeline and revenue*
 8 *projections. Accordingly, the Company no longer expects product revenue in*
 9 *2021, and expects product revenue to be immaterial in 2022.*

10 *During the quarter, several key target customers encountered technical*
 11 *issues in implementing Hyaline into their manufacturing processes typical of new*
 12 *product and process development learnings. The Company has made significant*
 13 *progress towards addressing these challenges and believes there are no intrinsic*
 14 *technical issues with Hyaline. However, this issue has resulted in a delay in the*
 15 *Company's commercial ramp. Zymergen is working to strengthen its commercial*
 16 *team to ensure the reliability and robustness of the sales pipeline qualification*
 17 *and forecast processes.*

18 *The Company is also evaluating emerging data on the total addressable*
 19 *market for foldable display applications, which indicate a smaller near-term*
 20 *market opportunity that is growing less rapidly than anticipated, as well as its*
 21 *impact on Zymergen's sales forecast. The Company will conduct a full re-*
 22 *examination of Zymergen's target markets confirming our past views or altering*
 23 *them if the data indicate a shift in market focus is appropriate.*

24 *"We are disappointed by these developments, and the Board and*
 25 *management team are focused on resolving the underlying issues to ensure*
 26 *Zymergen moves forward as a stronger company with a compelling operating*
 27 *plan," said Jay Flatley, Acting CEO and Chairman of the Board. "The Board has*
 28 *formed dedicated committees, including a Strategic Oversight Committee, and is*
working with outside experts to conduct an in-depth review of the Company's
operational, financial, product, and commercialization efforts to facilitate the
development of an updated strategic plan for Zymergen. The underlying promise
of our business and technology is sound, and I am proud of the work our teams are
doing across the organization. We are confident in Zymergen's opportunities and
prospects, although it will take longer to accomplish our goals than previously
expected."

29 *CEO Transition*

30 In connection with the business update, Zymergen also announced that Jay
 31 Flatley has been appointed Acting Chief Executive Officer, effective immediately.
 32 Flatley's appointment follows the mutual decision by Zymergen and Josh Hoffman
 33 that *Hoffman will step down as CEO and as a member of the Board, effective*
 34 *immediately*. The Company's Board of Directors will commence a search process
 35 to identify a permanent CEO. Sandi Peterson will serve as Zymergen's Lead
 36 Independent Director while Flatley serves as Acting CEO.

37 * * *

1 *demand pushed out in time and growing more slowly than anticipated. The*
2 *market is in an earlier stage than we previously expected.*

3 *Third, the company's commercial teams did not have significant insight*
4 *into the customer qualification process and into their customers and users, which*
5 *resulted in forecasted overestimated near-term demand. As a result, we're*
6 *already making substantive changes in our commercial team.*

7 171. After repeating the adverse information included in the earnings release, Flatley
8 emphasized the seriousness of the problems and what the Zymergen's Board of Directors and
9 management were doing to understand the issues and develop a plan to address them.

10 *I want to perhaps state the obvious that we're taking this situation*
11 *extremely seriously. As soon as we learned of the problems, our Board and*
12 *management immediately started to work to fully understand the issues and*
13 *began developing a plan to address them. The Board has formed dedicated*
14 *committees, including a strategic oversight committee, to conduct an in-depth*
15 *review of the company's operational, financial, product and commercialization*
16 *efforts. We have also engaged expert advisers to support us in this process.*

17 *Currently, our work is focused in several key areas. First, we're*
18 *conducting a deep dive into the company's sales forecasting process to examine*
19 *how the initial forecast was developed, where the issues arose and how to improve*
20 *that process going forward. Second, we've retained a number of outside experts*
21 *to examine the robustness of the products coming out of our pipeline and their*
22 *readiness for full commercialization. Third, we're digging into the company's*
23 *long-term market opportunities to ensure our product pipeline is aligned with*
24 *industry trends and customer demand.*

25 *With the assistance of a top-tier consulting firm, we're doing a full*
26 *assessment of Zymergen's target markets and the fit of our products into the*
27 *pipeline of those markets. As part of this work stream, we're exploring adjacent*
28 *opportunities that could potentially provide for new revenue sources.*

* * *

29 *Lastly, we're developing a plan to align our burn rate to match the newly*
30 *expected revenue ramp. One of our top priorities will be expense management.*
31 However, we should note that the Q3 expense rate is likely to be higher than Q2,
32 given the outside resources we've retained and the onetime expenses it will take to
33 manage down the burn rate. In the meantime, we have ample cash on hand to
34 manage the business.

35 172. Flatley also stated that Zymergen would conduct a cultural assessment to ensure
36 there was broad-based accountability across the organization and that the Company operated with
37 transparency and openness; that Zymergen was focused on reestablishing the credibility of the
38 leadership team and the Company; and that the termination of Hoffman was required to ensure
39 accountability, transparency, openness and credibility.

1 *We will conduct, additionally, a cultural assessment to ensure that there's broad-*
 2 *based accountability across the organization and that we operate with*
 3 *transparency and openness.*

4 * * *

5 As a result of the work underway, we will develop an updated strategic plan
 6 for Zymergen with clear milestones and goals that the company can be held
 7 accountable to achieving. *We are focused on reestablishing the credibility of the*
 8 *leadership team and the company. We recognize that this will not happen over*
 9 *weeks or months, but will require consistent quarter-after-quarter execution*
 10 *against a credible plan.*

11 *To that end, another key element to ensuring we're set up for long-term*
 12 *success is [to] have the best possible leadership.* As a co-founder and CEO, Josh
 13 Hoffman's vision and passion for partnering with nature to make better products
 14 has been instrumental to establishing Zymergen as an industry pioneer and
 15 innovator. We're all grateful to him for his work in advancing this mission and
 16 thank him for his many contributions.

17 *As we navigate the current situation and work to move the company*
 18 *forward as a refocused company, the Board and Josh mutually agreed that new*
 19 *leadership is required.* The Board will initiate a comprehensive search to find the
 20 right leader to guide Zymergen's strategy moving forward and deliver on its
 21 strategic and operational goals. We will take whatever time is necessary to find the
 22 world-class leader our company deserves. In the meantime, I'm committed to
 23 leading the company and overseeing all operations as well as the reviews underway,
 24 and we'll keep you updated as we have more information to announce.

25 173. Flatley concluded his opening remarks by stating that the Company was now
 26 "committed to acting with transparency" but could not provide a specific forecast for 2022 and
 27 2023, until it completed various tasks, including a full reexamination of the Company's target
 28 markets, the strengthening of the commercial team and ensuring the reliability and robustness of
 Zymergen's sales pipeline and forecast process. He acknowledged the unexpected adverse
 disclosures were "deeply disappointing" to investors and meant it would take longer for Zymergen
 to achieve its goals than previously expected.

29 *The Board's hope was to speak to you today about the company's 2022*
 30 *and 2023 prospects. However, we have more work to do before we can provide a*
 31 *more specific forecast. We're committed to acting with transparency and look*
 32 *forward to providing updates on our progress.*

33 Over the next several quarters, we expect to complete and deliver a full
 34 reexamination of the company's target markets, confirming our past views or
 35 altering them if the data indicate a shift in market focus is appropriate. This will
 36 also include exploring potential new markets. Second, a plan to strengthen the
 37 commercial team and ensure the reliability and robustness of both our sales
 38 pipeline, qualification and our forecast processes. A plan to reduce the company's
 burn rate to align more closely with our revenue prospects. Fourth, a deep dive into

1 the process by which we prepare and launch products to be sure they're market-
2 ready and can be easily integrated into our customers' workflows. And lastly, a
plan for 2022 and 2023, that we have confidence we will meet.

3 *To close, I want to acknowledge that these developments are deeply*
4 *disappointing to all of us as supporters of Zymergen and its mission, including*
5 *you, our analysts and investors, our employees, our customers and our Board of*
6 *Directors. This is a setback that we're committed to resolving fully and*
7 *expeditiously. Our execution challenges do mean it will take longer to achieve*
8 *our goals than previously expected.* However, we remain focused on our strategy
9 of pursuing continuous launches of breakthrough products and I'm proud of the
10 work our teams are doing across the organization.

11 174. Following Flatley's prepared remarks, analysts expressed shock and
12 disappointment with the numerous adverse disclosures made just months after the completion of
13 the IPO and asked many questions.

14 175. Cowen analyst Doug Schenkel ("Schenkel") asked the first question, stating the
15 disclosures were a disappointment for everybody and very surprising. He noted there was a lot of
16 excitement about the outlook for Hyaline because the Company had attached a large market
17 opportunity to it and because Hyaline working would be a sign that Zymergen's biofacturing
18 platform was worth much more. He asked Flatley if there truly was a real platform value given
19 the unexpected adverse disclosures.

20 *Obviously, a disappointment for everybody involved in listening to this call, and*
21 *it's very surprising.*

22 If we tick it up a level; from *Hyaline, there was a lot of excitement about*
23 *the outlook for that product. I would argue that investors were as focused on*
24 *Hyaline for the product itself as well as essentially looking at it as a sign that*
25 *investors and analysts could have more confidence that this platform could work.*

26 *So while the product itself had attached to it a large market value, a*
27 *market opportunity, I think folks looked at Zymergen as not just Hyaline*
28 *company. But if Hyaline worked and then the follow-on product worked, that it*
would be a sign that this platform was worth much, much more.

I know this has just happened, but I think *it would be really helpful if you*
could share anything that would make all of us feel better, that there truly is real
platform value here. How do we get comfortable with that, Jay?

176. Flatley claimed he had confidence the platform could produce products but
acknowledged the challenge was in the execution related to matching produced products with
market opportunity. Flatley also claimed Hyaline still had a material opportunity in the market –
a claim he would contradict in Zymergen's 3Q21 earnings call just three months later, when he

1 unexpectedly revealed the Company had stopped all work on Hyaline and cancelled the product
 2 because the foldable display market was smaller than initially expected – but admitted that
 3 opportunity had been “pushed out” and that the “pipeline [was] thinner than we might have
 4 expected back several months ago.” He also admitted what happened with Hyaline caused the
 5 Company to “relook at the entire pipeline of products” to determine the Company’s ability to
 6 manufacture them in a way that they were truly market ready and that they had a match to the best
 7 market opportunities.

8 So everything I’ve seen to date, Doug, reinforces the confidence that we
 9 have in the overall ability of this platform to produce products. *What I think we’ve*
 10 *seen, as we look back over the last weeks, is a real challenge in execution related*
 11 *to the match of the products that the platform can produce with the market*
 12 *opportunity.*

11 And Hyaline, you’re right, was certainly an exemplar or intended to be an
 12 exemplar of what this platform could produce. *We think the product still has a*
 13 *material opportunity in the market. It’s certainly pushed out, and the pipeline is*
 14 *thinner than we might have expected back several months ago.* But intrinsically,
 15 we think the technical characteristics of the products are sound.

14 *Having said that, what’s happened on Hyaline has caused us to relook at*
 15 *the entire pipeline of products that we’re producing, not in terms of the actual*
 16 *specification so much of those products, but our ability to manufacture them in*
 17 *a way that they’re truly market-ready, number one. But secondarily, that they*
 18 *also have a match to the best market opportunities that the company has in front*
 19 *of it.*

18 So in summary, I think the platform is solid. *What we’re facing here are*
 19 *execution challenges in matching the products that come off that platform to the*
 20 *market.*

20 177. Schenkel mentioned the pipeline of product charts shared by Zymergen – including
 21 in the Registration Statement – and asked what had changed if the products were as represented in
 22 the pipeline charts.

23 Okay. And I guess I follow-up on what you’ve mentioned a couple of
 24 times, which is this pipeline. I just want to make sure I understand that correctly.
 25 *When you talk about pipeline, and maybe I should just understand this*
 26 *inherently, but are you talking about the products and the targets that the*
 27 *company has been talking about for a while in terms of what would come next?*
 28 *Are you talking about the funnel of customers that could be interested in Hyaline*
 29 *and other products? Or is it actually both?*

27 178. Flatley responded that the pipeline of products was as represented during the IPO
 28 but that the pipeline of customers was thinner than represented during the IPO.

1 Your point's a good one. It's actually both, and pipeline is used to describe
2 both of those things. And what I would say is that the pipeline of products is as
3 was represented during the IPO. So those products are continuing to be developed
4 by the platform. ***What is thinner than we expected is the pipeline of customers
5 for Hyaline specifically.***

6 179. That response caused Schenkel to ask if what changed with the pipeline charts
7 included in the Registration Statement was Zymergen's ability to manufacture at a level that would
8 put the Company in a position to address the markets in a way where the markets would be as
9 previously communicated.

10 [Schenkel:] Okay. But – and then – but in general, so that – ***if we think of
11 those product pipeline charts, you guys shared, nothing's changed there. What's
12 changed is your assessment of your ability to manufacture at a level that would
13 put you in a position to address the markets in a way where the TAMs would be
14 what was previously communicated?***

15 180. Flatley responded that the problem was not manufacturing, but the actual fit of the
16 product to the market opportunity. Moreover, he admitted there was no market for Hyaline and
17 that the market was just “theoretical” because there was “no hit product yet in the foldable display
18 market.” Flatley said that problem caused Zymergen to relook at the entire portfolio of products
19 to make sure there were market opportunities for them.

20 [Flatley:] ***It's not so much the scalability of manufacturing, Doug. It's
21 the actual fit of the products that we're making to the market opportunity, right?
22 Do they satisfy the market? Are they timed in a way to hit the market when the
23 market is actually ready for them?***

24 So we think, as I mentioned in the script, ***that the timing for the foldable
25 display market is getting pushed out. As most people are aware, there's no hit
26 product yet in the foldable display market. So they're all remaining theoretical,
27 and that's sort of pushing out the time line for Hyaline. So that's an example, I
28 think, of where we have a product in a market that's not quite ready for it yet and
29 so the timing gets pushed out. That's what's caused us to go back and relook at
30 the entire pipeline of products to make sure that, that fit is appropriate and that
31 we're hitting the best market opportunities that the company has.***

32 181. In response to a question from J.P. Morgan Chase analyst Tycho Peterson
33 (“T. Peterson”) about the technical issues key target customers had implementing Hyaline into
34 their manufacturing processes, Flatley revealed there was product shrinkage at one customer site
35 and material compatibility issues at an undisclosed number of customers. He acknowledged the
36 Company did not do a sufficient job of anticipating and modeling the processes its products went
37 through at its customers or knowing in advance what risks its products could have in the hands of

1 third-party customers. As a result, Zymergen did not understand the various types of applications
2 for its products and what issues might come up at the customer sites and pretest for as many of
3 those as possible. Moreover, he acknowledged these failures should not have occurred, stating
4 they were “normal sort of cutting-your-teeth problems that happen in the implementation of these
5 advanced types of technologies.”

6 There were 2 specific things, Tycho, that came up post IPO. One was the
7 fact that *we had some product shrinkage in one customer site*. And as I said in
8 the script, we believe we’ve largely addressed that. There’s probably a little bit
9 more testing required to ensure that, that’s the case. But we think that’s largely
10 behind us.

11 *The second one has to do with material compatibility*. As you know, these
12 products go into a process that’s different at every customer site. And *what we
13 should have done as a company has done a better a job of anticipating and
14 modeling what those processes were at each of those customers, knowing in
15 advance what risks our product could have in the hands of the third-party
16 customers*.

17 *And that’s where we had some execution challenges and where we need
18 to go back into our pipeline of products and make sure that when we produce a
19 product, we understand clearly the various types of applications for that product
20 and what issues might come up in those customer sites and pretest for as many
21 of those as we possibly can. So those were the technical issues that we faced*.

22 And as I mentioned, we don’t think there’s any intrinsic problems with the
23 product. *These are normal sort of cutting-your-teeth problems that happen in the
24 implementation of these advanced types of technologies*.

25 182. T. Peterson also asked about the smaller near-term market opportunity for Hyaline,
26 which was growing more slowly, and asked if Zymergen had bad market data or if the Company’s
27 customers pushed out the timelines. Flatley said it was a combination. He said the Company had
28 research reports that clearly indicated the foldable display market was at least a year away and that
29 there was no killer product on the horizon, facts that would have existed at the time of the IPO.
30 He also said the smaller near-term market opportunity for Hyaline was a result of customer
31 feedback and acknowledged this information existed at the time of the IPO by stating that it was
32 another point in Zymergen’s commercial chain where the Company did not do as good a job as it
33 should have in understanding the ultimate end use of the product and what the demand curve
34 looked like, which was why Zymergen overestimated the near-term demand for Hyaline.

35 That was a combination. *We’ve had some research reports that have
36 clearly indicated a shift in market timing that’s at least a year and maybe more*.

1 *And as I mentioned, we all watch the foldable phone market, and there's no killer*
 2 *product immediately on the horizon that, at least, we're aware of. So that time*
 3 *line has largely gotten pushed out.*

4 *And we've had customer – direct customer contact, deep customer contact*
 5 *through our commercial channels, where we've talked to customers about exactly*
 6 *when they plan to implement it and what product they plan to implement it in.*
 7 *It's another point in our commercial chain where we didn't do as good a job as*
 8 *we should have in understanding, in fact, the ultimate end-use of the product in*
 9 *the stack and understanding what that demand curve look like. And that's why*
 10 *I think we potentially – well, we, in fact, did overestimate the near-term demand*
 11 *for Hyaline.*

12 183. Flatley also admitted Zymergen was looking at the fundamental model of the
 13 Company to determine whether its at-risk development model was sound compared to the foundry
 14 approach used by some of the Company's peers. Moreover, he admitted the deep dive into the
 15 Company's at-risk development model and other business assessments would occur over the next
 16 several quarters.

17 184. BofA analyst Derik De Bruin ("De Bruin") questioned the representations made
 18 during the IPO process given the unexpected adverse disclosures and asked how the analysts could
 19 have any confidence in anything the Company was now representing, noting the representations
 20 about Hyaline being the Company's breakthrough product were off so much. De Bruin told Flatley
 21 that, during the IPO process, health care analysts like him relied on the Company for information
 22 to evaluate the electronics markets, consumer products markets and agriculture product markets
 23 because they were a bit beyond the scope of health care analysts. He asked:

24 *[H]ow can we have any confidence whatsoever in anything that's been put out*
 25 *there in terms of numbers or putting the market opportunity? I mean, given that*
 26 *the one product, the one market that was set in stone to come out and be the*
 27 *breakthrough product is off so much? So . . . the question is like, what's the basis*
 28 *for our forecast for now on this and sort of the opportunity? And it's like – are*
 29 *you going to reevaluate all the other pipeline products as well?*

30 185. Flatley admitted that the Company was reevaluating all the other pipeline products
 31 and that it was *"totally fair that you question the credibility of any forecast we give you today,*
 32 *which is, frankly, why we didn't give you any forecast today."* He claimed the Zymergen Board
 33 was as surprised as De Bruin, the other analysts and the Company's investors and that it was part
 34 of the reason Zymergen was doing the very deep dive to understand what happened in the
 35 forecasting process, the product process and the overall market assessment.

1 186. In response to another question from De Bruin about the Company's cash burn,
2 Flatley said Zymergen was in a "great cash position at the moment" with \$580+ million of cash in
3 the bank and net cash of about \$500 million. He admitted, however, a key priority was to reduce
4 the cash burn rate sufficiently so cash would last longer and to the point it would match the revenue
5 stream going forward, which Flatley admitted the Company did not know.

6 187. Flatley failed to mention that the great cash position was the result of the Company
7 raising \$529.9 million less than four months earlier, based on a Registration Statement that
8 contained untrue statements of material facts and omitted facts necessary to make the statements
9 made not misleading.

10 188. Goldman Sachs analyst Matthew Sykes noted the technical issues customers
11 encountered with Hyaline during the evaluation and testing phase were fairly far along in the
12 process when discovered and asked if there were ways Zymergen could check in to avoid these
13 types of surprises in the future. Like in his response to J.P. Morgan analyst T. Peterson, Flatley
14 acknowledged the technical issues were knowable at the time of the IPO if Zymergen had done a
15 better job of understanding and anticipating the end use of the product in the customer's hands and
16 having a more intimate relationship with the customer so the Company understood specifically
17 how the customer was going to use the product and what other materials they were using in their
18 factories so that Zymergen's material would be compatible at the time it was provided to the
19 customer. Flatley also said Zymergen needed to have more talent at the application engineer level
20 who worked directly with the customer and make sure those engineers were on site working
21 directly with the customers. Flatley admitted that had not happened and blamed COVID for
22 engineers not being on site.

23 *There's 2 key things, Matt, that I think we need to do there. One is that*
24 *we need to do a much better job of understanding and anticipating the end-use*
25 *of the product in the customer hands; and having a more intimate relationship*
26 *with the customer so we understand specifically how they're going to use it, what*
other materials they're using in their factories, so that our material winds up
being fully compatible at the time we put it in their hands. There's always some
of this that's going to happen as you put a brand-new product into a new application.

27 *But the second thing we need to do to make that go much more smoothly*
28 *is have more talent at the application engineer level that works directly with the*
customer on site. And COVID, we've never used COVID as an excuse in any of

1 this, but there have been some COVID challenges in getting our teams to fly to
2 customer sites and be able to meet with customers. And so as a backdrop, that's
3 been a challenge, frankly, for the customer – company in the last 1.5 years. And so
4 what we need to do as we come out of COVID it is to make sure we have those
5 application engineers on-site working directly with customers in a much more
6 timely way.

7 189. Sykes, like other analysts, also questioned the Company's credibility and whether
8 there were also issues with the overall platform.

9 ***And then just on the overall credibility. Obviously, there will be general***
10 ***questions going forward.*** And how much of this is – can we attribute to specifically
11 to the technical issues that Hyaline had and/or electronic films versus other end
12 markets and in the conversations that you'll likely have with customers that you've
13 been working with other end markets to assure them that this is a specific issue to
14 a specific end market and a specific product versus the overall platform that you
15 kind of addressed in an earlier question, but just wanted a little more detail on it.

16 190. Flatley responded that there was no concern about the real market opportunities for
17 the Company but that the challenge was to make sure the specific products made would meet the
18 market need of a particular application area, which was where the Company had fallen down. He
19 stated Zymergen needed to track the evolution of these markets much more closely so that if the
20 markets evolved while Zymergen was developing products, the Company would have the ability
21 to adapt and react to those.

22 Yes. So Matt, we don't have any concerns about the real market
23 opportunities for this company. We believe the opportunity we have to make new
24 products that don't exist today, to make them in much more organic ways, nature
25 friendly ways is as enormous as we communicated and others in this field have
26 communicated. So there's no doubt about that.

27 ***The challenge we have is to make sure that the specific product that we***
28 ***make meets the market need of a particular application area. And that's where,***
I think, we've fallen down is in that execution side of things. And we need to
track the evolution of these markets much more closely so that if these markets
evolve while we're developing products, that we have the ability to adapt and react
to those. But there's no reduction of our optimism about the market opportunities
for Zymergen products in the long run.

191. In response to a question from Larew, Flatley stated that Zymergen continued to
work with the two customers that had problems incorporating Hyaline and the concern was how
fast they were going to ramp up and how fast their end-user markets were going to ramp up based
on what was known about the foldable display market.

1 data to quell our concerns or give us any sense of what the company’s actual
2 pipeline might look like following the in-depth review of the company’s
operational, financial, product, and commercialization efforts.

3 197. On August 4, 2021, HSBC analyst Sriharsha Pappu issued a report titled:
4 **“Downgrade to Reduce from Hold: A catastrophic business update.”** He noted the disclosure of
5 significant problems just three months after the IPO, including multiple fundamental problems
6 with Hyaline; raised fundamental questions about Zymergen’s ability to bring any products to
7 market; and made it clear the Company lacked fundamental business insights into its customers
8 and end markets.

9 ***Everything that could go wrong . . . has***

10 ***What happened? Three months on from its IPO, Zymergen issued an***
11 ***update post market close on 3 August, highlighting significant problems with its***
12 ***primary product – Hyaline.*** The company stated that several customers had
13 technical issues incorporating Hyaline into their manufacturing plans, that it had
14 overestimated the size and growth of the market for foldable films and that its
15 commercial teams lacked insight into customers’ processes and end users –
resulting in forecasts that overestimated near-term demand. ZY now expects no
product revenue in ‘21 or ‘22 (consensus ‘22e revenue currently stands at
USD135mn) and is reassessing the fit of its product pipeline, target markets and
commercial processes. Co-founder and CEO Josh Hoffman has been replaced by
Chairman Jay Flatley with immediate effect.

16 ***What does this mean?*** In our ZY initiation (Initiate at Hold, Platforms need
17 to scale, 6 July 2021) we made the point that all of the chat around code base, AI,
18 robotics, machine learning, pathways, database, etc, eventually needs to result in
19 products that generate revenue – and ***this update raises fundamental questions***
20 ***about ZY’s ability to bring products to market. Hyaline wasn’t just the lead***
21 ***product in ZY’s portfolio, it was also the proof point for their whole biofacturing***
22 ***model and the platform that would have bolstered confidence around the rest of***
23 ***the portfolio. With the rest of the product pipeline being early-stage, the***
24 ***disclosure of multiple fundamental problems with Hyaline – at this late stage –***
25 ***brings the entire pipeline into question.***

26 ***Fundamental questions with the business model.*** We wrote in our
27 initiation about the challenges of bringing products to market across multiple end
28 markets – ***and it is clear from the update that the company lacks fundamental***
business insights into its customers and end markets. The company might have
to pivot to a partnership model from an “at risk” product development model to
have a viable business model.

29 ***Downgrade to Reduce, TP USD8 from USD42; a long road to re-***
30 ***establishing credibility lies ahead. With this one update, ZY has gone from a***
31 ***fledgling Synbio platform to a turnaround story, needing to rebuild credibility***
32 ***around its products, technology and business model.*** The stock (down c70% after
33 hours) is likely to now go from “presuming scale” to “show me” mode on its
34 pipeline. Downgrade to Reduce.

1 198. On August 4, 2021, Schenkel issued a report downgrading the stock from
 2 Outperform to Market Perform and noting his surprise that such material adverse disclosures were
 3 made so soon after the IPO.

4 ***How Could Things Change so Much in the 72 Days Since The Last Earnings
 5 Call?***

6 The Board of Directors is wondering the same thing – it was noted that this
 7 situation is taken extremely seriously. Thus, the change in leadership and
 8 organizational evaluation. (For what it is worth, we noted that ZY was early at the
 9 time of our initiation and that there was risk – ***that said, we are very surprised that
 10 something this material could go wrong this quickly.***)

11 * * *

12 ***Was There Any Intentional Wrongdoing (Why Change CEO)?***

13 At this point, there is nothing to suggest that any of this was intentional
 14 wrongdoing. That said, ***the breakdown in process was so material and so close to
 15 the IPO and recent (first) earnings call that the BoD ostensibly had a difficult
 16 decision on leadership credibility*** – this led to naming former ILMN CEO Jay
 17 Flatley active ZY CEO.

18 * * *

19 **What Do We Think?**

20 We believe we have no choice but to downgrade to Market Perform (which
 21 we do not like to do after the news) – pending more details on the outcome of the
 22 BoD’s evaluation, we cannot recommend purchase of ZY shares. Our concerns are
 23 somewhat assuaged by Jay Flatley’s willingness to step in as acting CEO and
 24 assertions that this is not a technical issue. That said, ***there is little precedent (even
 25 for an early stage company) to have to make a change like this.***

26 199. On August 4, 2021, T. Peterson issued a report in which he downgraded the stock,
 27 noted the adverse disclosures about Hyaline and the total addressable market for foldable display
 28 applications causing the Company to no longer expect product revenues in 2021, and immaterial
 product revenues in 2022. Moreover, he noted that the Company’s previous representations about
 the total addressable market for foldable display applications were overstated and that J.P. Morgan
 had never been in the position of seeing a CEO change and significant revenue reset so soon after
 an IPO.

29 ***Hard to Synthesize . . . CEO Transition & Product Launch Pushouts Announced
 30 Amidst TAM Realignment, Downgrade to Neutral***

31 We are downgrading our rating on Zymergen (ZY) from Overweight to
 32 Neutral after the business update and conference call. Specifically, the Board has

1 appointed Chairman Jay Flatley (former ILMN CEO) as acting CEO after recently
 2 becoming aware of issues with the product pipeline that will impact delivery
 3 timelines, which resulted in the departure of former CEO Josh Hoffman. Looking
 4 closer, during 2Q, several target customers experienced technical issues
 5 implementing Hyaline into their manufacturing processes (product shrinkage at one
 6 customer site, which has largely been addressed, while material compatibility with
 7 certain manufacturers' processes remains a work in progress). ***Combined with an
 8 initially overstated TAM for foldable electronic devices (based on bad market
 9 data and slower foldable device uptake), ZY no longer expects product revenues
 10 in 2021 (vs. JPMe product revenue of \$13M) and immaterial product revenues
 11 in 2022 (vs. JPMe product revenue of \$117M).*** To address the challenges, the
 12 company is evaluating data on the TAM for foldable display applications, which
 13 indicates a smaller market opportunity growing less rapidly than anticipated
 14 (thinner pipeline of end-users), which will impact ZY's sales forecast for biofilms.
 15 As it relates to the long-term viability of the platform, interim ***CEO Jay Flatley
 16 relayed confidence by stating that there are no intrinsic issues, but rather a
 17 disconnect between the commercial team and understanding of end-markets,
 18 with ZY's focus now to reliably manufacture products that "hit the market when
 19 the market is ready"***. As part of the TAM evaluation, ZY has formed several
 20 committees (including a Strategic Oversight Committee) to conduct an in depth
 21 review of the sales forecasting process, pipeline commercialization plans and TAM
 22 analysis. ***Stepping back, we are adjusting our model to reflect the newfound
 23 uncertainty of the product launches and while we acknowledge the long-term
 24 viability of the synbio platform, with little to no visibility on product TAMs,
 25 customer pipelines or leadership, we downgrade to Neutral,*** while rolling our DCF
 26 to establish a Dec. 2022 PT of \$12.

- ***2Q preliminary results.*** ZY also reported preliminary 2Q revenues of \$5-6M (vs. JPMe \$4M), all from R&D service and collaboration revenues, while non-GAAP OPEX is expected to be \$80-85M. ZY is currently developing a plan to reduce and align expenses with the changes in revenue expectations (no guidance was given at this point).
- ***Downgrading to Neutral on lack of visibility. Admittedly, we have never been in this position, with a CEO change and significant revenue reset so soon post-IPO (2022 revenues now expected to be "immaterial" vs. Street at \$132M), so we do not make the decision lightly, but in the absence of visibility around a turnaround plan, ability to recruit a CEO and the revenue ramp, we are hard pressed to see near-term upside, notwithstanding our high regard for interim CEO Jay Flatley.***

F. September 23, 2021 – October 21, 2021: Zymergen and the Financial Press Report Additional Facts Demonstrating the Registration Statement Was Inaccurate and Materially Misleading, and the Financial Press Likens the Implosion of Zymergen to that of Theranos

200. On September 23, 2021, investors learned of additional negative impacts from the numerous problems revealed on August 3, 2021. Zymergen announced it was terminating approximately 120 employees as part of preliminary phase of the Company's plan to reduce costs to align with the delayed revenue ramp up previously disclosed on August 3, 2021. The Company

1 also disclosed it would incur an estimated \$4.5 million of severance and employee-related
2 restructuring costs related to the reduction in force.

3 201. On October 21, 2021, Zymergen filed a Report on Form 8-K with the SEC in which
4 it revealed more negative impacts from the numerous problems reported on August 3, 2021.
5 Zymergen announced a second reduction in force of approximately 100 employees, which would
6 result in approximately \$4.2 million of severance and employee-related restructuring costs.

7 202. In addition, the Company reported it expected to incur impairment charges of
8 \$15 million for certain manufacturing equipment as a result of its restructuring activities and might
9 incur additional restructuring and impairment charges in 4Q21, including lease expenses.

10 203. Zymergen also reported it had amended its Credit Agreement due to its violation of
11 revenue covenants. The amended Credit Agreement required Zymergen to: (i) shorten the term of
12 the Credit Agreement by moving the maturity date from December 19, 2024 to June 30, 2022;
13 (ii) increase the amount of the liquidity covenant; (iii) make a \$41 million payment, including a
14 \$35 million principal prepayment; and (iv) deposit the remaining outstanding balance of the loan
15 plus accrued interest through the maturity date in a blocked account controlled by the
16 Administrative Agent, which was subject to release from the blocked account upon the
17 Administrative Agent's completion of due diligence to its reasonable satisfaction regarding the
18 Company's anticipated operating costs and budget through the maturity date.

19 204. Investors also learned that co-founder Jed Dean had notified the Company of his
20 decision to step down, effective October 31, 2021.

21 205. The financial press likened the rapid rise and fall of Zymergen to that of Theranos
22 and reported facts indicating the representations in the Registration Statement were materially
23 misleading, including the representations about Hyaline; the total addressable market for foldable
24 display applications; and when the Company's products, including Hyaline, would generate
25 revenue.

26 206. On September 30, 2021, the *San Francisco Business Times* published an article
27 titled "The rise and fall of Zymergen: Can biotech veteran Jay Flatley save the company?" likening
28 the rapid rise and fall of Zymergen to that of Theranos:

1 In its rapid rise and equally quick fall as a huge potential turned to imminent
2 peril, it is hard not to hear echoes of Theranos in Zymergen’s emerging difficulties.

3 To be sure, there are parallels with the Palo Alto and East Bay-based blood
4 testing company, once valued at \$9 billion but now at the center of a high profile
5 fraud trial for its enigmatic founder. Theranos and Zymergen share high valuations,
6 the promise of disrupting an old-school industry, a penchant for corporate secrecy
7 and a fondness for signing large leases to meet swelling workforces.

8 207. On October 13, 2021, *Barron’s* published an article titled “*The Inside Story of How*
9 *SoftBank-Backed Zymergen Imploded Four Months After Its \$3 Billion IPO.*” The article
10 reported Zymergen’s market capitalization was \$3 billion following the completion of the IPO and
11 that “*just four months later*” the Company made the “*stunning announcement*” on August 3,
12 2021, that caused the stock to tank, wiping out more than \$2.5 billion in market value.

13 208. The article also included facts indicating the representations in the Registration
14 Statement were materially misleading, including the representations about Hyaline; the total
15 addressable market for foldable display applications; and when the Company’s products, including
16 Hyaline, would generate revenue. Indeed, it was reported that Hoffman used exaggerated financial
17 figures and made overly optimistic projections about the Company’s capabilities, both internally
18 and externally.

19 *According to a former senior-level employee at Zymergen, Hoffman used*
20 *exaggerated financial figures and made overly optimistic projections about the*
21 *company’s capabilities, both internally and externally. The former employee –*
22 *who retains a vested interest in the company – recalls Hoffman’s response when*
23 *he was confronted about this behavior: “Never underestimate the power of the*
24 *greater fool.”*

25 209. In fact, the article reported that such disclosure problems began surfacing long
26 before the IPO.

27 Problems began surfacing long before the IPO. At an all-hands meeting in
28 early 2018, for instance, Hoffman walked on stage to deliver a status report to his
roughly 500 employees. The company had just acquired Radiant Genomics, a
genomic database company, after a year and a half courtship.

According to the former Zymergen employee, the two Radiant co-founders
– Jeff Kim and Oliver Liu – had agreed to the acquisition after being shown
Zymergen’s internal pipeline, which showed projected contract sizes worth billions
by 2021. At the time, Radiant posted revenue just under \$10 million, according to
the employee, who became familiar with both companies’ financial statements
through the due diligence process. Prior to the deal’s close, Radiant was told that
Zymergen was on track to book three times that amount for 2017, the employee
says. Liu didn’t respond to requests for comment and Kim declined to comment.

1 As the gregarious Hoffman delivered his speech at the meeting, he shared
 2 with employees Zymergen's annual revenue number: just under \$10 million. "Wait
 3 a minute," the former employee remembers thinking. "That's Radiant's figure.
 That's exactly Radiant's figure which indicated to me that Zymergen had zero in
 revenue."

4 210. *Barron's* also reported that the SEC had concerns about the Company's disclosures
 5 before the IPO in connection with its review of draft registration statements submitted by
 6 Zymergen. It referenced the letter the SEC sent to Zymergen in February 2021:

7 The Securities and Exchange Commission had concerns as well
 8 Correspondence in February with the SEC showed that regulators questioned the
 9 company's plans for growing revenue and profitability, its current financial
 10 condition and its outstanding indebtedness, which included a \$100 million credit
 11 facility at the time of the IPO. It also asked the company to stop comparing its
 12 products to Kevlar, a strong and heat resistant fiber developed by chemicals giant
 DuPont that is used in bulletproof vests, tires and more as it does not appear to be
 relevant comparison, according to a letter from Katherine Bagley at the SEC's
 Division of Corporate Finance. The SEC declined to comment for this article or
 confirm or deny that it is now investigating Zymergen.

13 211. Not surprisingly, *Barron's* reported the stunning disclosures on August 3, 2021,
 14 indicated the Underwriter Defendants and Zymergen's Board of Directors failed to conduct
 15 appropriate due diligence, and that the Controlling Stockholders were also to blame.

16 When high-profile companies like WeWork or Theranos unravel, company
 17 founders often take the blame. But for these venture-backed companies, there's
 18 lots of blame to go around. Investors such as SoftBank enable founders, then pass
 19 on their investments to the public through IPOs. Underwriters, too, like Goldman
 20 Sachs and J.P. Morgan in Zymergen's case, may be failing to do the appropriate
 due diligence (Goldman Sachs did not respond to a request for comment and a
 spokesperson for J.P. Morgan declined to comment). Likewise the boards of
 venture-backed companies have a duty to ensure that company filings and
 projections are accurate and reliable, says John C. Coffee, Jr., a law professor at
 Columbia University.

21 "In the course of preparing the registration for the IPO, you would normally
 22 have a good deal of due diligence done by all the people at the law firms of the
 23 company and the underwriters. They apparently didn't detect this problem at all."
 Coffee says. "We may have another instance of highly competent people failing to
 vet a new company and just believing in the founder's endearing tale."

24 212. Further, *Barron's* reported that Flatley acknowledged the validity of concerns about
 25 the Company's credibility following the August 3, 2021 disclosures.

26 Zymergen hasn't commented publicly on the crisis since Hoffman departed
 27 in August, except in a call that month with investors at which Flatley, the interim
 28 CEO, ***acknowledged the validity of concerns about the company's credibility. "I
 want to perhaps state the obvious that we are taking this situation extremely
 seriously,"*** Flatley said during the call, noting that the firm had formed a strategic

1 oversight committee and planned to conduct an in-depth review with the support of
2 outside advisors. “We’re focused on reestablishing the credibility of the leadership
3 team and the company. We recognize this will not happen over weeks or months,
4 but will require consistent quarter-after-quarter execution against a credible plan.”

5 **G. November 3, 2021: Zymergen Reports Six of the Eleven Products**
6 **Featured in the Registration Statement Will Be Discontinued**

7 213. On November 3, 2021, Zymergen reported its preliminary 3Q21 results and
8 revealed more unexpected negative news, which, like the statements on August 3, 2021,
9 established the Registration Statement contained untrue statements of material facts and omitted
10 facts necessary to make the statements made not misleading. However, the Company failed to
11 disclose other unexpected negative news – that government agencies, including the SEC – had
12 requested information from the Company related to the unexpected adverse disclosures on
13 August 3, 2021. That material adverse information was not disclosed until November 15, 2021,
14 when Zymergen reported the multiple government inquiries in the Company’s 3Q21 Report on
15 Form 10-Q filed with the SEC.

16 214. In the November 3, 2021 earnings release and conference call, Zymergen revealed
17 it was discontinuing Hyaline, the main product featured in the Registration Statement, and all but
18 one of the electronics film program products. It also revealed that all consumer care programs,
19 including the insect repellent product featured in the Registration Statement, were being
20 discontinued. Thus, the Company revealed that six of the 11 products highlighted in the
21 Registration Statement had been discontinued and would not generate any revenue for the
22 Company.

23 215. Zymergen also reported it had eliminated approximately 220 positions, which, with
24 reductions in overhead spending, would still result in a burn rate that would cause the Company to
25 run out of cash in little more than a year. In the press release, the Company reported the following:

26 Since the previous business update in August, the Company has reviewed
27 the potential market opportunities and its related portfolio, using a rigorous
28 evaluation process applied to current and potential market segments. As a result of
this review, the Company will focus on a smaller number of programs that it
believes capitalize on its capabilities and provide clear commercial opportunities.

1 Accordingly, *several programs will be discontinued, including:*

- 2 • *The electronics film programs, with the exception of ZYM0101, which is*
3 *being developed in partnership with Sumitomo Chemical. Emerging data*
4 *on the market segment being targeted with Hyaline and other electronics*
5 *films indicates a smaller near-term opportunity than previously expected.*
- 6 • *The consumer care programs, including insect repellent, ZYM0201.*
7 *Based on the portfolio review, the costs of customer acquisition with a*
8 *direct-to-consumer model were prohibitive and, in the case of ZYM0201,*
9 *it could not be produced and distributed at a price point competitive with*
10 *incumbent products.*

11 As a result of these changes, the Company eliminated approximately 220
12 positions across a variety of levels and functions. These decisions, along with a
13 reduction in related overhead spending, are expected to slow the Company's cash
14 burn rate sufficiently to operate to the middle of 2023 with cash on hand.

15 216. The Company also revealed it would have run out of cash in 3Q21 had it not raised
16 \$529.9 million from the IPO. Zymergen reported that cash and cash equivalents totaled
17 \$496.2 million as of September 30, 2021, a \$91.8 million decline from the \$588 million of cash
18 and cash equivalents reported as of June 30, 2021. The Company reported a net loss of
19 \$283.6 million for the nine months ending September 30, 2021.

20 217. During the earnings call, Flatley made numerous statements that also establish the
21 Registration Statement contained untrue statements of material facts and omitted facts necessary
22 to make the statements made not misleading.

23 218. Flatley repeated the information included in the earnings release; summarized the
24 work Zymergen had done to date; and shared a high level overview of the Company's forward-
25 looking (and much smaller) portfolio of products, which he claimed would provide a general sense
26 of the Company's direction. He admitted more bad news would likely arrive in the future – but
27 failed to mention the inquiries by the SEC and other government agencies – by also revealing that
28 full details of the Company's future direction would not be provided until the Company completed
its strategic plan around year end.

29 219. Flatley revealed Zymergen did not have adequate resources to support the 30
30 different programs on which the Company was working and therefore eliminated two programs
31 Flatley admitted were prominent in the Company's public plans.

1 Let me now share some additional details. *Our portfolio review indicated*
2 *that we are working – we were working on at least 30 different programs, far too*
3 *many to adequately resource. It was imperative that we narrow our focus to a*
4 *smaller number that we believe capitalize on our strengths and provide clear*
5 *commercial opportunities. That resulted in decisions to pause or eliminate*
6 *several programs while promoting others to a higher level of investment.*

7 *A critical highlight is the cancellation of 2 programs that were prominent*
8 *in our public plans, Hyaline, known as ZYM102 (Phonetic) and our direct-to-*
9 *consumer insect repellent referred to as ZYM201 (Phonetic). In the case of*
10 *Hyaline films, we no longer have conviction in the market opportunity. To be*
11 *clear and contrary to many published reports, the product worked as designed, the*
12 *underlying technology and science are sound.*

13 The technical issues that I discussed on our August call caused delays but
14 were quickly resolved by our teams, and were not a factor in our decision to halt
15 the project. In fact, at the time we canceled the program, we have made tens of
16 thousands of square meters of Hyaline. *The issues we uncovered were*
17 *commercial. We look more closely at the foldable display market and the*
18 *emerging data on the market segment that we targeted with Hyaline and other*
19 *electronic films indicated a smaller near-term opportunity than we initially*
20 *expected.*

21 *As a result, we stopped work on our electronic films programs* but are
22 continuing work on our ZYM101 film in partnership with Sumitomo. We will also
23 continue to explore and develop bio-based polyimides in several different form
24 factors, which we expect will add value to potential future products, not just in
25 electronics, but other markets as well.

26 *In the case of our insect repellent and other consumer care programs, our*
27 *reviews show that the cost of customer acquisition with a direct-to-consumer*
28 *model would have been prohibited for Zymergen. While the product performance*
was satisfactory, *it could not be produced and distributed at a price point*
competitive with the incumbent products. With this assessment, we've decided to
park all our efforts in consumer care. We have, however, developed strong IP
and technology around bioactives and remain open to potential future partnerships
in clean consumer care.

220. Singh, the Company's CFO, revealed some of the costs related to the discontinued
Hyaline and consumer care products, stating that operating expenses in 3Q21 were \$39.1 million,
an 80% increase from the prior year, and that the increase was primarily related to work on Hyaline
and the insect repellent product prior to the decision to discontinue those products.

221. Singh also acknowledged the Company's precarious financial condition, stating
Zymergen did not expect any product revenue in 2021, and only immaterial product revenue in
2022. As a result, Singh explained that without visibility into near-term product revenue, one of
the Company's top priorities was to closely manage expenses, including the reductions in force
implemented in September and October, and the narrowed focus on a smaller number of programs.

1 222. Before taking questions, Flatley acknowledged the Company needed to accelerate
2 revenue generation while rebuilding stakeholder confidence. The questions from the analysts
3 established that rebuilding stakeholder confidence would be difficult. Indeed, the first question
4 was from De Bruin, who asked Flatley why investors should remain confident in the agriculture
5 programs, the only programs in the Registration Statement (other than the optical film partnership
6 with Sumitomo and the bio-based epoxy product) that were not discontinued.

7 223. Cowen analyst Thomas Stevens asked Flatley why any customer would choose to
8 work with Zymergen and how the Company could explain its value proposition given the pipeline
9 changes and changes in the sales force.

10 224. Investors also learned Zymergen's future was too uncertain to even try to recruit a
11 new CEO. In response to a question from J.P. Morgan Chase analyst Rachael Olson about the
12 status of recruiting a permanent CEO, Flatley acknowledged the problems at Zymergen were too
13 large to recruit a new CEO until the Company developed a credible and defensible strategic plan.

14 Yes. So, we have not started the process yet and that's by choice. So, the
15 decision that I made, along with the Board of Directors is that we as priority 1, 1
16 and 2 make sure that we right size the Company, got our processes fixed, got our
17 development teams really focused on the products, the new products in the pipeline
18 that we write a strategic plan that we all believe in, that has credibility and is
19 defensible. And at that point, we believe we could credibly go recruit a world-class
20 CEO. Prior to that, I think it would be challenging to sit across the table to try to
21 recruit someone without a plan that you had conviction in and so our intent is to
22 begin working on the recruiting process early in 2022.

23 225. Responding to a question from UBS analyst John Sourbeer, Flatley also revealed
24 there was "no chance" the discontinued consumer care programs highlighted in the Registration
25 Statement were going to be profitable.

26 [Sourbeer:] I guess just one on the consumer care programs. You
27 highlighted that some of the costs were prohibitive on the direct-to-consumer
28 model. Can you just maybe elaborate a little bit there on what specific areas you
saw there on the costs that you highlighted?

 [Flatley:] Sure. So, the history of those programs were that the company a
few years back was thinking that it may want to partner those programs and – with
a big consumer company, and those partnerships didn't reach any conclusion. And
so, the decision then was made to go direct-to-consumer. And *as we analyze this
recently over the last 30 days, particularly with only a single product in the
portfolio in the near term, which would have been our insect repellent. The cost
of hiring a direct sales force supporting that and building the infrastructure was
quite prohibitive. So, if you look at the profitability profile over the next 3 years,*

1 ***there was no chance that, that product was going to be profitable.*** And so for that
2 reason, we've parked it, and it doesn't mean that we're abandoning the consumer
3 care market because we continue to believe that the technology has great
4 applicability there. And we can create products in that space. It's a question of us
5 being – having a financial footing where we can either take the products directly to
6 market ourselves and afford to make that investment or in the alternative, we
7 develop a partner that we either license the technology to or jointly develop and
8 distribute the products.

9 226. Flatley and Singh also confirmed Zymergen would not receive any revenue from
10 the discontinued Hyaline product and the Company could not provide any revenue guidance other
11 than stating immaterial revenues were expected in 2021 and 2022:

12 [Sourbeer:] And I guess just another one just a little bit on the cash burn and cash
13 on hand through 2023. I think in the last update, there were – was talk is still
14 launching Hyaline in '22 and maybe having some revenues in '23. Any additional
15 color you can provide on that? Does that assume any meaningful revenues in 2023?
16 Or just any way to think about follow-on product launches there?

17 [Flatley:] Yes. ***I think we've been pretty clear on Hyaline that we've really
18 canceled that program now. And so we should expect no revenue from Hyaline
19 coming from the company at any point in time.*** Now, there's theoretically a
20 chance that if the market changed in some dramatic way that the company could
21 reevaluate in the future. And as I alluded to in my remarks, the underlying material
22 that's used in Hyaline has potential other applications. And so, we're exploring
23 those. So it's – the R&D work that went into creating that novel material could
24 have future value. But at this point, I'd say it's unlikely it's going to be in the films
25 market.

26 [Sourbeer:] I guess I was more trying to get at, when you say the cash burn
27 through 2023, does that assume product launches in revenue generation in '23, is
28 there any revenue in that model?

[Flatley:] Yes. As I mentioned earlier, we haven't talked about '23 yet.
We've really given some clarity around what we expect in '22. As we complete
the plan here over the next couple of months, we'll get greater visibility on the
relative ramp of the products that we now have in the pipeline and solidify our
internal forecasts, probably not just '23, but all the way through '24 and we'll
decide at that point what external guidance we give.

[Singh:] ***But we still expect product revenue to be immaterial, right, in
2022, including in the end of 2022.***

227. In response to a question from Goldman Sachs analyst Dave Delahunt, Flatley
admitted that the Company's previous strategy of creating, manufacturing and distributing
products on its own was not tenable.

[Delahunt:] And with the strategic review, has that affected how you think about
potential partnerships? And maybe, are you pretty more inclined now to work with
project – with partners on projects instead of taking 100% product risk?

1 [Flatley:] Yes. I think it has influenced us to some extent. And the way it
2 has is that *previously, the company was focused not only on creating the product,*
3 *but also manufacturing it and distributing it, in many cases, not in every case.*
4 *And I think both because of cost constraints and of reasons of time to market, we*
5 *decided to pull that part of the strategy in and really focus on creating the*
6 *products and doing more partnering, both for the manufacturing and distribution*
7 *side of this.* And so that both saves money because we don't have to build a direct
8 sales force as we would have had to do in consumer care, as an example, or to build
9 things like GMP manufacturing, which we might have had to do in other product
10 areas as well. And so, we can save the money there, which is a large investment
11 and a time delay to market. And so, we continue to develop the products largely
12 ourselves, sometimes in partnership, but much of the manufacturing and
13 distribution will be through partners in the near term.

14 228. In response to a question from William Blair & Company analyst Maxwell Smock,
15 Flatley acknowledged a primary reason one of the three electronic film products, ZYM0101, was
16 not being discontinued was that it was being developed in partnership with Sumitomo.

17 [Smock:] And then, I just wanted to dig in a little bit more on ZYM0101 and your
18 decision to keep that program alive. I mean, was that decision based – just based
19 on your partnership with Sumitomo? Or is there something unique about that
20 market or that product that gave you more comfort in your ability to commercialize
21 it down the line?

22 [Flatley:] There were 2 factors and at least 2 factors, let me say that. Clearly,
23 *the fact that it was partnered was a huge part of this so, that we didn't have the*
24 *expense of distributing the product or manufacturing it. So much of the risk then*
25 *of the program is taken on by Sumitomo in partnership. So, that was a very*
26 *important factor.* The second factor is that if this material is successful as we hope,
27 it has very broad applicability across all types of devices. And so it has a more
28 general applicability than perhaps Hyaline did. And so that's the second
distinguishing factor.

29 229. Following the November 3, 2021 earnings call, Zymergen's stock price declined
30 \$0.93, or 8.1% from \$11.43 on November 3, 2021, to \$10.50 on November 4, 2021.

31 230. Analysts issued reports in which they noted that the discontinuation of Hyaline, one
32 of the other optical film products and all of the consumer care products were disappointing and a
33 "key part of the thesis during the IPO" and "prominent in [Zymergen's] initial plans."

34 231. On November 4, 2021, T. Peterson issued a report in which he wrote that J.P.
35 Morgan was disappointed in the discontinuation of several key programs (including Hyaline, one
36 of the other electronic film programs and all consumer care programs) and noted that all of the
37 discontinued programs "had been a key part of the thesis during the IPO."
38

1 232. Similarly, Larew issued a report on November 4, 2021, in which he noted that the
2 discontinued products “were prominent in [Zymergen’s] initial plans.” He also reported that
3 William Blair & Company had not seen “any proof that the company can monetize its platform”
4 and that “there [was] still a considerable amount of uncertainty around the company’s commercial
5 pipeline and broader strategy.”

6 **H. November 15, 2021: Zymergen Reports that Multiple Government**
7 **Agencies, Including the SEC, Are Investigating the Company**

8 233. On November 15, 2021, Zymergen filed its 3Q21 Report on Form 10-Q with the
9 SEC and disclosed that government agencies, including the SEC, had requested information from
10 the Company related to the unexpected adverse disclosures on August 3, 2021.

11 **I. December 9, 2021 – January 10, 2022: Additional Disclosures Show**
12 **the Dramatic and Material Adverse Impacts on Zymergen’s Business**
13 **Since the IPO**

14 234. On December 9, 2021, *Seeking Alpha* published an article titled “Zymergen: Total
15 Chaos.” The opening paragraph of the article succinctly explained the dramatic change at
16 Zymergen since the IPO, which caused Class members to suffer millions of dollars in damages –
17 going from a Company launching Hyaline and preparing to rapidly scale up production and
18 revenue, to a Company that had abandoned Hyaline and other products and was dramatically
19 cutting headcount and cash burn in an effort to avoid bankruptcy.

20 Zymergen . . . listed in April 2021 and, after recently launching their
21 Hyaline product were supposedly preparing to rapidly scale up production and
22 revenue. In August, they indicated that there was an issue integrating Hyaline into
23 the manufacturing process of customers, which would temporarily delay rollout of
24 the product. The CEO was replaced at the same time though and Zymergen
25 appeared to freeze hiring, indicating that the problems were far larger than the
26 company was letting on. In November, Zymergen announced that they were
27 abandoning their two main products, rationalizing their product portfolio and
28 dramatically cutting headcount to reduce cash burn. Zymergen no longer has a
clear path to profitability and rather than focusing on growth, the company is clearly
positioning to avoid bankruptcy. Zymergen does not have the narrative of Ginko
Bioworks . . . or the revenue growth of Amyris . . . , and there is a real risk of high
caliber employees abandoning the company for better opportunities. While
Zymergen’s intellectual property is likely worth a significant amount and the
company may be able to turn itself around, I consider the company uninvestable
given the way management has failed to provide investors with clarity over the last
six months.

1 235. During a January 10, 2022 presentation at a JPMorgan Healthcare conference
2 Flatley revealed additional fallout from the unexpected adverse disclosures on August 3, 2021 and
3 November 3, 2021. After acknowledging the challenges in 2021, Flatley stated that the issues with
4 the commercial product pipeline caused a business reset that impacted the Company's revenue
5 projections and product roadmap. Indeed, he acknowledged that dramatic steps had been taken to
6 operationally restructure and transform the Company including the elimination of almost half of
7 Zymergen's workforce.

8 Let me begin by acknowledging the challenges that we had in 2021. As we
9 discussed in our August and our subsequent earnings call, issues with our
10 commercial product pipeline caused a business reset that impacted the company's
11 revenue projections and product road map. After a lot of hard work by our teams,
12 we've exited 2021 with a clear focus on who we are and on what we do.

11 Zymergen is a biotech company that designs and produces molecules,
12 microbes and materials for diverse end markets. Having a clear mission and vision
13 is critically important, but ultimately, it's execution that matters. ***In the last 5
14 months, we've taken dramatic steps to operationally restructure and transform
15 the company. First, we reorganized our teams. This reduced our head count
16 from approximately 900 to about 500, focused on creating a much more efficient
17 organization by eliminating leadership layers and consolidated distributed
18 functions.***

15 * * *

16 ***[We] did a deep dive on our program investments, and we optimized the portfolio
17 across the key factors that drive market success. As a result, we stopped to work
18 on a significant number of programs, and are focusing now on a handful of
19 higher potential ones.***

19 236. However, Flatley acknowledged that the negative financial impact on Zymergen
20 would continue for at least another year and possibly longer, stating that the Company thought it
21 would begin to have product revenue in the 2023 timeframe.

22 237. In addition, Flatley admitted that the potential market opportunity for the one
23 optical film product that was not discontinued, the product being produced in partnership with
24 Sumitomo, was still uncertain, stating that there was either going to be significant revenue or
25 potentially zero revenue.

26 [Olson:] And then shifting gears to project ZYM101. So the film
27 partnership that you have with Sumitomo. Can you just talk about the decision to
28 retain that project but then for go the other film projects that you're tackling? And
then what should we expect in terms of commercialization timing for this project?

1 And is there any opportunity to pull that forward just given you have a more narrow
2 focus on your projects now?

3 [Flatley:] Yes. I mean that partnership is going well. We continue to invest
4 in it as Sumitomo does. We believe that much like the Hyaline product, the
5 technology – the underlying technology works. And *the reason we decided to*
6 *continue that one is because there is a very large potential market opportunity at*
7 *the end of the process. But we don't know. It's a very digital opportunity, I would*
8 *say. It's kind of a 1-0 outcome, either it's going to be significant revenue for us*
9 *or potentially 0, depending upon what customers they land. And the amount of*
10 *work we need to do on the distribution side of it is de minimis because all of that*
11 *customer interface is being handled through Sumitomo. So it made sense for us to*
12 *continue to make the investments in evolving that Z101 technology and moving it*
13 *forward. And so that program is the only one that truly remains in the film part of*
14 *the business at the moment.*

15 238. Flatley's statements about Hyaline, like his previous statements, also indicated the
16 representations in the Registration Statement about the foldable display market were materially
17 misleading.

18 [Olson:] And then stepping back, just kind of going back to your additional
19 business update earlier this summer. So investors were really concerned that there
20 was a broader technical issue with Hyaline following that first business update call.
21 It's clarified during the 3Q call that Hyaline actually worked as designed. But the
22 decision to hold the project was just due to the smaller-than-expected TAM. So
23 can you really walk through what happened from a technical perspective with
24 Hyaline then?

25 [Flatley:] Yes. I guess I would reiterate what I said in the presentation. I spent a
26 fair amount of time talking about how we think the underlying technology platform
27 works, and works robustly. *What happened with Hyaline, and in retrospect, we*
28 *probably made a mistake in how we presented it. When we talked about the*
29 *challenges there, we began by talking about the fact that we had a couple of*
30 *month delay because of some process tuning that had to happen with the early*
31 *customers of Hyaline.*

32 We knew from the start that we would figure out those process challenges and
33 overcome them, and we did that. And so those were never going to be barriers to
34 long-term adoption. *There were simply delays in the potential revenue stream.*
35 *The big issue with Hyaline, of course, was that the ultimate market was not large,*
36 *not large enough to justify continuation of the program.*

37 VIII. CLASS ACTION ALLEGATIONS

38 239. Plaintiffs bring this action as a Class action pursuant to Rules 23(a) and (b)(3) of
39 the Federal Rules of Civil Procedure on behalf of a Class consisting of all persons and entities that
40 purchased or otherwise acquired Zymergen common stock pursuant and/or traceable to the
41 Registration Statement issued in connection with the Company's IPO. Excluded from the Class
42 are Defendants, the officers and directors of the Company, at all relevant times, members of their

1 immediate families and their legal representatives, heirs, successors or assigns and any entity in
2 which Defendants have or had a controlling interest.

3 240. The members of the Class are so numerous that joinder of all members is
4 impracticable. Throughout the relevant period, Zymergen's shares actively traded on the
5 NASDAQ. While the exact number of Class members is unknown to Plaintiffs at this time and
6 can only be ascertained through appropriate discovery, Plaintiffs believe there are at least hundreds
7 or thousands of members in the proposed Class. Millions of Zymergen shares were traded publicly
8 during the relevant period on the NASDAQ. Record owners and other members of the Class may
9 be identified from records maintained by Zymergen or its transfer agent (American Stock
10 Transfer & Trust Company, LLC) and may be notified of the pendency of this action by United
11 States mail, using the form of notice similar to that customarily used in securities class actions.

12 241. Plaintiffs' claims are typical of the claims of the members of the Class as all
13 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
14 federal law that is complained of herein.

15 242. Plaintiffs will fairly and adequately protect the interests of the members of the Class
16 and have retained counsel competent and experienced in class and securities litigation.

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

20 (a) whether the federal securities laws were violated by Defendants' acts as
21 alleged herein;

22 (b) whether the Registration Statement was inaccurate and misleading,
23 contained untrue statements of material facts, omitted to state other facts necessary to make the
24 statements made not misleading and omitted to state material facts required to be stated therein;
25 and

26 (c) to what extent the members of the Class have sustained damages and the
27 proper measure of damages.

28

1 244. A class action is superior to all other available methods for the fair and efficient
2 adjudication of this controversy since joinder of all members is impracticable. Further, as the
3 damages suffered by individual Class members may be relatively small, the expense and burden
4 of individual litigation makes it impossible for members of the Class to individually redress the
5 wrongs done to them. There will be no difficulty in the management of this action as a class action.

6 **IX. CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**

8 **Violation of §11 of the Securities Act**
9 **(Against Zymergen, the Individual Defendants and the Underwriter Defendants)**

10 245. Plaintiffs repeat and reallege each and every allegation contained above as if fully
11 set forth herein.

12 246. This Count is brought pursuant to §11 of the Securities Act, 15 U.S.C. §77k, on
13 behalf of the Class, against the Zymergen, the Individual Defendants and the Underwriter
14 Defendants.

15 247. The Registration Statement for the IPO was inaccurate and misleading, contained
16 untrue statements of material facts, omitted to state other facts necessary to make the statements
17 made not misleading and omitted to state material facts required to be stated therein.

18 248. Zymergen is the registrant for the IPO. Zymergen, the Individual Defendants and
19 the Underwriter Defendants named herein were responsible for the contents and dissemination of
20 the Registration Statement.

21 249. As issuer of the shares, Zymergen is strictly liable to Plaintiffs and the Class for the
22 misstatements and omissions.

23 250. Zymergen, the Individual Defendants and the Underwriter Defendants named
24 herein did not conduct a reasonable investigation or possess reasonable grounds for the belief that
25 the statements contained in the Registration Statement were true and without omissions of any
26 material facts and were not misleading.

27 251. By reasons of the conduct herein alleged, Zymergen, the Individual Defendants and
28 the Underwriter Defendants violated §11 of the Securities Act.

1 to cause Defendants Murdoch, Ocko and Sharma, respectively, to engage in the acts described
2 herein.

3 259. By virtue of their employment and/or principal/agent relationship, the Controlling
4 Stockholders as employers and/or principals are liable under the doctrine of *respondeat superior*,
5 for the actions of their respective employee and/or agent, Defendants Murdoch, Ocko and Sharma,
6 who violated §15 of the Securities Act while acting within the scope of their employment and/or
7 agency.

8 260. By virtue of the conduct alleged herein, the Individual Defendants and the
9 Controlling Stockholders are liable for the aforesaid wrongful conduct and are liable to Plaintiffs
10 and the Class for damages suffered.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

13 A. Determining that this action is a proper class action under Rule 23 of the Federal
14 Rules of Civil Procedure;

15 B. Awarding compensatory damages in favor of Plaintiffs and the other Class
16 members against all Defendants, jointly and severally, for all damages sustained as a result of
17 Defendants' wrongdoing, or as control persons or principals of Defendants under the doctrine of
18 *respondeat superior*, in an amount to be proven at trial, including interest thereon;

19 C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in
20 this action, including attorneys' fees and expert fees; and

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

22 **JURY TRIAL DEMANDED**

23 Plaintiffs hereby demand a trial by jury.

24 DATED: March 4, 2024

ROBBINS GELLER RUDMAN & DOWD LLP
SHAWN A. WILLIAMS
DANIEL J. PFEFFERBAUM
ALAINA L. GILCHRIST

27 s/ Daniel J. Pfefferbaum

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DANIEL J. PFEFFERBAUM

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Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)
shawnw@rgrdlaw.com
dpfefferbaum@rgrdlaw.com
agilchrist@rgrdlaw.com

ROBBINS GELLER RUDMAN & DOWD LLP
JUAN CARLOS SANCHEZ
PATTON L. JOHNSON
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
jsanchez@rgrdlaw.com
pjohnson@rgrdlaw.com

Counsel for Plaintiffs

BERMAN TABACCO
NICOLE LAVALLEE (SBN 165755)
KRISTIN J. MOODY (SBN 206326)
JEFFREY V. ROCHA (SBN 304852)
425 California Street, Suite 2300
San Francisco, CA 94104
Telephone: 415/433-3200
415/433-6382 (fax)
nlavallee@bermantabacco.com
kmoody@bermantabacco.com
jrocha@bermantabacco.com

BERMAN TABACCO
LESLIE R. STERN
One Liberty Square
Boston, MA 02109
Telephone: 617/542-8300
617/542-1194 (fax)
lstern@bermantabacco.com

Counsel for Plaintiff West Palm Beach
Firefighters' Pension Fund

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KLAUSNER, KAUFMAN, JENSEN
& LEVINSON
ROBERT D. KLAUSNER
BONNI S. JENSEN
7080 NW 4th Street
Plantation, FL 33317
Telephone: 954/916-1202
954/916-1232 (fax)
bob@robertdklausner.com
bonni@robertdklausner.com

Board Counsel for Plaintiff West Palm Beach
Firefighters' Pension Fund