

1 Robert W. Ottinger (SBN 156825)
2 THE OTTINGER FIRM, P.C.
3 535 Mission Street
4 San Francisco, CA 94105
5 robert@ottingerlaw.com
6 Tel: 415-262-0096
7 Fax: 212-571-0505

8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

12/09/2021
Clerk of the Court
BY: LAURA SIMMONS
Deputy Clerk

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN FRANCISCO**

CGC-21-597028

11 HENRICUS DUCKERS, an individual,

12 Plaintiff,

13 vs.

14 BEREN THERAPEUTICS, P.B.C., a
15 Delaware Public Benefit Corporation,

16 Defendant.

Case Number:

COMPLAINT FOR DAMAGES

1 Plaintiff HENRICUS DUCKERS (“Plaintiff” or “Mr. Duckers”), by and through his attorneys, The
2 Ottinger Firm, P.C., brings this Complaint against Defendant, BEREN THERAPEUTICS, P.B.C.
3 (“Defendant”, “Beren” or “Company”). Plaintiff alleges upon knowledge as to himself and his own acts,
4 and otherwise upon information and belief as follows:

5 **INTRODUCTION**

6 1. Billionaire investor and entrepreneur Peter Thiel operates a venture capital fund called Thiel
7 Capital in Los Angeles. The Defendant, Beren Therapeutics, P.B.C. is controlled and operated by Thiel
8 Capital. The CEO of Beren, Jason Camm, is also the Managing Director and Chief Medical Officer of
9 Thiel Capital. Peter Thiel serves on the board of directors of Beren.

10 2. In a textbook bait and switch campaign, Jason Camm and Beren defrauded the Plaintiff,
11 Henricus Duckers, out of approximately 50,000 shares of Beren with an estimated value of \$3,200,000.00.
12 Mr. Camm and Beren also caused Mr. Duckers to work for the company for six months without paying
13 him any compensation whatsoever in violation of California law.

14 **THE PARTIES**

15 3. Beren Pharmaceuticals P.B.C. (“Defendant”, “Beren” or “Company”), is a Biotechnology
16 start up managed by Thiel Capital.

17 4. Beren’s focus is developing treatments for Coronary Artery Disease/Atherosclerosis,
18 Tauopathies/Neurodegenerative Diseases (including Progressive Supranuclear Palsy and Alzheimer’s
19 Disease – MCI), Nieman Pick Syndrome Type C, Cholesterol Thromboembolic Disease, Diabetic
20 Nephropathy, and other diseases.

21 5. Beren is a Public Benefit Corporation existing under the laws of the state of Delaware, with
22 its principal place of business in Los Angeles, California, and operating in the state of California and within
23 this County.

24 6. Mr. Duckers is a medical doctor with a PhD in Molecular Cardiology. He was Head Docent
25 and Professor of Interventional Cardiology at the University Medical Center at Rotterdam for ten years
26 and served as Chief Medical Officer at Cardialysis, a leading Cardiovascular Research Organization, for
27 eight years and served as the Chief Medical Officer at BioCardia for five years.

1 7. In 2020, Mr. Duckers was serving as Chief Medical Officer for BioCardia in San Carlos,
2 California. In the spring of that year, Beren began recruiting him to serve as their Chief Medical Officer.

3 8. Beren continued to discuss the CMO position with Mr. Duckers and in June 2020 Jason
4 Camm suggested that he start working for Beren as a consultant so they could get to know each other. Mr.
5 Duckers agreed and began working part-time for Beren and focused on building out Beren's clinical
6 program. Mr. Duckers continued working for BioCardia while he worked part-time for Beren.

7 9. In or about July of 2020, Mr. Camm asked Mr. Duckers to devote his efforts full-time,
8 which included working weekends in excess of forty-hours a week, at Beren to help the company prepare
9 or their first meeting with the FDA in September. Mr. Duckers agreed and gave 30 days' notice at BioCardia
10 in July.

11 10. In order to induce Mr. Duckers to leave BioCardia and join Beren full-time, Mr. Camm
12 promised that the company would compensate him with a salary of \$300,000 and an equity stake equal to
13 2.5% of the company. Mr. Camm stated that it would "kick in" or count immediately. Based on these
14 promises, Mr. Duckers began working for Beren full-time and expected to be compensated for his time by
15 being paid the agreed upon salary and provided with the 2.5% equity grant.

16 11. Beren enticed Mr. Duckers into working for them part-time in June of 2020 and then,
17 through promises of equity and a six-figure salary, induced him into working full-time starting in July of
18 2020. But Beren, however, had no intention of providing Mr. Duckers with the promised compensation
19 then. Instead, Beren strung Mr. Duckers along for six months without providing any compensation at all
20 or crediting his time towards vesting the promised 2.5% equity.

21 12. As a result of Beren's false promises, Mr. Duckers worked for Beren for nearly six months
22 without any pay or vesting credit.

23 13. Finally, on October 9, 2020, Beren presented Mr. Duckers with a bogus offer letter that
24 acted as if he was just about to start working for the company. The letter made no reference to the six
25 months of work that Mr. Duckers had already provided to the company. Instead, the letter stated, "we
26 would like your start date to be on or before 19th October 2020." The terms, however, were in line with
27 what Mr. Camm had previously promised with an annual salary of \$335,000 and an equity grant of 194,730
28 shares of the Company's Class A Common Stock with a standard four-year vesting schedule.

14. Having already left his Chief Medical Officer role at BioCardia and invested six months of work at Beren, Mr. Duckers felt duped by the fake offer letter and had no choice but to accept it.

15. At a Board of Directors meeting attended by Directors Jason Camm, Peter Thiel, and Dr. Eicke Latz, a false vesting commencement date of October 19, 2020, was assigned to Mr. Duckers' stock option grant. The true commencement date should have been in July of 2020 as promised by Beren.

16. The first 25% of Mr. Duckers equity interest in Beren should have vested in July of 2021.

17. One month later, in August of 2020, another $1/48^{\text{th}}$ of the shares should have vested.

18. On September 8, 2021, Beren terminated Mr. Duckers' employment, and this caused Mr. Duckers to forfeit the entirety of his equity interest in Beren because he did not meet the false vesting date of October 19, 2021.

19. As a result of Beren's false statements, Mr. Duckers was induced to work for Beren on the understanding that he would receive a 2.5% equity interest in Beren subject to the standard four-year vesting schedule as well as payment for his time worked at the agreed upon salary.

JURISDICTION AND VENUE

20. Plaintiff was employed in, and significant events material to this case occurred within San Francisco County, California.

PROCEDURAL HISTORY

21. Plaintiff's employment agreement contains an arbitration clause requiring that all disputes between the parties, including those based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, proceed to arbitration. Plaintiff's claim herein, solely for relief under the Private Attorney's General Act, is not subject to arbitration.

STATEMENT OF LWDA NOTICE COMPLIANCE

22. Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency (LWDA) and to Defendant of the legal claims and theories of this case. Plaintiff will amend his complaint to plead exhaustion of administrative remedies following the statutorily prescribed sixty-five day waiting period in which no response was received from the LWDA. Labor Code Section 2699.3.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, prays for relief and judgment against Defendant as follows:

3 A. A declaratory judgment that the practices complained of herein are unlawful under the
4 California Labor Code and a declaration that Defendant is found to have violated the Labor Code
5 provisions cited herein.

6 B. For penalties as provided under the Private Attorneys General Act and distributed
7 according to the Act; and

8 C. Costs of the action incurred herein, including expert fees;

9 D. Attorney's fees including fees pursuant to California Code of Civil Procedure section
10 1021.5 and California Labor Code section 2699; and

11 E. For such other and further relief as the Court deems just and proper.
12
13

14 Dated: December 8, 2021
15 San Francisco, CA

Respectfully submitted,

16 

17 Robert W. Ottinger (SBN 156825)
18 THE OTTINGER FIRM, P.C.
19 535 Mission Street
20 San Francisco, CA 94105
21 robert@ottingerlaw.com
22 Tel: 415-262-0096
23 Fax: 212-571-0505
24
25
26
27
28