

2013 MAR - 12

RICHARD B. CLERK, U.S. DISTRICT COURT

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED BY FAX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LHK

Case No.: 13 0945



Individually and On Behalf of All Others
Similarly Situated,

Plaintiff,

v.

ROSEMARY A. CRANE, PATRICK D.
SPANGLER, PATRICK S. JONES,
PETER C. BRANDT, PHILIPPE O.
CHAMBON, DARREN W. COHEN,
THOMAS L. HARRISON, GILBERT H.
KLIMAN, JOHN E. VORIS, MARK A.
WAN, JACOB J. WINEBAUM and
EPOCRATES, INC.,

Defendants.

CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS

FRL

JURY TRIAL DEMANDED

1 Plaintiff [REDACTED] ("Plaintiff"), by and
2 through its attorneys, alleges the following upon information and belief, except as to those
3 allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's
4 information and belief is based upon, among other things, its counsel's investigation, which
5 included without limitation a review and analysis of: (a) regulatory filings made by Epocrates,
6 Inc. ("Epocrates" or the "Company"), with the United States Securities and Exchange
7 Commission ("SEC"); (b) press releases and media reports issued by and disseminated by
8 Epocrates; and (c) other publicly available information concerning Epocrates.

9 NATURE OF THE ACTION AND OVERVIEW

10 1. This is a class action on behalf of: (1) persons or entities who purchased or
11 otherwise acquired the securities of Epocrates pursuant and/or traceable to the Company's
12 Registration Statement and Prospectus (collectively, the "Registration Statement" or "Offering
13 Materials") issued in connection with the Company's February 2, 2011, initial public offering
14 (the "IPO" or the "Offering") seeking to pursue remedies under the Securities Act of 1933 (the
15 "Securities Act"); and (2) purchasers of Epocrates' securities between February 2, 2011 and
16 August 9, 2011, inclusive (the "Class Period"), seeking to pursue remedies under the Securities
17 Exchange Act of 1934 (the "Exchange Act"). Epocrates provides subscriptions for mobile drug
18 reference tools and electronic health records to healthcare professionals, as well as interactive
19 services to the healthcare industry.
20

21 2. On August 9, 2011, the Company reported its 2011 fiscal second quarter
22 financial results and lowered its net sales guidance for the 2011 fiscal year from the range of
23 \$122 million to \$125 million to the range of \$115 million to \$120 million. According to the
24 Company, the reason for this revised guidance was that its revenue growth was being negatively
25 impacted by expanding regulatory queues, causing delays in the launch of DocAlert® messages
26 and the lengthening of the time between contract signing and revenue recognition.

27 3. On this news, shares of Epocrates declined \$6.80 per share, nearly 40%, to close
28 on August 10, 2011, at \$9.89 per share, on heavy trading volume.

1 charged herein, including the preparation and dissemination of materially false and/or
2 misleading information, occurred in substantial part in this Judicial District. Additionally,
3 Defendant is located within this Judicial District.

4 9. In connection with the acts, transactions, and conduct alleged herein, Defendants
5 directly and indirectly used the means and instrumentalities of interstate commerce, including
6 the United States mail, interstate telephone communications, and the facilities of a national
7 securities exchange.

8 **PARTIES**

9 10. Plaintiff [REDACTED] as set forth in
10 the accompanying certification, incorporated by reference herein, purchased Epocrates common
11 stock pursuant, or traceable, to the Registration Statement issued in connection with the
12 Company's IPO, and suffered damages as a result of the federal securities law violations and
13 false and/or misleading statements and/or material omissions alleged herein.

14 11. Defendant Rosemary A. Crane ("Crane") was, at all relevant times, President,
15 Chief Executive Officer ("CEO") and a director of the Company. Defendant Crane signed or
16 authorized the signing of the Registration Statement.

17 12. Defendant Patrick D. Spangler ("Spangler") was, at all relevant times, Chief
18 Financial Officer ("CFO") of the Company. Defendant Spangler signed or authorized the
19 signing of the Registration Statement.

20 13. Defendant Patrick S. Jones ("Jones") was, at all relevant times, Chairman of the
21 Board and a director of the Company. Defendant Jones signed or authorized the signing of the
22 Registration Statement.

23 14. Defendant Peter C. Brandt ("Brandt") was, at all relevant times, a director of the
24 Company. Defendant Brandt signed or authorized the signing of the Registration Statement.

25 15. Defendant Philippe O. Chambon ("Chambon") was, at all relevant times, a
26 director of the Company. Defendant Chambon signed or authorized the signing of the
27 Registration Statement.
28

1 16. Defendant Darren W. Cohen (“Cohen”) was, at all relevant times, a director of
2 the Company. Defendant Cohen signed or authorized the signing of the Registration Statement.

3 17. Defendant Thomas L. Harrison (“Harrison”) was, at all relevant times, a director
4 of the Company. Defendant Harrison signed or authorized the signing of the Registration
5 Statement.

6 18. Defendant Gilbert H. Kliman (“Kliman”) was, at all relevant times, a director of
7 the Company. Defendant Kliman signed or authorized the signing of the Registration
8 Statement.

9 19. Defendant John E. Voris (“Voris”) was, at all relevant times, a director of the
10 Company. Defendant Voris signed or authorized the signing of the Registration Statement.

11 20. Defendant Mark A. Wan (“Wan”) was, at all relevant times, a director of the
12 Company. Defendant Wan signed or authorized the signing of the Registration Statement.

13 21. Defendant Jacob J. Winebaum (“Winebaum”) was, at all relevant times, a
14 director of the Company. Defendant Winebaum signed or authorized the signing of the
15 Registration Statement.

16 22. Defendants Crane, Spangler, Jones, Brandt, Chambon, Cohen, Harrison, Kliman,
17 Voris, Wan and Winebaum are collectively referred to hereinafter as the “Individual
18 Defendants.” The Individual Defendants, because of their positions with the Company,
19 possessed the power and authority to control the contents of Epocrates’ reports to the SEC,
20 press releases and presentations to securities analysts, money and portfolio managers and
21 institutional investors, *i.e.*, the market. Each defendant was provided with copies of the
22 Company’s reports and press releases alleged herein to be misleading prior to, or shortly after,
23 their issuance and had the ability and opportunity to prevent their issuance or cause them to be
24 corrected. Because of their positions and access to material non-public information available to
25 them, each of these defendants knew that the adverse facts specified herein had not been
26 disclosed to, and were being concealed from, the public, and that the positive representations
27 which were being made were then materially false and/or misleading. The Individual
28

1 Defendants are liable for the false statements pleaded herein, as those statements were each
2 “group-published” information, the result of the collective actions of the Individual Defendants.

3 23. Defendant Epocrates is a Delaware corporation with its principal executive
4 offices located at 1100 Park Place, Suite 300, San Mateo, California 94403.

5 24. Defendant Epocrates and the Individual Defendants who signed the Registration
6 Statement are liable for the false and misleading statements incorporated into the Registration
7 Statement.

8 **SUBSTANTIVE ALLEGATIONS**

9 **Epocrates and Its Revenue Recognition Policy**

10 25. Epocrates provides subscriptions for mobile drug reference tools and electronic
11 health records to healthcare professionals, as well as interactive services to the healthcare
12 industry. Most commonly used on mobile devices at the point of care, the Company’s products
13 help healthcare professionals make more informed prescribing decisions, enhance patient safety
14 and improve practice productivity. At the time of the Company’s IPO, the Company claimed its
15 user network consisted of over one million healthcare professionals, including over 300,000, or
16 over 45% of, U.S. physicians.

17 26. According to the Company, at all relevant times, Epocrates primarily generated
18 revenues from providing interactive services, including the Company’s “DocAlert” clinical
19 messages, as well as the Company’s “Virtual Representative Services.” As the Company
20 described:
21

22
23 Through our interactive services, we provide the healthcare industry, primarily
24 pharmaceutical companies, access to our user network to deliver targeted
25 information and conduct market research in a cost-effective manner. Our
26 services include DocAlert® clinical messages that deliver product news and
27 alerts to healthcare professionals. Our Virtual Representative Services,
28 including drug detailing, sampling, patient literature delivery and the ability to
contact drug manufacturers, are designed to supplement and replicate the
activities of pharmaceutical sales representatives.

1 exercised their over-allotment option on an additional 804,000 shares, raising approximately
2 \$11.9 million more for the Company, net of underwriters' discounts and commissions.

3 **Materially False and Misleading**
4 **Statements Issued During the Class Period**

5 30. The Class Period begins on February 2, 2011. On this day, in connection with
6 the IPO, the Company filed the Prospectus for the IPO.

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

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

14 33. The Registration Statement represented the regulatory climate for the Company's
15 pharmaceutical advertising and promotion business, in relevant part, as follows:

16 *Regulation of drug and medical device advertising and promotion.* We provide
17 services involving promotion of prescription and over-the-counter drugs and
18 medical devices. Any increase in regulation of these areas by the FDA, the
19 Federal Trade Commission, or FTC, or other governmental bodies at the
20 federal, state or local level, could make it more difficult for us to contract for
21 certain of our interactive services. Physician groups and others have criticized
22 the FDA's current policies and have called for restrictions on advertising of
23 prescription drugs and for increased FDA enforcement. In response, the FDA
24 has conducted hearings and sought public comment regarding its regulation of
25 information concerning drugs on the Internet and the relationships between
26 pharmaceutical companies and those disseminating information on drugs. We
cannot predict what actions the FDA or industry participants may take in
response to these criticisms. It is also possible that new laws would be enacted
that impose restrictions on such marketing and advertising. Our interactive
services revenues could be materially reduced by additional restrictions on the
marketing or advertising of prescription drugs and medical devices, whether
imposed by law or regulation or by policies adopted by industry members.

27 If the FDA, the FTC or another governmental body finds that any information
28 available on our website or distributed by us violates FDA, FTC or other laws
or regulations, they may take regulatory or judicial action against us or the

1 advertiser or sponsor of that information. State attorneys general may also take
2 similar action based on their state's consumer protection statutes or other new
or existing laws.

3 * * *

4 ***Regulation of drug and medical device advertising and promotion***

5 We provide services involving promotion of prescription and over-the-counter
6 drugs and medical devices. The FDA regulates the form, content and
7 dissemination of labeling, advertising and promotional materials prepared by,
8 or for, pharmaceutical or medical device companies, including direct-to-
9 consumer prescription drug and medical device advertising. The FTC regulates
10 over-the-counter, or OTC, drug advertising and, in some cases, medical device
11 advertising, as well as general product or service advertising. Generally, based
12 on FDA requirements, regulated companies must limit advertising and
13 promotional materials to discussions of FDA-approved uses and claims.
14 Information that promotes the use of pharmaceutical products or medical
15 devices that we disseminate on behalf of our clients is subject to the full array
of the FDA and FTC requirements and enforcement actions. Information in our
16 services that is not disseminated on behalf of clients is not subject to such
17 regulatory oversight. However, products or services that discuss use of an
18 FDA-regulated product or that the regulators believe may lack editorial
19 independence from the influence of sponsoring pharmaceutical or medical
20 device companies may become a focus of regulatory scrutiny.

21 The federal Food, Drug, and Cosmetic Act, or FD&C Act, requires that
22 prescription drugs, including biological products, be approved for a specific
23 medical indication by the FDA prior to marketing. It is a violation of the
24 FD&C Act and of FDA regulations to market, advertise or otherwise
25 commercialize such products prior to approval. The FDA does allow for
26 preapproval exchange of scientific information, provided it is nonpromotional
in nature and does not draw conclusions regarding the ultimate safety or
27 efficacy of the unapproved drug. Upon approval, the FDA's regulatory
28 authority extends to the labeling and advertising of prescription drugs offered
in interstate commerce. Such products may only be promoted and advertised
for approved indications. In addition, the labeling and advertising can be
neither false nor misleading, and must present all material information,
including risk information, in a balanced manner. Labeling and advertising that
violate these legal standards are subject to FDA enforcement action. In the last
few years, there have been several prominent enforcement actions, settled for
hundreds of millions of dollars each, against pharmaceutical companies in
connection with their alleged off-label promotion of their products.

The FDA regulates the safety, efficacy and labeling of OTC drugs under the
FD&C Act, either through specific product approvals or through regulations

1 that define approved claims for specific categories of such products. The FTC
2 regulates the advertising of OTC drugs under the section of the FTC Act that
3 prohibits unfair or deceptive trade practices. Together, the FDA and FTC
4 regulatory framework requires that OTC drugs be formulated and labeled in
5 accordance with FDA approvals or regulations and promoted in a manner that
6 is truthful, adequately substantiated and consistent with the labeled uses. OTC
7 drugs that do not meet these requirements are subject to FDA or FTC
8 enforcement action depending on the nature of the violation. In addition, state
9 attorneys general can also bring enforcement actions for alleged unfair or
10 deceptive advertising.

11 Any increase in FDA regulation of the Internet or other media for
12 advertisements of prescription drugs could make it more difficult for us to
13 obtain advertising and sponsorship revenue. In November 2009, the FDA held
14 hearings and solicited comments concerning its regulation of the promotion of
15 pharmaceuticals and other medical products using the Internet and social media
16 tools, indicating its concern about activities in these forums and its intention to
17 consider additional regulations in this area. There is a reasonable possibility
18 that Congress, the FDA or the FTC may alter their present policies on the
19 advertising of prescription drugs or medical devices in a material way. We
20 cannot predict what effect any such changes would have on our business.

21 34. On March 29, 2011, the Company issued a press release entitled, "Epocrates
22 Reports 2010 Fourth Quarter and Full-Year Financial Results and Provides 2011 Outlook."
23 Therein, the Company, in relevant part, stated:

24 Epocrates, Inc. (Nasdaq:EPOC), a leading provider of mobile drug reference
25 tools to healthcare professionals and interactive services to the healthcare
26 industry, today reported financial results for its fiscal fourth quarter and full-
27 year of 2010 and its financial outlook for 2011. Epocrates' net sales totaled
28 \$30.3 million in the fourth quarter of 2010 compared to \$27.4 million in the
same quarter of the prior year, an increase of 11%. For the year ended
December 31, 2010, Epocrates' net sales increased 11% to \$104.0 million
compared to \$93.7 million for the year ended December 31, 2009.

* * *

As of December 31, 2010, Epocrates had total backlog of \$86.5 million,
consisting of deferred revenue of \$55.0 million, along with \$31.5 million of
contractual backlog. Bookings were \$37.0 million in the fourth quarter of 2010,
a 22% increase compared to the fourth quarter of 2009, led by a 43% increase
in bookings from pharmaceutical company clients.

* * *

1 Outlook for Full-Year 2011

2 Epocrates expects full-year 2011 net sales to be in the range of \$122 million to
3 \$125 million, representing growth of 17% to 20% over full-year 2010.
4 Epocrates expects 2011 adjusted EBITDA of 16% to 17% of sales, or \$19.5
5 million to \$21.5 million. This would represent an increase in adjusted EBITDA
6 of 15% to 27% over the adjusted EBITDA reported in 2010. In addition, full-
year 2011 net income is expected to be in the range of \$3.0 million to \$4.0
million, and net income per diluted share is expected to be between \$0.12 and
\$0.15, based on approximately 26.0 million shares outstanding.

7 35. On March 31, 2011, Epocrates filed its Annual Report on Form 10-K with the
8 SEC for the 2010 fiscal year. The Company's Form 10-K was signed by Defendants Crane,
9 Spangler, Jones, Brandt, Chambon, Voris, Wan and Winebaum, and reaffirmed the Company's
10 statements announced on March 29, 2011.

11 36. On May 10, 2011, the Company issued a press release entitled, "Epocrates
12 Reports 2011 First Quarter Financial Results." Therein, the Company, in relevant part, stated:

13
14 Epocrates, Inc. (Nasdaq:EPOC), a leading provider of mobile drug reference
15 tools to healthcare professionals and interactive services to the healthcare
16 industry, today reported financial results for its fiscal first quarter of 2011.
17 Epocrates' net sales totaled \$29.2 million in the first quarter of 2011 compared
to \$24.3 million in the same quarter of the prior year, an increase of
approximately 20%.

18 Rose Crane, president and chief executive officer of Epocrates, Inc.,
19 commented, "With our first quarter results, we delivered a solid start to 2011
20 and continued to strengthen our leadership position at the point of care. Our
21 overall net sales growth was driven by a strong performance across both our
22 subscription and interactive services businesses, which grew approximately 8%
23 and 24%, respectively, versus the prior year quarter. Notably, sales in our core
24 pharmaceutical business, which include DocAlert® messages and virtual
representative services, increased by over 40% during the first quarter of 2011
compared to the same quarter of the prior year. These results reflect the growth
in bookings that we saw in 2010 and the positive momentum we have
generated from the investments we made to expand our product pipeline."

25 * * *

26 Outlook for Full-Year 2011

27 Epocrates continues to expect full-year 2011 net sales to be in the range of
28 \$122 million to \$125 million, representing growth of 17% to 20% over full-

1 year 2010. Epocrates also continues to expect 2011 adjusted EBITDA of 16%
2 to 17% of sales, or \$19.5 million to \$21.5 million. This would represent an
3 increase in adjusted EBITDA of 15% to 27% over the adjusted EBITDA
4 reported in 2010. In addition, full-year 2011 net income is expected to be in the
5 range of \$3.0 million to \$4.0 million, and net income per diluted share is
6 expected to be between \$0.12 and \$0.15, based on approximately 26.0 million
7 shares outstanding.

8 37. On May 12, 2011, Epocrates filed its Quarterly Report on Form 10-Q with the
9 SEC for the 2011 fiscal first quarter. The Company's Form 10-Q was signed by Defendants
10 Crane and Spangler, and reaffirmed the Company's statements announced on May 10, 2011.

11 38. The statements contained in ¶¶33-37, were materially false and/or misleading
12 when made because defendants failed to disclose or indicate the following: (1) that the
13 Company's pharmaceutical clients were awaiting guidance relating to use of advertising on the
14 Internet and through social media from the FDA; (2) that, as a result, the Company's
15 pharmaceutical clients were increasingly delaying their marketing activities as they awaited
16 guidance from the FDA; (3) the FDA's delays in issuing guidance relating to the Internet and
17 social media was causing expanding regulatory queues for Epocrates; (4) the expanding
18 regulatory queues were negatively impacting the Company's sales and revenue growth; and (5)
19 as a result of the foregoing, the Defendants' positive statements about the Company's business,
20 operations and prospects lacked a reasonable basis and/or were materially false and misleading
21 at all relevant times.

22 **Disclosures at the End of the Class Period**

23 39. On August 9, 2011, the Company issued a press release entitled, "Epocrates
24 Reports 2011 Second Quarter Financial Results and Updated 2011 Guidance." Therein, the
25 Company, in relevant part, stated:

26 Epocrates, Inc. (Nasdaq:EPOC), a leading provider of mobile drug reference
27 tools to healthcare professionals and interactive services to the healthcare
28 industry, today reported financial results for its fiscal second quarter of 2011
and provided updated financial guidance for 2011. Epocrates' net sales totaled
\$27.9 million in the second quarter of 2011 compared to \$25.3 million in the
same quarter of the prior year, an increase of 10.2%.

1 "Epocrates continues to be recognized as a trusted leader in point-of-care
2 solutions for healthcare professionals, as evidenced by our growing network of
3 over 1.3 million users, including 328,000 U.S. physicians," stated Rose Crane,
4 president and chief executive officer. "We are focused on strengthening our
5 leadership position in delivering solutions to help improve patient care and
6 practice efficiencies with the launch of the Epocrates® EHR for small practice
7 physicians and new product offerings for pharma clients. All of these represent
8 exciting long-term growth opportunities that complement our core business,
9 leverage our broad physician network and position Epocrates for continued
10 long-term success."

11 Crane added, "With respect to our pharma revenue, which grew 18 percent in
12 the second quarter of 2011 over the second quarter of 2010, *there are two*
13 *factors which are impacting the timing of revenue growth. Due to expanding*
14 *regulatory queues, we are experiencing delays in the launch of DocAlert®*
15 *messages. For our newer products, the time between contract signing and*
16 *revenue recognition is taking longer than expected due to the size and*
17 *complexity of these launches. These factors impacted our second quarter*
18 *revenue and are expected to continue to affect the timing of our net sales for*
19 *the remainder of the year. Accordingly, we are proactively updating our*
20 *guidance to reflect the shift in timing."*

21 Crane continued, "Our updated guidance also reflects our decision to focus the
22 first phase of availability for our Epocrates EHR solution to a targeted group of
23 early adopters in order to continue to enhance the product. While this is
24 expected to impact our revenue in the second half of 2011, we believe this
25 approach will result in a better user experience for the physician and long-term
26 success of our EHR."

27 * * *

28 Outlook for Full-Year 2011

Epocrates has updated its expected full-year 2011 net sales guidance to be in the range of \$115 million to \$120 million, representing growth of 11% to 15% over full-year 2010. Epocrates has also updated its 2011 adjusted EBITDA to be 11% to 14% of sales, or \$13 million to \$17 million. This would represent a decrease in adjusted EBITDA of 26% to 4% over the adjusted EBITDA reported in 2010. In addition, full-year 2011 net income has been updated to be in the range of \$0.5 million to \$3.0 million, and net income per diluted share has been updated to be between \$0.01 and \$0.10, based on approximately 26.0 million shares outstanding.

[Emphasis added.]

1 damages sustained by Plaintiff and other members of the Class. As described herein, during the
2 Class Period, Defendants made or caused to be made a series of materially false and/or
3 misleading statements about Epocrates' business, prospects, and operations. These material
4 misstatements and/or omissions created an unrealistically positive assessment of Epocrates and
5 its business, operations, and prospects, thus causing the price of the Company's securities to be
6 artificially inflated at all relevant times, and when disclosed, negatively affected the value of the
7 Company stock. Defendants' materially false and/or misleading statements during the Class
8 Period resulted in Plaintiff and other members of the Class purchasing the Company's securities
9 at such artificially inflated prices, and each of them has been damaged as a result.

10 53. At all relevant times, the market for Epocrates' securities was an efficient market
11 for the following reasons, among others:

12 (a) Epocrates stock met the requirements for listing, and was listed and
13 actively traded on the NASDAQ, a highly efficient and automated market;

14 (b) As a regulated issuer, Epocrates filed periodic public reports with the
15 SEC and/or the NASDAQ;

16 (c) Epocrates regularly communicated with public investors *via* established
17 market communication mechanisms, including through regular dissemination of press releases
18 on the national circuits of major newswire services and through other wide-ranging public
19 disclosures, such as communications with the financial press and other similar reporting
20 services; and/or

21 (d) Epocrates was followed by securities analysts employed by brokerage
22 firms who wrote reports about the Company, and these reports were distributed to the sales
23 force and certain customers of their respective brokerage firms. Each of these reports was
24 publicly available and entered the public marketplace.

25 54. As a result of the foregoing, the market for Epocrates' securities promptly
26 digested current information regarding Epocrates from all publicly available sources and
27 reflected such information in Epocrates' stock price. Under these circumstances, all purchasers
28

1 of Epocrates' securities during the Class Period suffered similar injury through their purchase of
2 Epocrates' securities at artificially inflated prices and a presumption of reliance applies.

3 **NO SAFE HARBOR**

4 55. The statutory safe harbor provided for forward-looking statements under certain
5 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.
6 The statements alleged to be false and misleading herein all relate to then-existing facts and
7 conditions. In addition, to the extent certain of the statements alleged to be false may be
8 characterized as forward looking, they were not identified as "forward-looking statements"
9 when made and there were no meaningful cautionary statements identifying important factors
10 that could cause actual results to differ materially from those in the purportedly forward-looking
11 statements. In the alternative, to the extent that the statutory safe harbor is determined to apply
12 to any forward-looking statements pleaded herein, Defendants are liable for those false forward-
13 looking statements because at the time each of those forward-looking statements was made, the
14 speaker had actual knowledge that the forward-looking statement was materially false or
15 misleading, and/or the forward-looking statement was authorized or approved by an executive
16 officer of Epocrates who knew that the statement was false when made.

17
18 **FIRST CLAIM**

19 **Violation of Section 11 of**
20 **The Securities Act Against All Defendants**

21 56. Plaintiff repeats and realleges each and every allegation contained above, except
22 any allegation of fraud, recklessness or intentional misconduct.

23 57. This Count is brought against all Defendants pursuant to Section 11 of the
24 Securities Act, 15 U.S.C. §77k, on behalf of the all persons or entities who purchased or
25 otherwise acquired the securities of Epocrates pursuant and/or traceable to the Company's
26 Registration Statement issued in connection with the Company's February 2, 2011 IPO.
27
28

1 Statement contained a Prospectus, which was used to induce investors, such as Plaintiff and the
2 other members of the Class, to purchase Epocrates common stock.

3 68. The Prospectus contained untrue statements of material facts, omitted to state
4 other facts necessary to make the statements not misleading, and concealed and failed to
5 disclosed material facts. The Defendants' actions of solicitation included participating in the
6 preparation of the false and misleading Prospectus. Epocrates, acting through its employees,
7 agents, and others, solicited such purchases for its personal financial gain through the
8 preparation and dissemination of the Prospectus.

9 69. Epocrates, its employees and agents, and the Individual Defendants owed
10 Plaintiff and members of the Class a duty to make a reasonable and diligent investigation of the
11 statements contained in the Prospectus to ensure that such statements were true and that there
12 was no omission of material facts required to be stated in order to make the statements
13 contained therein not misleading. Defendants knew of, or in the exercise of reasonable care by
14 their employees and agents should have known of, the misstatements and omission contained in
15 the IPO materials, including the Prospectus, as set forth above.

16 70. Plaintiff and other members of the Class purchased or otherwise acquired
17 Epocrates common stock pursuant to and/or traceable to the defective Prospectus. Plaintiff did
18 not know, or in the exercise of reasonable diligence could not have known, of the untruths and
19 omissions contain in the Prospectus.

20 71. By reason of the conduct alleged herein, these Defendants violated, and/or
21 controlled a person who violated, §12(a)(2) of the Securities Act. Accordingly, Plaintiff and
22 members of the Class who hold Epocrates common stock purchased in the IPO have the right to
23 rescind and recover the consideration paid for their Epocrates common stock and hereby elect to
24 rescind and tender their Epocrates common stock to Defendants sued herein in return for the
25 consideration paid for those securities with interest thereon. Class members who have sold their
26 Epocrates common stock are entitled to rescissory damages.
27
28

THIRD CLAIM
Violation of Section 15 of
The Securities Act Against the Individual Defendants

1
2
3 72. Plaintiff repeats and realleges each and every allegation contained above, except
4 any allegation of fraud, recklessness or intentional misconduct.

5 73. This count is based upon Section 15 of the Securities Act, and is asserted against
6 the Individual Defendants on behalf of all persons or entities who purchased or otherwise
7 acquired the securities of Epocrates pursuant and/or traceable to the Company's Registration
8 Statement issued in connection with the Company's February 2, 2011 IPO.

9 74. Individual Defendants, by virtue of their offices, directorship and specific acts
10 were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of
11 Epocrates within the meaning of Section 15 of the Securities Act. The Individual Defendants
12 had the power and influence and exercised the same to cause Epocrates to engage in the acts
13 described herein.

14 75. Individual Defendants position made them privy to and provided them with
15 actual knowledge of the material facts concealed from Plaintiff and the Class.

16 76. By virtue of the conduct alleged herein, the Individual Defendants are liable for
17 the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.
18

FOURTH CLAIM
Violation of Section 10(b) of
The Exchange Act and Rule 10b-5
Promulgated Thereunder Against All Defendants

19
20
21
22 77. Plaintiff repeats and realleges each and every allegation contained above as if
23 fully set forth herein.

24 78. During the Class Period, Defendants carried out a plan, scheme and course of
25 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing
26 public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff
27 and other members of the Class to purchase Epocrates' securities at artificially inflated prices.
28

1 In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of
2 them, took the actions set forth herein.

3 79. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made
4 untrue statements of material fact and/or omitted to state material facts necessary to make the
5 statements not misleading; and (iii) engaged in acts, practices, and a course of business which
6 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to
7 maintain artificially high market prices for Epocrates' securities in violation of Section 10(b) of
8 the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the
9 wrongful and illegal conduct charged herein or as controlling persons as alleged below.

10 80. Defendants, individually and in concert, directly and indirectly, by the use,
11 means or instrumentalities of interstate commerce and/or of the mails, engaged and participated
12 in a continuous course of conduct to conceal adverse material information about Epocrates'
13 financial well-being and prospects, as specified herein.

14 81. These defendants employed devices, schemes and artifices to defraud, while in
15 possession of material adverse non-public information and engaged in acts, practices, and a
16 course of conduct as alleged herein in an effort to assure investors of Epocrates' value and
17 performance and continued substantial growth, which included the making of, or the
18 participation in the making of, untrue statements of material facts and/or omitting to state
19 material facts necessary in order to make the statements made about Epocrates and its business
20 operations and future prospects in light of the circumstances under which they were made, not
21 misleading, as set forth more particularly herein, and engaged in transactions, practices and a
22 course of business which operated as a fraud and deceit upon the purchasers of the Company's
23 securities during the Class Period.

24 82. Each of the Individual Defendants' primary liability, and controlling person
25 liability, arises from the following facts: (i) the Individual Defendants were high-level
26 executives and/or directors at the Company during the Class Period and members of the
27 Company's management team or had control thereof; (ii) each of these defendants, by virtue of
28

1 their responsibilities and activities as a senior officer and/or director of the Company, was privy
2 to and participated in the creation, development and reporting of the Company's internal
3 budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant
4 personal contact and familiarity with the other defendants and was advised of, and had access
5 to, other members of the Company's management team, internal reports and other data and
6 information about the Company's finances, operations, and sales at all relevant times; and (iv)
7 each of these defendants was aware of the Company's dissemination of information to the
8 investing public which they knew and/or recklessly disregarded was materially false and
9 misleading.

10 83. The Defendants had actual knowledge of the misrepresentations and/or
11 omissions of material facts set forth herein, or acted with reckless disregard for the truth in that
12 they failed to ascertain and to disclose such facts, even though such facts were available to
13 them. Such Defendants' material misrepresentations and/or omissions were done knowingly or
14 recklessly and for the purpose and effect of concealing Epocrates' financial well-being and
15 prospects from the investing public and supporting the artificially inflated price of its securities.
16 As demonstrated by Defendants' omission and/or misstatements regarding the Company's
17 business, operations, financial well-being, and prospects throughout the Class Period,
18 Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions
19 alleged, they were reckless in failing to obtain such knowledge by deliberately refraining from
20 taking those steps necessary to discover whether those statements were false or misleading.

21 84. As a result of the dissemination of the materially false and/or misleading
22 information and/or failure to disclose material facts, as set forth above, the market price of
23 Epocrates' securities was artificially inflated during the Class Period. In ignorance of the fact
24 that market prices of the Company's securities were artificially inflated, and relying directly or
25 indirectly on the false and misleading statements made by Defendants, or upon the integrity of
26 the market in which the securities trades, and/or in the absence of material adverse information
27 that was known to or recklessly disregarded by Defendants, but not disclosed in public
28

1 statements by Defendants during the Class Period, Plaintiff and the other members of the Class
2 acquired Epocrates' securities during the Class Period at artificially high prices and were
3 damaged thereby.

4 85. At the time of said misrepresentations and/or omissions, Plaintiff and other
5 members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff
6 and the other members of the Class and the marketplace known the truth regarding the problems
7 that Epocrates was experiencing, which were not disclosed by Defendants, Plaintiff and other
8 members of the Class would not have purchased or otherwise acquired their Epocrates
9 securities, or, if they had acquired such securities during the Class Period, they would not have
10 done so at the artificially inflated prices which they paid.

11 86. By virtue of the foregoing, Defendants have violated Section 10(b) of the
12 Exchange Act and Rule 10b-5 promulgated thereunder.

13 87. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and
14 the other members of the Class suffered damages in connection with their respective purchases
15 and sales of the Company's securities during the Class Period.

16
17 **FIFTH CLAIM**
18 **Violation of Section 20(a) of**
19 **The Exchange Act Against the Individual Defendants**

20 88. Plaintiff repeats and realleges each and every allegation contained above as if
21 fully set forth herein.

22 89. The Individual Defendants acted as controlling persons of Epocrates within the
23 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level
24 positions, and their ownership and contractual rights, participation in and/or awareness of the
25 Company's operations and/or intimate knowledge of the false financial statements filed by the
26 Company with the SEC and disseminated to the investing public, the Individual Defendants had
27 the power to influence and control and did influence and control, directly or indirectly, the
28 decision-making of the Company, including the content and dissemination of the various

1 statements which Plaintiff contends are false and misleading. The Individual Defendants were
2 provided with or had unlimited access to copies of the Company's reports, press releases, public
3 filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after
4 these statements were issued and had the ability to prevent the issuance of the statements or
5 cause the statements to be corrected.

6 90. In particular, each of these Defendants had direct and supervisory involvement in
7 the day-to-day operations of the Company and, therefore, is presumed to have had the power to
8 control or influence the particular transactions giving rise to the securities violations as alleged
9 herein, and exercised the same.

10 91. As set forth above, Epocrates and the Individual Defendants each violated
11 Section 10(b) and Rule 10b-5 by their acts and/or omissions as alleged in this Complaint. By
12 virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to
13 Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful
14 conduct, Plaintiff and other members of the Class suffered damages in connection with their
15 purchases of the Company's securities during the Class Period.

16
17 **PRAYER FOR RELIEF**

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

19 (a) Determining that this action is a proper class action under Rule 23 of the
20 Federal Rules of Civil Procedure;

21 (b) Awarding compensatory damages in favor of Plaintiff and the other Class
22 members against all defendants, jointly and severally, for all damages sustained as a result of
23 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

24 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred
25 in this action, including counsel fees and expert fees; and

26 (d) Such other and further relief as the Court may deem just and proper.

27 **JURY TRIAL DEMANDED**

28 Plaintiff hereby demands a trial by jury.