UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **WPD PHARMACEUTICALS, INC., and MARIUSZ OLEJNICZAK**	**Administrative Proceeding** **File No. 3-19801**

INFORMATION BEFORE THE COMMISSION AT THE TIME OF THE TRADING SUSPENSION

Pursuant to the Commission's Orders Requesting Additional Written Submissions in the matter of WPD Pharmaceuticals, Inc. ("WPD") and Mariusz Olejniczak (Admin. Proc. File No. 3-19801), the Division of Enforcement attaches the affidavit of Michael Vito setting forth the substantive facts before the Commission at the time of the trading suspension in the securities of WPD. The affidavit does not disclose privileged analysis or sensitive information about the staff's investigative methods.

By its attorneys,

/s/Richard M. Harper II
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CERTIFICATE OF SERVICE

I hereby certify that, on May 21, 2020, I served copies of the foregoing, the Division of Enforcement's submission entitled Information Before the Commission at the Time of the Trading Suspension and Affidavit of Michael Vito by electronic mail upon the following parties:

Counsel for WPD Pharmaceuticals, Inc. and Mariusz Olejniczak
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/s/Richard M. Harper II
Richard M. Harper II

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SECURITIES AND EXCHANGE COMMISSION

In the Matter of **WPD PHARMACEUTICALS, INC.**	**Administrative Proceeding** **File Nos. 3-19789, 3-19780**

AFFIDAVIT OF MICHAEL J. VITO

I, Michael J. Vito, hereby swear:

1. Since October 2014, I have been employed as an enforcement attorney with the U.S. Securities and Exchange Commission (the "Commission") in the Boston Regional Office in the Division of Enforcement (the "Division"). My duties include conducting investigations related to potential violations of the securities laws. I was an investigator for the Division in this matter.

2. On [redacted] the Division provided the factual information summarized herein to the Commission in support of the issuance of three Trading Suspension Orders temporarily suspending trading in the securities of WPD Pharmaceuticals, Inc. ("WPD") / ticker symbol "WCOTF," Moleculin Biotech, Inc. / ticker symbol "MBRX," and CNS Pharmaceuticals, Inc. / ticker symbol "CNSP."

WPD Pharmaceuticals, Inc.

3. WPD, a British Columbia, Canada corporation with its principal offices located in Vancouver British Columbia, purports to be a research and development company focusing on cancer treatments. Initially formed in 2006 as 0762477 B.C. Ltd., the company changed its name two times before its most recent name change to WPD in January 2020. The current CEO of

WPD is Mariusz Olejniak. Five members of WPD's board of directors and scientific advisory board presently hold roles with one or both of Moleculin and CNS.

4. WPD's present business is the product of a December 2019 reverse merger between the public company (then named Westcot Ventures Corp.) and a privately held research and development company founded by Dr. Waldemar Priebe of MD Anderson. Dr. Priebe became the largest shareholder of WPD upon the completion of the reverse merger.

5. On February 3, 2020, WPD announced that it acquired from Moleculin sublicense rights to WP1122, which it described as a pancreatic cancer drug candidate. In total, WPD holds sublicense rights to ten drug candidates through agreements with Wake Forest University, Moleculin, and CNS. WPD has not filed financial statements since November 2019, but reported on the SEDAR filing system (the Canadian equivalent of Edgar) in December 2019 that it had total assets of approximately $3.4 million as of September 2019, $3 million of which were current assets.

6. WPD's common stock is quoted on OTC Link (previously "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link") under the trading symbol WCOTF. It is also quoted on the Canadian Stock Exchange under the trading symbol WBIO and the Frankfurt Stock Exchange under the trading symbol 8SV1. As of April 20, 2020, WPD's common stock had six market makers and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3). According to the OTC Markets Group website, WPD had more than 111.5 million shares of common stock outstanding as of January 7, 2020, and its market capitalization on April 20, 2020, was over $63.8 million.

Moleculin Biotech, Inc.

7. Moleculin, a Delaware corporation with its principal offices located in Houston, Texas, is purportedly a clinical stage pharmaceutical company focused on the treatment of highly resistant cancers. Moleculin was formed in July 2015 prior to an initial public offering in May 2016 which netted proceeds of about $8.4 million. Prior to the initial public offering, a private limited liability company of the same name owned by Dr. Priebe and others affiliated with the company was merged into Moleculin. Also prior to the initial public offering, Moleculin obtained license rights to various drug candidates from other entities owned by Dr. Priebe and others affiliated with the company. Moleculin's S-1 filed with the Commission in connection with the initial public offering stated that these transactions were not completed on an arms-length basis. The current CEO of Moleculin is Walter Klemp. Five members of Moleculin's senior management, board of directors, and scientific advisory board presently hold roles with one or both of WPD and CNS.

8. In its Form 10-K for fiscal year ended on December 31, 2019, filed on March 19, 2020, Moleculin made its first statement regarding the potential to use WP1122 to treat COVID-19, noting that it had "entered into an agreement with an outside research center who will conduct research on WP1122 for antiviral properties against a range of viruses, including coronavirus." In various statements between in its initial public offering and March 19, Moleculin described WP1122 as a candidate to treat central nervous system and/or pancreatic cancers.

9. Moleculin reported in its most recent Form 10-K filed with the Commission that, as of December 31, 2019, it had cash on hand to meet projected operating requirements until the end of the third quarter 2020 (the quarter ending September 30, 2020). Subsequently, Moleculin

obtained $10.3 million from the sale of its stock from April 8 to April 16 and stated, in a Form 8-K filed with the Commission on April 17, that it anticipated it had sufficient cash on hand to support planned operations into the first quarter of 2021 (the quarter ending March 31, 2021). Based on a review of the company's filings with the Commission, Moleculin appears to have raised approximately $62 million to date, principally through equity issuances. The company has purportedly used the bulk of the funds raised on research and development and general and administrative expenses.

10. Moleculin's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ stock exchange under the trading symbol MBRX. As of April 21, 2020, Moleculin's common stock had 27 market makers. Moleculin has more than 60 million shares of common stock outstanding, and its market capitalization on April 20, 2020, was over $63.8 million.

11. Moleculin received a deficiency letter from NASDAQ on March 20, 2020 because its bid price for the company's common stock closed under $1.00 over the preceding thirty consecutive business days in violation of NASDAQ Listing Rule 5550(a)(2). The company reported in a Form 8-K filed with the Commission on April 23, 2020 that it had regained compliance with the rule because the bid price closed above $1.00 for ten consecutive business days during the period from April 8 through April 22, 2020. Moleculin's ability to regain compliance with NASDAQ listing requirements coincides with its statements regarding a potential treatment for COVID-19.

CNS Pharmaceuticals, Inc.

12. CNS, a Nevada corporation with principal offices located in Houston, Texas, describes itself as a preclinical stage pharmaceutical company focused on the treatment of brain

and central nervous system tumors. CNS was founded by Dr. Priebe in July 2017 prior to an initial public offering in November 2019 which netted proceeds of about $9.8 million. Prior to the offering, CNS obtained licensing rights to the drug Berubicin from a company controlled by Dr. Priebe. At the time, Dr. Priebe was also the majority shareholder of CNS. CNS's Form S-1 filed with the Commission in connection with the Company's initial public offering in 2019 stated that the transaction was not completed on an arms-length basis. The current CEO of CNS is John Climaco. Five members of CNS's senior management, board of directors, and scientific advisory board presently hold roles with one or both of WPD and Moleculin.

13. CNS first acquired rights to future profits from WP1122 on March 20, 2020, when it entered into a development agreement with WPD to provide funding commitments to WPD in exchange for a percentage of future sales.

14. As of December 31, 2019, CNS reported in its most recent Form 10-K filed with the Commission it had cash on hand to meet projected operating requirements into, but not beyond, calendar year 2021. The company has purportedly used the bulk of the funds raised on research and development and general and administrative expenses.

15. CNS's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is quoted on the NASDAQ stock exchange under the trading symbol CNSP. As of April 21, 2020, CNS's common stock had 19 market makers. CNS has more than 16.4 million shares of common stock outstanding, and its market capitalization on April 20, 2020, was over $53.1 million.

COVID-19 Related Disclosures

16. During the period from March 19, 2020 through April 22, 2020, WPD (12), Moleculin (10), and CNS (4) have collectively issued 26 press releases and other public

statements regarding WP1122's potential to treat COVID-19. The companies' statements most impacted their stock prices in and around April 8 through April 13, when each experienced daily trading volume in excess of 20 times higher than at any other point this year and each experienced stock price increases of greater than 66% as compared to the closing share prices on April 7.

17. In May 2016 and April 2017, Moleculin disclosed in its S-1 and Form 10-K that its rights to WP1122 could be terminated by MD Anderson if certain development milestones were not met within prescribed periods of time. Thereafter, the company removed the disclosure from its financial statements and has since made no reference to the possibility of the termination of the license rights.

18. The staff obtained from MD Anderson a more recent amendment to the license agreement between Moleculin and MD Anderson, which was signed in November 2018. This amendment modifies MD Anderson's termination rights. Although Moleculin has disclosed the underlying license agreement with MD Anderson as an exhibit to its annual 10-K filings with the Commission, it has not disclosed the November 2018 amendment. That amendment affords MD Anderson the right to terminate the license if Moleculin does not file an IND with the FDA for a Phase I clinical trial by May 1, 2020.

19. As of the end of April 2020, Moleculin had not yet filed an IND with the FDA for WP1122, and based on its own representations, it did not appear that it would do so before the May 1, 2020 termination provision due date. The company stated in a press release dated April 20, 2020 that it required "4 to 8 weeks" to develop the necessary data to support an IND submission for WP1122's use in COVID-19. Prior to its consideration of WP1122 as a COVID-

19 treatment, the company had stated in a November 2019 quarterly earnings release that it did not plan to file an IND for a cancer treatment until 2021.

20. On March 17, 2020, Moleculin entered into an agreement to provide WP1122 to a researcher at the University of Texas Medical Branch ("UTMB") to study the effects of the active ingredient in WP1122 on the infectivity of viruses. In an article in the Houston Chronicle on March 19, 2020, Moleculin's CEO Walter Klemp linked WP1122's purported ability to "slow down the replication of a virus or maybe even stop the replication of the virus" to the potential to treat COVID-19. The article reported that it would be some time before WP1122 would be available to the public but that "Klemp is encouraged by the possibility of preventing future outbreaks."

21. The staff spoke to the UTMB professor who will be studying WP1122. Most significantly, he noted he was unaware of any research that had yet been conducted to evaluate WP1122's impact on viruses. He also noted that he had not yet started any work to evaluate WP1122 himself and that he is not working at the direction of any of the companies to complete any specified research.

22. WPD issued its own press release about Moleculin's agreement with UTMB on March 19, 2020. That same day, Bullvestor, an Austrian stock promoter, published an article on its website describing WPD's drug candidate as a "Corona Remedy Sponsored by the US Department of Defense." No evidence existed that WP1122 would prove to be a COVID-19 remedy or that the drug candidate had received any sponsorship. The author of the Bullvestor article claimed to be a consultant of WPD who was compensated to draft it on the company's behalf.

23. On March 20, 2020, Moleculin issued a press release announcing a patent filing to cover its "new coronavirus drug candidate." Moleculin's CEO stated in the release that Moleculin had "been working on the antiviral potential of WP1122 for some time now but the rise of COVID-19 has obviously placed a new sense of urgency on what we are doing." The staff has not identified any evidence of research on the antiviral potential of WP1122. The UTMB professor informed the staff that the prior work with WP1122 focused on cancer treatment, and that he had only recently proposed to Dr. Priebe using WP1122 to research treatment of deadly viruses that resided in the brain. The UTMB professor did note that, while the scope of his research is entirely within his discretion, he does intend to consider possible impacts on COVID-19, if and when he is able to obtain COVID-19 materials.

24. Also on March 20, Stockhouse.com ("Stockhouse") published an article that characterized WP1122 as a "vaccine" and further stated that WP1122 "has already shown considerable promise in pre-clinical studies as a novel therapy for treating a range of viruses, including coronavirus." The article claimed that "WPD can now test the efficacy of its anti-viral biotechnology in a leading federal government funded research facility in the US." The article further asserted that WPD and Moleculin had an extraordinary upside opportunity which was "virtually assured in the eventuality that WP1122 is successfully commercialized."

25. Stockhouse is a Canadian entity that describes itself as a "global hub for investors to find relevant financial news [about small cap stocks], access expert analysis and opinion and share knowledge and information with each other."

26. WPD posted the Stockhouse article on its Twitter feed the day it was published, and it remained on the feed as of April 23, 2020, after WPD was contacted by FINRA regarding the article.

27. FINRA investigators contacted the CEO of WPD regarding the truth of the claims in the article. In his interview with FINRA investigators, WPD's CEO claimed he was unfamiliar with the article and was unable to identify any basis for the statement that WP1122 had already shown promise in preclinical testing. WPD's CEO also admitted that the characterization of WP1122 as a vaccine was false, clarifying that WP1122 was being eyed as a potential treatment for COVID-19. WPD's CEO told FINRA investigators that WPD has "some activities with Stockhouse" but did not follow up with FINRA investigators to confirm whether this article was part of those activities.

28. On March 20, 2020, CNS entered into a development agreement with WPD to provide funding commitments to WPD in exchange for a percentage of future sales. In a press release CNS issued on March 23, 2020, the company's CEO stated "we are grateful to be able to help in the urgent fight against deadly viral infections such as the coronavirus."

29. On April 8, 2020, Moleculin issued a press release titled "Moleculin Announces Active Compound in WP1122 Reduces Coronavirus Replication In Vitro by 100%: Independent Research Shows 2-DG Activity Against Virus that Causes COVID-19." The release cited to an article submitted to NatureResearch on March 11, 2020 by researchers at the University of Frankfurt who were unaffiliated with Moleculin, WPD, or CNS.

30. The article addressed research conducted on the potential efficacy of 2-DG, which the research has shown to be effective in preventing "SARS-CoV-2 replication" in certain cells. In the Moleculin press release, the company claimed that 2-DG was the "active ingredient" of WP1122, and Klemp stated that the article was "the breakthrough we were looking for" that "will help support our development of WP1122 for treating COVID-19." Moleculin's Chief Medical Officer was also quoted in the release, stating "The FDA has cleared the way for very

rapid development of COVID-19 therapies, so we should be able to move WP1122 into the clinics on an expedited basis."

31. On April 9, 2020, WPD issued a companion press release to Moleculin's April 8 release which contained substantially similar information and referenced CNS as WPD's development partner. WPD's CEO characterized the article as a "breakthrough on our WP1122 drug candidate" and stated "the early indications are that it could have positive effects on reducing the spread of COVID-19." Moleculin's CEO also commented in the release, stating "This discovery essentially put our development efforts in to turbodrive. We are moving as quickly as we can to prepare WP1122 for clinical trials. With the US and EU having established accelerated approval procedures for COVID-19 related projects, we expect this to move very quickly. We look forward to WPD's help, especially as it relates to expediting things in Europe."

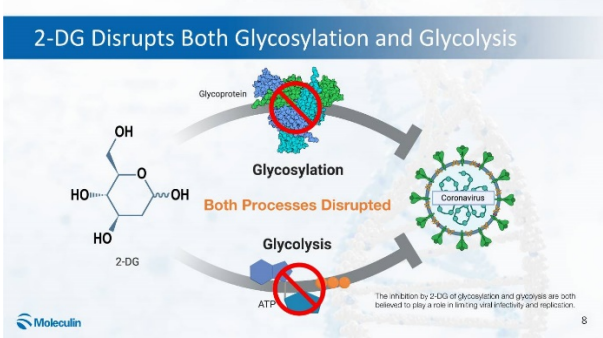
32. Following the issuance of WPD's April 9 press release, the Investment Industry Regulatory Organization of Canada ("IIROC") halted trading of WPD on the Canadian Stock Exchange because it viewed the release as unbalanced and misleading, and because it viewed the information to be material enough to significantly impact the price of WPD's stock. IIROC requested that WPD provide additional information in a supplemental news release in order to lift the trading halt. As a result, WPD issued a supplemental press release on April 9, 2020 stating that WPD: (1) had not conducted its own research into 2-DG; (2) had started the process of preparing protocols for its own research into whether WP1122 can be an effective treatment for viruses; (3) was in the process of preparing a preclinical development plan, clinical development plan and grant application for the use of WP1122 in Covid-19; and (4) had not retained a contract research organization necessary to conduct any research on viruses. IIROC

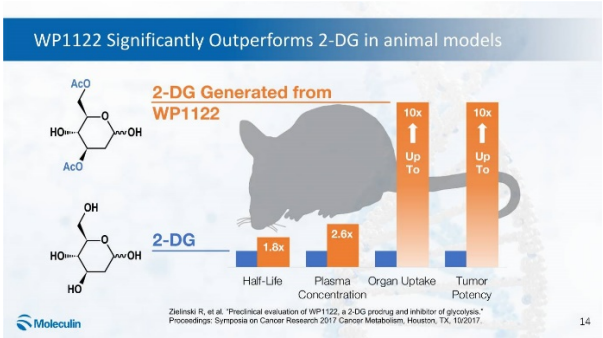
lifted the trading halt on the next trading day, April 13, 2020, following the issuance of the supplemental press release.

33. When trading resumed, on April 13, 2020, WPD posted the original April 9 press release about the independent research on its Twitter feed without posting the supplemental press release prompted by the IIROC's halt. The release remains on the company's Twitter feed as of April 23, 2020.

34. Also on April 13, CNS issued a press release substantially similar to Moleculin's and WPD's press releases about the research regarding 2-DG. Most notably, the press release states that WP1122 "is being tested on a range of viruses including the coronavirus SARS-Cov-2." Although the UTMB researcher has expressed an intention to test WP1122's impact on COVID-19, there is no evidence that WP1122 was currently being tested on any viruses. Moreover, CNS did not publish any of the information in WPD's supplemental April 9 press release, including information about a lack of any development or research activity by WPD to date. Moleculin also did not clarify the status of its research into WP1122's effectiveness to treat COVID-19.

35. On April 14, 2020, Moleculin issued a press release announcing an "investor conference call to discuss COVID-19 potential" for WP1122. The investor call occurred on April 16 at 4:30 PM. Slides from the call, copied below, reflect efforts to exaggerate the conclusions that can be drawn from the research on 2-DG.





36. On April 16, 2020, WPD issued a press release announcing Moleculin's investor call. CNS announced its own investor call on April 15 to "discuss collaboration with WPD for developing Coronavirus drug candidates." CNS's call occurred on April 22, 2020.

37. Moleculin, WPD, and CNS have continued issuing press releases since April 15 which address (1) adding consultants and advisory board members to assist with WP1122's development as a COVID-19 treatment and (2) retaining a contract research organization to expand COVID-19 testing of WP1122. These releases suggest plans to file an IND or similar application in Europe by the third quarter of this year.

38. On April 20, Moleculin announced an agreement with contract research organization ImQuest Biosciences to expand coronavirus testing. The staff spoke to ImQuest and learned that they will not be testing WP1122 on COVID-19, but rather will be testing on other coronavirus surrogates. Moleculin's release states "we are determined to generate critical data over the next 4 to 8 weeks that will support an IND." ImQuest explained to the staff that their research is limited to only one component of the necessary data.

Other Information

39. FINRA and the Commission received tips from two different attorneys who received cold calls touting WPD after the release of the Stockhouse article in late March 2020. Both attorneys stated that the caller identified himself as with "Investors Daily Research," had a foreign accent, and purported to offer a free stock tip with the hope of future business dealing.

40. The FINRA complainant told FINRA investigators that he received three calls on March 25, 27, and 30, 2020. The caller advised the FINRA complainant to buy WPD, stating that WPD had a government contract and was testing new drugs for COVID-19 and brain disorders and that WPD's stock price would be going up soon. The FINRA complainant told FINRA investigators that he believed the caller's response to his questions about the stock were scripted, repeated, and were only said to keep the conversation going.

41. Similarly, the SEC complainant stated that the caller advised him to buy WPD and expect a 300% return because the company was about to hit on some COVID-19 drugs after getting FDA approval. When contacted by the staff, the SEC complainant stated that the caller reached out to him three times, once a week after the initial call he received on March 30. The SEC complainant noted that the caller seemed to be monitoring the price of WPD closely and, on one occasion, advised him to buy when it dipped under $0.60.

42. FINRA's preliminary analysis of bluesheeting for WPD during the period from March 25 through March 30 identified 23 accounts tied to individuals 55 years or older that collectively purchased 77,733 WPD shares, representing approximately 95% of the retail buying volume. The staff spoke to two of these traders, aged 97 and 91, both of whom recalled receiving cold calls to purchase WPD stock in the late January timeframe, another period of abnormally high daily volume.

43. The staff has uncovered evidence that WPD, Moleculin, and CNS have connections to one or more penny stock promoters who assisted in fundraising efforts for these companies. One of these promoters has been cited in a number of FINRA's Fraud Surveillance referral reports to the Commission for (1) the promotion of microcap issuers during potential pump and dump schemes and (2) suspicious trading in securities with connections to defendants in an ongoing SEC enforcement action.

44. Moleculin disclosed for the first time on April 17, 2020 that it had sold 7.2 million shares between April 8 and April 16 pursuant to an existing at market issuance agreement with Oppenheimer. The average price of the shares was $1.44, and resulted in proceeds of approximately $10.3 million. The company seemingly profited from the increased trading volume and stock price resulting from its statements regarding WP1122 and COVID-19 to raise these funds and did not disclose this fact in connection with those statements.

45. Under the terms of the at market issuance agreement, Moleculin has the ability to sell an additional $5 million worth of its common stock to investors via Oppenheimer.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2020.

/s/ Michael J. Vito
Senior Enforcement Counsel
Securities and Exchange Commission