UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

TERRY TURNER, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. THERAPEUTICSMD, INC., ROBERT G. FINIZIO and BRIAN BERNICK, Defendants.	**Case No.** **CLASS ACTION COMPLAINT** **AND DEMAND FOR JURY TRIAL**

CLASS ACTION COMPLAINT

Plaintiff Terry Turner ("Plaintiff"), individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his complaint against Defendants, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding TherapeuticsMD, Inc. ("TherapeuticsMD" or the "Company"), analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons other than Defendants who purchased or otherwise acquired TherapeuticsMD securities between July 7, 2016 and May 7, 2017, both dates inclusive (the "Class Period"), seeking to recover damages caused by Defendants' violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. TherapeuticsMD is a women's health care company focused on creating and commercializing products targeted exclusively for women. The Company is focused on pursuing regulatory approvals and pre-commercialization activities necessary for the commercialization of its advanced hormone therapy pharmaceutical products.

3. Founded in 2008, the Company is headquartered in Boca Raton, Florida. TherapeuticsMD's stock trades on the New York Stock Exchange ("NYSE") under the ticker symbol "TXMD."

4. One of TherapeuticsMD's leading product candidates is TX-004HR. On July 7, 2016, the Company announced that it had filed its New Drug Application ("NDA") for TX-004HR with the U.S. Food and Drug Administration ("FDA"). The NDA seeks approval of TX-004HR for the treatment of moderate-to-severe vaginal pain during sexual intercourse (dyspareunia), a symptom of vulvar and vaginal atrophy ("VVA") due to menopause.

5. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company's business, operational and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company's NDA submission for TX- 004HR was deficient; (ii) the Company's NDA

submission for TX-004HR was not supported by the complete TX-004HR clinical program and/or the clinical program was deficient; (iii) as a result of the foregoing, TherapeuticsMD's public statements were materially false and misleading at all relevant times.

6. On April 10, 2017, pre-market, the Company issued a press release ("April 2017 Press Release"), also attached as exhibit 99.1 to a Form 8-K filed with the SEC on the same day. The April 2017 Press Release stated in relevant part:

> TherapeuticsMD, Inc. (NYSE MKT: TXMD), an innovative women's healthcare company, today announced that, on April 7, 2017, the Company received a letter ***from the U.S. Food and Drug Administration (FDA) stating that, as part of the FDA's ongoing review of the Company's new drug application (NDA) for TX-004HR***, the Company's applicator-free vaginal estradiol soft-gel drug candidate for the treatment of moderate to severe dyspareunia (vaginal pain during sexual intercourse), a symptom of vulvar and vaginal atrophy (VVA), in post-menopausal women, ***the FDA has identified deficiencies that preclude discussion of labeling and post-marketing requirements/commitments at this time.***
>
> The letter states that the notification does not reflect a final decision on the information under review. The letter does not specify the deficiencies identified by the FDA and at this time the Company is not aware of the nature of the deficiencies. The Company intends to work with the FDA to understand the nature of the deficiencies and resolve them as quickly as possible.
>
> ***The FDA previously set a target action date under the Prescription Drug User Fee Act (PDUFA) of May 7, 2017 to complete the FDA's review of the NDA and had communicated to the Company the FDA's target date of April 9, 2017 for communicating to the Company proposed labeling and/or post-marketing requirements/commitments in accordance with FDA's PDUFA Reauthorization Performance Goals And Procedures – Fiscal Years 2013 Through 2017.***

(Emphasis added.)

7. The Form 8-K, to which the April 2017 Press Release was attached, additionally stated:

> On July 7, 2016, TherapeuticsMD, Inc., a Nevada corporation (the "Company"), submitted to the U.S. Food and Drug Administration (the "FDA") a New Drug Application (the "NDA") under Section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act for three doses of TX-004HR, the Company's applicator-free vaginal estradiol soft-gel drug candidate for the treatment of moderate to severe

> dyspareunia (vaginal pain during sexual intercourse), a symptom of vulvar and vaginal atrophy (VVA), in post-menopausal women. The submission was accepted by the FDA and the FDA set a target action date under the Prescription Drug User Fee Act ("PDUFA") of May 7, 2017 to complete the FDA's review of the NDA. ***In a letter dated September 19, 2016, the FDA notified the Company of the FDA's target date of April 9, 2017 for communicating to the Company proposed labeling and/or post-marketing requirements/commitments in accordance with FDA's PDUFA Reauthorization Performance Goals And Procedures – Fiscal Years 2013 Through 2017.***
>
> ***On April 7, 2017, the Company received a letter from the FDA (the "Letter") stating that, as part of its ongoing review of the NDA, the FDA has identified deficiencies that preclude discussion of labeling and postmarketing requirements/commitments at this time. The Letter states that it does not reflect a final decision on the information under review. The Letter does not specify the deficiencies identified by the FDA and at this time the Company is not aware of the nature of the deficiencies.*** The Company intends to work with the FDA to understand the nature of the deficiencies and resolve them as quickly as possible.
>
> On April 10, the Company issued a press release (the "Press Release") announcing its receipt of the Letter. Copies of the Press Release and the Letter are attached hereto as Exhibits 99.1 and 99.2, respectively, and are incorporated herein by reference.

(Emphasis added.)

8. On this news, TherapeuticsMD's price share fell $1.50, or 19.48%, to close at $6.20 on April 10, 2017.

9. On May 8, 2017, the Company issued a press release ("May 2017 Press Release"), also attached as exhibit 99.1 to a Form 8-K filed with the SEC on the same day, announcing the FDA's rejection of the NDA for TX-004HR. The May 2017 Press Release stated in relevant part:

> **TherapeuticsMD Receives Complete Response Letter from FDA for TX-004HR New Drug Application**
>
> *– No approvability issues identified by FDA related to efficacy or CMC –*
>
> **BOCA RATON, Fla. – May 8, 2017** – TherapeuticsMD, Inc. (NYSE MKT: TXMD), an innovative women's healthcare company, today announced that it received a Complete Response Letter (CRL) from the U.S. Food and Drug

> Administration (FDA) regarding the New Drug Application (NDA) for TX-004HR, the company's investigational applicator-free estradiol vaginal softgel capsule for the treatment of moderate-to-severe vaginal pain during sexual intercourse (dyspareunia), a symptom of vulvar and vaginal atrophy (VVA) due to menopause.
>
> In the CRL, the only approvability concern raised by the FDA was the lack of long-term endometrial safety data for TX-004HR beyond the 12-weeks studied in the pivotal phase 3 Rejoice Trial. No cases of endometrial hyperplasia were observed in the Rejoice Trial at the end of week 12 for all the doses studied and included in the NDA.
>
> The CRL did not identify any issues related to the efficacy of TX-004HR and did not identify any approvability issues related to chemistry, manufacturing, and controls.
>
> The Company believes that the NDA was approvable as filed and intends to meet with the FDA as soon as possible to address the concerns raised by the FDA.

10. On this news, TherapeuticsMD's price share fell $0.49, or 10.49%, to close at $4.18 on May 8, 2017.

11. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

12. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

13. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and Section 27 of the Exchange Act.

14. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b). TherapeuticsMD's principal executive offices are located within this Judicial District.

15. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

16. Plaintiff, as set forth in the attached Certification, acquired TherapeuticsMD securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

17. Defendant TherapeuticsMD, Inc. is incorporated under the laws of Nevada. The Company's principal executive offices are located at 6800 Broken Sound Parkway NW – Third Floor, Boca Raton, Florida 33487. TherapeuticsMD's shares trade on the NYSE under the ticker symbol "TXMD."

18. Defendant Robert G. Finizio ("Finizio") has served as the Company's Chief Executive Officer ("CEO") and Director since October 2011.

19. Defendant Brian Bernick ("Bernick") has served as the Company's Chief Clinical Officer since November 2013, as a Director since October 2011, and served as its Chief Medical Officer from February 2012 to November 2013.

20. The Defendants referenced above in ¶¶ 18-19 are sometimes referred to herein as the "Individual Defendants."

SUBSTANTIVE ALLEGATIONS

Background

21. TherapeuticsMD is a women's health care company focused on creating and commercializing products targeted exclusively for women. The Company is focused on pursuing

regulatory approvals and pre-commercialization activities necessary for the commercialization of its advanced hormone therapy pharmaceutical products.

22. One of TherapeuticsMD's leading product candidates is TX-004HR. TX-004HR is an investigational 17β-estradiol vaginal drug product candidate being studied for the treatment of VVA in postmenopausal women. TX-004HR is our applicator-free vaginal estradiol softgel drug candidate for the treatment of moderate to severe dyspareunia, a symptom of VVA in postmenopausal women with vaginal linings that do not receive enough estrogen.

23. During the third quarter of 2014, the Company initiated the REJOICE Trial, a randomized, multicenter, double-blind, placebo-controlled phase 3 clinical trial to assess the safety and efficacy of three doses — 25 mcg, 10 mcg and 4 mcg (compared to placebo) — of TX-004HR for the treatment of moderate to severe dyspareunia.

24. In December 2015, the Company completed the REJOICE Trial.

Materially False and Misleading Statements Issued During the Class Period

25. The Class Period begins on July 7, 2016, when TherapeuticsMD issued a press release ("July 7, 2016 Press Release"), also attached as exhibit 99.1 to the Form 8-K filed with the SEC, announcing the Company filed its NDA for TX-004HR for the proposed treatment of moderate to serve dyspareunia. The July 7, 2016 Press Release press release stated in relevant part:

> **TherapeuticsMD Announces New Drug Application Submission for Yuvvexy™ (TX-004HR)**
>
> BOCA RATON, Fla., July 7, 2016 – TherapeuticsMD, Inc. (NYSE MKT: TXMD), an innovative women's healthcare company, announced today that it has submitted its New Drug Application (NDA) for Yuvvexy with the U.S. Food and Drug Administration (FDA). ***The NDA submission is supported by the complete Yuvvexy clinical program, including positive results of the recently completed phase 3 Rejoice Trial.*** The NDA submission includes all three doses of Yuvvexy (4 mcg, 10 mcg and 25 mcg) that were evaluated in the Rejoice Trial.

> Yuvvexy, the conditionally-approved trade name for the company's TX-004HR drug candidate, is an applicator-free, vaginal, estradiol softgel capsule being proposed for the treatment of moderate-to-severe vaginal pain during sexual intercourse (dyspareunia), a symptom of vulvar and vaginal atrophy (VVA) due to menopause.

(Emphasis added.)

26. On August 4, 2016, TherapeuticsMD issued a press release, also attached as exhibit 99.1 to the Form 8-K filed with the SEC announcing the Company's second quarter 2016 fiscal results for the period ended June 30, 2016 ("August 4, 2016 Press Release"). The August 4, 2016 Form Press Release stated, in relevant part:

TherapeuticsMD Announces Second Quarter 2016 Financial Results

- New Drug Application submitted for Yuvvexy™ (TX-004HR) –

- Topline phase 3 data for TX-001HR Replenish Trial on track for fourth quarter of 2016 -

> **BOCA RATON, Fla. – August 4, 2016** – TherapeuticsMD, Inc. (NYSE MKT: TXMD), an innovative women's healthcare company, today announced its second quarter financial results for the quarter ended June 30, 2016.
>
> **Second Quarter and Recent Developments**
>
> - Submitted a New Drug Application (NDA) with the U.S. Food and Drug Administration for Yuvvexy, the conditionally approved trade name for TX-004HR, the company's applicator-free vaginal estradiol softgel drug candidate for the treatment of moderate- to-severe vaginal pain during sexual intercourse (dyspareunia), a symptom of vulvar and vaginal atrophy (VVA) due to menopause. The NDA is supported by the complete Yuvvexy clinical program, including positive results of the recently completed phase 3 Rejoice Trial. The submission included all three doses of Yuvvexy (4 mcg, 10 mcg and 25 mcg) that were evaluated in the Rejoice Trial . . .
>
> ***"The second quarter was transformative for our company, with the submission of our NDA for Yuvvexy as a highly-differentiated potential treatment for moderate to severe dyspareunia, a symptom of VVA, due to menopause," said TherapeuticsMD CEO Robert G. Finizio. "The Yuvvexy NDA reflects a significant corporate achievement*** and we are thankful for the contributions of everyone involved. As we prepare for future commercialization of Yuvvexy, if approved, we also look forward to the topline data in the fourth quarter of 2016

> from our Replenish Trial for TX-001HR, our second novel hormone therapy program. If approved, we believe TX-001HR would be the first and only FDAapproved bio-identical combination of estradiol and progesterone for treatment of moderate-to-severe vasomotor symptoms due to menopause. We are very pleased with our progress this year."

(Emphasis added.)

27. On August 4, 2016, the Company filed its Form 10-Q with the SEC for the period ended June 30, 2016 ("2Q2016 Form 10-Q"). The 2Q2016 Form 10-Q reiterated Defendants' statements concerning the submission of the NDA for TX-004HR and further stated, in part:

> We submitted the New Drug Application, or NDA, for TX-004HR with the U.S. Food and Drug Administration, or FDA, on July 7, 2016. ***The NDA submission was supported by the complete TX-004HR clinical program, including positive results of the recently completed phase 3 REJOICE Trial.*** The NDA submission included all three doses of TX-004HR (4 mcg, 10 mcg and 25 mcg) that were evaluated in the REJOICE Trial. Once submitted, the FDA has a 60-day filing review period to determine whether the NDA is sufficiently complete to permit the FDA to accept the NDA for filing.

(Emphasis added.)

28. The 2Q2016 Form 10-Q was signed by Defendant Finizio and also contained a certification pursuant to the Sarbanes Oxley Act of 2002 ("SOX") signed by him stating that all fraud by the Company's management had been disclosed.

29. Also, on August 4, 2016, the Company held an earnings conference call with analysts to discuss the financial results of the second fiscal quarter of 2016 ("August 4, 2016 Conference Call"). In relevant part, Defendant Finizio stated:

> On July 7, we submitted our new drug application for Yuvvexy, the conditionally approved trade name for TX-004HR, reflecting a major achievement for our company. ***The NDA is based upon the robust results of our clinical program, including our positive pivotal Phase III Rejoice Trial.*** Yuvvexy has many differentiating features that if approved enable it to potentially become a best-in-class treatment for postmenopausal women suffering from moderate to severe dyspareunia, associated with vulvovaginal atrophy or I'll refer as to VVA.

(Emphasis added.)

30. During the August 4, 2016 Conference Call, Defendant Dr. Bernick, the Company's Chief Clinical Officer, reiterated Defendant Finizio's statements. In relevant part, Dr. Bernick stated:

> Our NDA for Yuvvexy was officially submitted on July 7, and we expect the 10-month review process for FDA guidelines. ***Our NDA is anchored on the robust results of our full clinical program designed in accordance with current FDA guidelines.*** This 505(b)(2) submission includes all three doses of Yuvvexy 4-microgram, 10-microgram, and 25-microgram that were evaluated in the Rejoice Trial. We have also proposed new modified labeling for Yuvvexy including remove of the black-box warning, and we look forward to the FDA's feedback.

(Emphasis added.)

31. On September 19, 2016, TherapeuticsMD issued a press release, also attached as exhibit 99.1 to the Form 8-K filed with the SEC ("September 19, 2016 Press Release"). The September 19, 2016 Press Release stated in relevant part:

> **TherapeuticsMD Announces FDA Acceptance of New Drug Application (NDA) and Prescription Drug User Fee Act (PDUFA) Date for Yuvvexy™ (TX-004HR)**
>
> - PDUFA target action date of May 7, 2017 –
>
> **BOCA RATON, Florida, Sept. 19, 2016** – TherapeuticsMD, Inc. (NYSE MKT: TXMD), an innovative women's healthcare company, today announced the acceptance of the NDA for Yuvvexy, the conditionally-approved trade name for TX-004HR, by the U.S. Food and Drug Administration (FDA). Yuvvexy is an investigational bio-identical 17β-estradiol vaginal softgel capsule for the treatment of moderate-to-severe vaginal pain during sexual intercourse (dyspareunia), a symptom of vulvar vaginal atrophy (VVA) in postmenopausal women.
>
> The NDA acceptance by the FDA in its 74-day letter indicates that the application is sufficiently complete to permit a substantive review. The PDUFA target action date for the completion of the FDA's review is May 7, 2017.
>
> "The acceptance of the NDA for Yuvvexy is an important milestone for TherapeuticsMD as we pursue our goal to provide women with novel healthcare solutions that address their needs throughout life," said TherapeuticsMD CEO Robert G. Finizio. "If approved, Yuvvexy has the potential to be a highly differentiated treatment option for the 32 million postmenopausal women in the United States who suffer from symptoms of VVA. Yuvvexy is the first product

> candidate from our pipeline of novel hormone therapies in development to address women's unmet health needs."
>
> ***The 505(b)(2) NDA submission for Yuvvexy is supported by the complete Yuvvexy clinical program, including positive results of the phase 3 Rejoice Trial, which evaluated the effect of three doses of Yuvvexy (4 mcg, 10 mcg and 25 mcg) compared to placebo from baseline to week 12.*** The results demonstrated statistically significant and clinically meaningful improvements in dyspareunia, a co-primary endpoint, and vaginal dryness, a secondary endpoint. Statistically significant results were seen as early as two weeks of treatment. The NDA includes all three doses of Yuvvexy that were evaluated in the Rejoice Trial.

(Emphasis added.)

32. On November 3, 2016, TherapeuticsMD issued a press release, also attached as exhibit 99.1 to the Form 8-K filed with the SEC announcing the Company's third quarter 2016 fiscal results for the period ended September 30, 2016 ("November 3, 2016 Press Release"). The November 3, 2016 Press Release stated, in relevant part:

> **TherapeuticsMD Announces Third Quarter 2016 Financial Results**
>
> *- Topline phase 3 data for TX-001HR Replenish Trial on track for fourth quarter of 2016 –*
>
> *- TX-004HR PDUFA target action date of May 7, 2017 –*
>
> **BOCA RATON, Fla.** – Nov. 3, 2016 – TherapeuticsMD, Inc. (NYSE MKT: TXMD), an innovative women's healthcare company, today announced its third quarter financial results for the quarter ended September 30, 2016.
>
> **Third Quarter and Recent Developments**
>
> - ***Announced acceptance of a New Drug Application (NDA) by the U.S. Food and Drug Administration (FDA) for TX-004HR (conditionally approved trade name Yuvvexy™), the company's investigational applicator-free estradiol vaginal softgel capsule for the treatment of moderate-to-severe vaginal pain during sexual intercourse (dyspareunia), a symptom of vulvar and vaginal atrophy (VVA) due to menopause. The NDA is supported by the complete TX-004HR clinical program, including positive phase 3 results with all three doses of TX-004HR (4 mcg, 10 mcg and 25 mcg) that were evaluated in the Rejoice Trial.*** The FDA's Prescription Drug User Fee Act (PDUFA) target action date for the NDA is May 7, 2017. . .

> ***"We are making excellent progress this year advancing our pipeline and enhancing our commercial capabilities focused on women's health. During the quarter, we successfully completed the submission of our NDA for TX-004HR as a novel treatment for moderate to severe dyspareunia, a symptom of VVA due to menopause, and we continued ongoing pre-commercialization activities for this important product," said TherapeuticsMD CEO Robert G. Finizio.*** "We now eagerly await the topline data from our Replenish Trial for TX-001HR in the fourth quarter of 2016, our second novel hormone therapy program, which, if approved, would be the first and only FDA-approved bio-identical combination of estradiol and progesterone for the treatment of moderate-to-severe vasomotor symptoms due to menopause."

(Emphasis added.)

33. Also on November 3, 2016, the Company held an earnings conference call with analysts to discuss the financial results of its third fiscal quarter of 2016. During this conference call, Defendant Finizio stated, in relevant part:

> On July 7, we submitted our new drug application, also known as an NDA, for TX- 004HR or Yuvvexy, our conditionally-approved trade name. ***On September 19, our NDA was officially accepted by the FDA and we have received a PDUFA target action date of May 7, 2017. The NDA is based upon the complete results of TX- 004HR clinical program including our positive pivotal Phase 3 Rejoice Trial.***

(Emphasis added.)

34. On November 4, 2016, the Company filed its Form 10-Q with the SEC for the period ended September 30, 2016 ("3Q2016 Form 10-Q"). The 3Q2016 Form 10-Q reiterated Defendants' statements concerning the submission of the NDA for TX-004HR and additionally stated, in relevant part:

> We submitted the NDA for TX-004HR with the FDA on July 7, 2016. The FDA determined that the NDA is sufficiently complete to permit a substantive review and accepted the NDA for filing. The PDUFA target action date for the completion of the FDA's review is May 7, 2017. The NDA submission was supported by the complete TX-004HR clinical program, including positive results of the recently completed phase 3 REJOICE Trial. ***The NDA submission included all three doses of TX-004HR (4 mcg, 10 mcg and 25 mcg) that were evaluated in the REJOICE Trial.*** If approved, the 4 mcg formulation would represent a lower effective dose than the currently available VVA therapies approved by the FDA.

35. The 3Q2016 Form 10-Q was signed by Defendant Finizio and also contained a SOX certification signed by him stating that all fraud by the Company's management had been disclosed.

36. On February 23, 2017, TherapeuticsMD issued a press release, also attached as exhibit 99.1 to the Form 8-K filed with the SEC announcing the Company's fourth quarter 2016 and full-year fiscal results for the periods ended December 31, 2016 ("February 23, 2017 Press Release"). The February 23, 2017 Press Release stated in relevant part:

> ***TherapeuticsMD Announces Fourth Quarter and Full-Year 2016 Financial Results***
>
> *– Pipeline of two late-stage product candidates advancing towards commercialization, with launch of TX-004HR expected in fourth quarter 2017 pending regulatory approval –*
>
> *– Management to host conference call today at 8:00 a.m. EST –*
>
> **BOCA RATON, Fla.** – February 23, 2017 – TherapeuticsMD, Inc. (NYSE MKT: TXMD), an innovative women's healthcare company, today announced its fourth quarter and full-year financial results for 2016.
>
> 2016 and Recent Developments
>
> ***
>
> - Submitted an NDA for TX-004HR, the company's applicator-free estradiol vaginal softgel capsule drug candidate for the treatment of moderate-tosevere vaginal pain during sexual intercourse (dyspareunia), a symptom of vulvar and vaginal atrophy (VVA) due to menopause. ***The NDA is supported by the complete TX-004HR clinical program, including positive results from all three doses of TX-004HR (4 mcg, 10 mcg and 25 mcg) that were evaluated in the phase 3 Rejoice Trial.*** The FDA's Prescription Drug User Fee Act (PDUFA) target action date for the NDA is May 7, 2017.
>
> ***
>
> ***"During 2016, we made significant advancements with our two late-stage pipeline candidates while we pursued our goal to bring new healthcare solutions to women to help manage their menopause symptoms," said TherapeuticsMD CEO Robert G. Finizio. "As we look forward to 2017, we are***

> ***planning the launch of TX-004HR, pending regulatory approval, as a highly differentiated new treatment for moderate-to-severe dyspareunia, a symptom of VVA due to menopause.*** We also intend to file an NDA for TX-001HR, which, if approved, would be the first and only FDA-approved bio-identical combination of estradiol and progesterone for the treatment of moderate-to-severe vasomotor symptoms due to menopause."

(Emphasis added.)

37. On February 28, 2017, the Company filed its Form 10-K with the SEC ("2016 Form 10-K"). The 2016 Form 10-K reiterated Defendants statements concerning the submission of the NDA for TX-004HR and also stated, in relevant part:

> We submitted the NDA for TX-004HR with the FDA on July 7, 2016. The FDA determined that the NDA is sufficiently complete to permit a substantive review and accepted the NDA for filing. The PDUFA target action date for the completion of the FDA's review is May 7, 2017. ***The NDA submission was supported by the complete TX-004HR clinical program, including positive results of the phase 3 REJOICE Trial.*** The NDA submission included all three doses of TX-004HR (4 mcg, 10 mcg and 25 mcg) that were evaluated in the REJOICE Trial. If approved, the 4 mcg formulation would represent a lower effective dose than the currently available VVA therapies approved by the FDA.

38. The 2016 Form 10-K was signed by Defendant Finizio and also contained a SOX certification signed by him stating that all fraud by the Company's management had been disclosed.

39. The statements referenced in ¶¶ 25-38 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operational and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company's NDA submission for TX- 004HR was deficient; (ii) the Company's NDA submission for TX-004HR was not supported by the complete TX-004HR clinical program and/or the clinical program was deficient; (iii) as a result of the foregoing, TherapeuticsMD's public statements were materially false and misleading at all relevant times.

The Truth Begins to Emerge

40. On April 10, 2017, pre-market, the Company issued a press release ("April 2017 Press Release"), also attached as exhibit 99.1 to a Form 8-K filed with the SEC on the same day. The April 2017 Press Release stated in relevant part:

> TherapeuticsMD, Inc. (NYSE MKT: TXMD), an innovative women's healthcare company, today announced that, on April 7, 2017, the Company received a letter ***from the U.S. Food and Drug Administration (FDA) stating that, as part of the FDA's ongoing review of the Company's new drug application (NDA) for TX-004HR***, the Company's applicator-free vaginal estradiol soft-gel drug candidate for the treatment of moderate to severe dyspareunia (vaginal pain during sexual intercourse), a symptom of vulvar and vaginal atrophy (VVA), in post-menopausal women, ***the FDA has identified deficiencies that preclude discussion of labeling and post-marketing requirements/commitments at this time.***
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> The letter states that the notification does not reflect a final decision on the information under review. The letter does not specify the deficiencies identified by the FDA and at this time the Company is not aware of the nature of the deficiencies. The Company intends to work with the FDA to understand the nature of the deficiencies and resolve them as quickly as possible.
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> ***The FDA previously set a target action date under the Prescription Drug User Fee Act (PDUFA) of May 7, 2017 to complete the FDA's review of the NDA and had communicated to the Company the FDA's target date of April 9, 2017 for communicating to the Company proposed labeling and/or post-marketing requirements/commitments in accordance with FDA's PDUFA Reauthorization Performance Goals And Procedures – Fiscal Years 2013 Through 2017.***

(Emphasis added.)

41. The Form 8-K, to which the April 2017 Press Release was attached, additionally stated:

> On July 7, 2016, TherapeuticsMD, Inc., a Nevada corporation (the "Company"), submitted to the U.S. Food and Drug Administration (the "FDA") a New Drug Application (the "NDA") under Section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act for three doses of TX-004HR, the Company's applicator-free vaginal estradiol soft-gel drug candidate for the treatment of moderate to severe dyspareunia (vaginal pain during sexual intercourse), a symptom of vulvar and vaginal atrophy (VVA), in post-menopausal women. The submission was accepted by the FDA and the FDA set a target action date under the Prescription Drug User Fee Act ("PDUFA") of May 7, 2017 to complete the FDA's review of

> the NDA. ***In a letter dated September 19, 2016, the FDA notified the Company of the FDA's target date of April 9, 2017 for communicating to the Company proposed labeling and/or post-marketing requirements/commitments in accordance with FDA's PDUFA Reauthorization Performance Goals And Procedures – Fiscal Years 2013 Through 2017.***
>
> ***On April 7, 2017, the Company received a letter from the FDA (the "Letter") stating that, as part of its ongoing review of the NDA, the FDA has identified deficiencies that preclude discussion of labeling and postmarketing requirements/commitments at this time. The Letter states that it does not reflect a final decision on the information under review. The Letter does not specify the deficiencies identified by the FDA and at this time the Company is not aware of the nature of the deficiencies.*** The Company intends to work with the FDA to understand the nature of the deficiencies and resolve them as quickly as possible.
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> On April 10, the Company issued a press release (the "Press Release") announcing its receipt of the Letter. Copies of the Press Release and the Letter are attached hereto as Exhibits 99.1 and 99.2, respectively, and are incorporated herein by reference.

(Emphasis added.)

42. On this news, TherapeuticsMD's price share fell $1.50, or 19.48%, to close at $6.20 on April 10, 2017.

43. On May 8, 2017, the Company issued a press release ("May 2017 Press Release"), also attached as exhibit 99.1 to a Form 8-K filed with the SEC on the same day, announcing the FDA's rejection of the NDA for TX-004HR. The May 2017 Press Release stated in relevant part:

> **TherapeuticsMD Receives Complete Response Letter from FDA for TX-004HR New Drug Application**
>
> *– No approvability issues identified by FDA related to efficacy or CMC –*
>
> **BOCA RATON, Fla. – May 8, 2017** – TherapeuticsMD, Inc. (NYSE MKT: TXMD), an innovative women's healthcare company, today announced that it received a Complete Response Letter (CRL) from the U.S. Food and Drug Administration (FDA) regarding the New Drug Application (NDA) for TX-004HR, the company's investigational applicator-free estradiol vaginal softgel capsule for the treatment of moderate-to-severe vaginal pain during sexual

> intercourse (dyspareunia), a symptom of vulvar and vaginal atrophy (VVA) due to menopause.
>
> In the CRL, the only approvability concern raised by the FDA was the lack of long-term endometrial safety data for TX-004HR beyond the 12-weeks studied in the pivotal phase 3 Rejoice Trial. No cases of endometrial hyperplasia were observed in the Rejoice Trial at the end of week 12 for all the doses studied and included in the NDA.
>
> The CRL did not identify any issues related to the efficacy of TX-004HR and did not identify any approvability issues related to chemistry, manufacturing, and controls.
>
> The Company believes that the NDA was approvable as filed and intends to meet with the FDA as soon as possible to address the concerns raised by the FDA.

44. On this news, TherapeuticsMD's price share fell $0.49, or 10.49%, to close at $4.18 on May 8, 2017.

45. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired TherapeuticsMD securities during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

47. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, TherapeuticsMD securities were actively traded on

the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by TherapeuticsMD or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

48. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

49. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

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

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of TherapeuticsMD;
- whether the Individual Defendants caused TherapeuticsMD to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of TherapeuticsMD securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and

- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

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

52. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- TherapeuticsMD securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NYSE and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold TherapeuticsMD securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

53. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

54. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State*

of Utah v. United States, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

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

56. This Count is asserted against Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

57. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of TherapeuticsMD securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire TherapeuticsMD securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

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

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

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

61. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual

Defendants were able to and did, directly or indirectly, control the content of the statements of TherapeuticsMD. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to TherapeuticsMD's businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of TherapeuticsMD securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning TherapeuticsMD's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired TherapeuticsMD securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

62. During the Class Period, TherapeuticsMD securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of TherapeuticsMD securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of TherapeuticsMD securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of TherapeuticsMD securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

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

64. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

COUNT II

(Violations of Section 20(a) of the Exchange Act Against The Individual Defendants)

65. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

66. During the Class Period, the Individual Defendants participated in the operation and management of TherapeuticsMD, and conducted and participated, directly and indirectly, in the conduct of TherapeuticsMD's business affairs. Because of their senior positions, they knew the adverse non-public information about TherapeuticsMD's misstatement of income and expenses and false financial statements.

67. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to TherapeuticsMD's financial condition and results of operations, and to correct promptly any public statements issued by TherapeuticsMD which had become materially false or misleading.

68. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press

releases and public filings which TherapeuticsMD disseminated in the marketplace during the Class Period concerning TherapeuticsMD's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause TherapeuticsMD to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of TherapeuticsMD within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of TherapeuticsMD securities.

69. Each of the Individual Defendants, therefore, acted as a controlling person of TherapeuticsMD. By reason of their senior management positions and/or being directors of TherapeuticsMD, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, TherapeuticsMD to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of TherapeuticsMD and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

70. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by TherapeuticsMD.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: June 8, 2017

Respectfully submitted,

/s/ Jayne A. Goldstein
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Attorneys for Plaintiff

Submission Date

2017-05-10 15:48:45

CERTIFICATION PURSUANT TO FEDERAL SECURITIES LAWS

1. I make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 ("Securities Act") and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") as amended by the Private Securities Litigation Reform Act of 1995.

2. I have reviewed a Complaint against against TherapeuticsMD, Inc. ("TherapeuticsMD" or the "Company") and, authorize the filing of a comparable complaint on my behalf.

3. I did not purchase or acquire TherapeuticsMD securities at the direction of plaintiffs' counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.

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

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

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

7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.

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

Name

Print Name

Terry Turner

Acquisitions

Configurable list (if none enter none)

Date Acquired	Number of Shares Acquired	Price per Share Acquired
01/27/2017	100	5.815

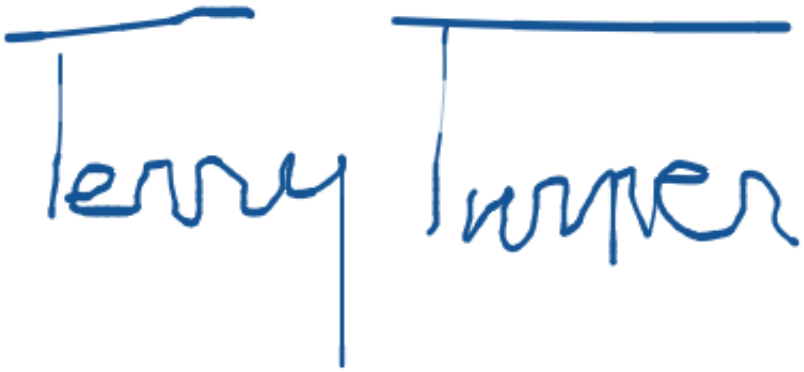
Sales

Configurable list (if none enter none)

Date Sold	Number of Shares Sold	Price per Share Sold
none	none	none

Documents & Message

(redacted)



Full Name

Terry Turner

(redacted)

THERAPEUTICSMD, INC (TXMD) **Turner, Terry**

LIST OF PURCHASES AND SALES

DATE	PURCHASE OR SALE	NUMBER OF SHARES/UNITS	PRICE PER SHARES/UNITS
1/27/2017	Purchase	100	$5.8150

JS 44 (Rev 06/17) FLSD Revised 06/01/2017

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS TERRY TURNER, Individually and On Behalf of All Others Similarly Situated,

DEFENDANTS THERAPEUTICSMD, INC., ROBERT G. FINIZIO and BRIAN BERNICK,

(b) County of Residence of First Listed Plaintiff Cobb County, GA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Palm Beach County, FL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Shepherd, Finkelman, Miller & Shah LLP, 1625 N Commerce Pkwy, Fort Lauderdale, FL 33326, Jayne A. Goldstein, 954-515-0123

Attorneys *(If Known)*

(d) Check County Where Action Arose: ☐ MIAMI- DADE ☐ MONROE ☐ BROWARD ☑ PALM BEACH ☐ MARTIN ☐ ST LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U S Government Plaintiff
- ☑ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U S Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Med Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer w/Disabilities - Employment
- ☐ 446 Amer w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence

Other:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee – Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl Ret Inc Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U S Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729 (a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☒ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed **(See VI below)** ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation – Direct File ☐ 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☑ YES ☐ NO

JUDGE: Robin L. Rosenberg **DOCKET NUMBER:** 17-cv-80473

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause ***(Do not cite jurisdictional statutes unless diversity)***:
15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5)

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☑ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE June 8, 2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

Save As... Print Reset

JS 44 (Rev 06/17) FLSD Revised 06/01/2017

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

TERRY TURNER, Individually and On Behalf of All Others Similarly Situated,

Plaintiff(s)

v.

THERAPEUTICSMD, INC., ROBERT G. FINIZIO and BRIAN BERNICK,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* THERAPEUTICSMD, INC., ROBERT G. FINIZIO and BRIAN BERNICK
6800 Broken Sound Parkway NW – Third Floor
Boca Raton, Florida 33487

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Jayne A. Goldstein
SHEPHERD, FINKELMAN, MILLER & SHAH LLP
1625 North Commerce Parkway, Suite 320
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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset