EFiled: Apr 18 2019 11:50AM EDT
Transaction ID 63181699
Case No. 2019-0294-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

EVELYN HARRIS,	)	
	)	
	)	
Plaintiff,	)	C.A. No. ____________
v.	)	
	)	
AMERISOURCEBERGEN CORPORATION a Delaware Corporation,	)	
	)	
Defendant.	)	

VERIFIED COMPLAINT PURSUANT TO 8 DELAWARE CODE SECTION 220 TO COMPEL INSPECTION OF BOOKS AND RECORDS

Plaintiff Evelyn Harris ("Plaintiff") alleges, upon knowledge as to herself and her own actions, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. Plaintiff seeks to enforce her right to inspect certain corporate books and records of defendant AmerisourceBergen Corporation ("ABC" or the "Company"), a Delaware corporation, pursuant to 8 Del. C. § 220 ("Section 220"). Plaintiff is a beneficial stockholder of the Company.

2. Plaintiff sent an inspection demand letter to the Company on December 14, 2018 (the "Demand"). The Demand complied with all the form and

manner requirements of Section 220, including that it was accompanied by a power of attorney, an oath, and proof of Plaintiff's current ownership of ABC stock.

3. Plaintiff's Demand establishes proper purposes for her inspection, explaining that she intends to investigate potential wrongdoing occurring at the Company, including potential breaches of fiduciary duty, corporate waste, and mismanagement. Plaintiff further detailed additional purposes of the investigation, including: (i) determining whether the current directors are fit to continue serving on ABC's board of directors (the "Board"); (ii) investigating potential breaches of fiduciary duty by the Board related to the Company's participation in the opioid crisis; and (iii) taking appropriate action. Notably, Plaintiff explicitly did not limit her "ends" to just filing a derivative action.

4. The Demand also sets forth a credible basis to infer that the Board and certain officers of the Company breached their fiduciary duties as the directors in charge of one of the nation's largest wholesaler-distributors of opioids. In particular, Plaintiff's Demand is motivated by ABC inundating the nation with huge quantities of opioids clearly not for legitimate medical purposes, fueling the opioid crisis, and earning ABC billions of dollars in revenue, all in direct violation of its federal and state anti-diversion and reporting obligations for distributing those controlled substances. Under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§ 801 *et seq.* (the "CSA", and the regulations

promulgated thereunder, 21 C.F.R. Part 1300 *et seq.*), ABC, as a pharmaceutical distributor of controlled substances, is required to maintain "effective control against diversion of particular controlled substances [including opioids] into other than legitimate medical, scientific, and industrial channels," 21 U.S.C. § 823(b)(1), to "design and operate a system to disclose to [ABC] suspicious orders of controlled substances," and to "inform the [Drug Enforcement Agency ('DEA')]" of such orders. 21 C.F.R. § 1300 *et seq.*, § 1301.74(b). State laws mirror these control requirements.

5. ABC has previously been found in violation of the CSA for failing to properly control the distribution, and report suspicious sales, of opioids. In April 2007, the DEA suspended ABC's Orlando Distribution Center's license to distribute controlled substances and issued an Immediate Stop Order ("ISO") due to the Company's substantial sales and shipments of unreported suspicious orders of millions of hydrocodone pills, a common opioid, from that facility. That suspension and ISO remained in place until August 2007.

6. Despite the DEA suspension and ISO, ABC's officers and directors appear to have failed to ensure that ABC designed, operated and maintained an effective anti-diversion and reporting system. Since 2007, the opioid crisis has worsened and claimed hundreds of thousands of lives. More than 40 United States Attorney's Offices and State Attorneys General have launched investigations into

ABC's program for controlling and monitoring the diversion of controlled substances, including opioids. States, counties, and municipalities have filed hundreds of lawsuits against ABC for failing to properly control its distribution of opioids, many of which have been consolidated into a multidistrict litigation in which the court recently denied ABC's motion to dismiss. In 2017, ABC settled one such case brought by West Virginia for $16 million.

7. ABC's failure to comply with the CSA's and similar state laws' anti-diversion and reporting obligations continues through the present. Per a recent U.S. Senate report, ABC distributed over 650 million doses of opioids to the state of Missouri between 2012 and 2017. That amounts to approximately 40% of the 1.6 billion doses delivered to the state by the "Big Three" pharmaceutical distributors, of which ABC is a member. Those 1.6 billion doses represent 260 opioid doses for every Missouri resident. During that same five-year period, ABC reported only 224 suspicious orders to DEA as required by the CSA, compared to 16,714 such reports submitted by one competitor (over the same time frame during which the competitor distributed a similar number of opioid doses to Missouri).

8. Court documents in the West Virginia case, along with a December 19, 2017 U.S. Congress Energy and Commerce Committee report, reveal that ABC shipped a similarly egregious number of opioids to West Virginia during this same time period. ABC distributed nearly 250 million doses of

hydrocodone and oxycodone to West Virginia pharmacies between 2005 and 2016—enough to supply every West Virginian with over a hundred and thirty doses—while reporting (for the state of West Virginia) a high of 792 suspicious orders to the DEA in 2013 and a low of three suspicious order reports in 2016. That ABC was distributing hundreds of millions of opioid doses to a small state clearly far in excess of any conceivable legitimate medical needs, virtually without reporting—let alone stopping—any suspicious orders, indicates a lack of a functional anti-diversion system.

9. Rather than focusing on ABC's compliance with controlled substance laws, ABC's officers and directors have instead profited handsomely from the opioid crisis, while resisting shareholder proposals that would improve ABC's governance and disclosure regime. Since 2007, and during the crisis' most damaging years, ABC's directors and officers earned hundreds of millions of dollars from sales of ABC stock, the price of which benefitted from ABC's opioid-driven financial performance. ABC's current Chief Executive Officer, Steven Collis, has gained over $120 million from stock sales, salary, bonuses, and other compensation since the beginning of 2008. Yet those same officers and directors have resisted shareholder proposals that would: (i) improve corporate governance by requiring that an independent director serve as ABC's Chairperson of the Board; (ii) improve ABC's disclosures regarding executive compensation claw

backs and steps taken to effectively monitor risks related to the opioid crisis; and (iii) link executive pay to legal costs from the opioid epidemic.

10. Given that the Board knew of numerous red flags suggesting that ABC's anti-diversion controls and suspicious order reporting procedures for opioids were ineffective and violated the controlled substance laws, a credible basis exists to infer that ABC's officers and directors violated their duties to shareholders in failing to ensure that the required controls and reporting procedures were effectively designed, implemented, and monitored.

11. Despite Plaintiff's articulation of her proper purpose for seeking to inspect the Company's books and records, at the time this Complaint was filed, the Company had not produced any documents. ABC remained steadfast in its refusal despite multiple communications from Plaintiff detailing the propriety of Plaintiff's purpose for seeking to inspect ABC's books and records. Indeed, Plaintiff thoroughly addressed ABC's concerns in at least three different lengthy and thorough letters.

12. In light of ABC's intransigence, Plaintiff now respectfully asks the Court to order ABC to produce the demanded books and records that she is entitled to review as a stockholder of the Company pursuant to Section 220.

THE PARTIES

13. Plaintiff is a beneficial stockholder of ABC. She held and continues to hold shares of ABC at all relevant times.

14. Defendant ABC is a Delaware corporation with its principal executive offices at 1300 Morris Drive, Chesterbrook, Pennsylvania. ABC is one of the largest global pharmaceutical sourcing and distribution services companies, with annual revenues surpassing $150 billion in fiscal years 2017 and 2018. ABC derives the vast majority of its revenue from its pharmaceutical distribution services segment, which contributed over 96% of ABC's revenue for the fiscal years 2017 and 2018.

STATEMENT OF FACTS

I. THERE IS A CREDIBLE BASIS TO INFER THAT THE BOARD AND CERTAIN OFFICERS BREACHED THEIR FIDUCIARY DUTIES

A. ABC Is One Of The Three Largest Pharmaceutical Distributors In The United States And Distributes Opioids Pursuant to A Rigid Regulatory Framework

15. In the United States, pharmaceutical manufacturers do not sell drugs directly to patients or pharmacies. Instead, manufacturers sell their products to pharmaceutical wholesalers, who then sell the drugs to pharmacies and the pharmacies then provide the drugs to patients.

16. At all relevant times, the wholesale pharmaceutical segment of the market has been dominated by a group of three companies known as the "Big Three": ABC; Cardinal Health, Inc. ("Cardinal"); and McKesson Corporation ("McKesson"). These wholesalers consistently account for 85% to 90% of all wholesale revenues from pharmaceuticals distributed in the United States.

17. ABC is second only to McKesson in market share based on revenue. ABC consistently controls approximately one third of the total market dominated by the Big Three. ABC's revenues from its pharmaceutical distribution segment have more than tripled since the mid-2000s, growing from approximately $50 billion in 2005 to over $161.6 billion in 2018. A material portion of those revenues were attributable to sales of opioids.

18. As a pharmaceutical distributor, ABC is required to comply with certain state and federal regulations. At all relevant times, ABC and its distribution centers were required to operate in accordance with the statutory provisions of the CSA.

19. The DEA is the agency within the Department of Justice ("DOJ") primarily responsible for administering the CSA and the regulations promulgated thereunder. The DEA is also vested with the responsibility of investigating CSA violations.

20. The CSA seeks to prevent the diversion of controlled substances by establishing a closed system of distribution. As a distributor in that closed system, ABC is required by the CSA to register with the DEA to engage in commercial distribution of certain controlled substances for therapeutic use. 21 U.S.C. § 823(b), (e); 28 C.F.R. § 0.100.

21. To qualify for registration, a distributor must demonstrate that it maintains "effective control against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels." 21 U.S.C. § 823(b)(1); *see also* 21 C.F.R. § 1301.71(a) (requiring registrants to "provide effective controls and procedures to guard against theft and diversion of controlled substances"). The requirement that a distributor maintain such controls has been incorporated into the laws of virtually all states.

22. Federal regulations provide examples of the security measures that satisfy adequate control requirements, including the implementation of lock and alarm systems, providing adequate security personnel, and supervising employee access to controlled substances, among other possible measures. 21 C.F.R. §1301.71(b).

23. After qualifying for registration, distributors must report to the DEA any transaction of controlled substances "involving an extraordinary quantity of a listed chemical, an uncommon method or payment or delivery, or any other

circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of" the CSA. 21 U.S.C. § 830(b)(1)(A). To this same end, distributor employees are also responsible for reporting drug diversion by another employee to their employer. 21 C.F.R. § 1301.91. To achieve these reporting results, distributors are required to "design and operate a system to disclose to the registrant suspicious orders of controlled substances." 21 C.F.R. § 1301.74(b).

24. At all relevant times, ABC's officers and directors knew that the Company operated in a highly regulated environment and was required to comply with controlled substance laws, including the CSA. ABC's Form 10-K filed with the SEC for fiscal year 2007, and signed by the Board and several ABC officers, acknowledged this system of regulatory provisions when it warned investors: "The healthcare industry is highly regulated at the federal and state level. Consequently, we are subject to the risk of changes in various federal and state laws, which include operating and security standards of the DEA, the FDA, various state boards of pharmacy and comparable agencies." ABC also warned that "[t]he suspension or revocation by the DEA of any of the registrations that must be in effect for our distribution facilities to purchase, store and distribute controlled substances … may adversely affect our reputation, our business and our results of operations." ABC has issued similar disclosures in each subsequent Form 10-K filed with the SEC.

B. The Opioid Public Health Crisis

25. Opioids are a diverse category of painkillers including oxycodone, hydrocodone, and fentanyl. The potency and easy availability of opioids has made them popular as a prescribed and recreational drug. Controlling distribution of these highly addictive pain medications is intended to effectively thwart the opioid crisis.

26. For most of the 20th century, doctors reserved opioids for severe, short-term pain—such as that caused by surgery—or for pain related to deadly diseases like cancer. But by the 1990s, that practice changed, with opioid prescriptions for pain related to arthritis, back pain, and other chronic conditions becoming more common.

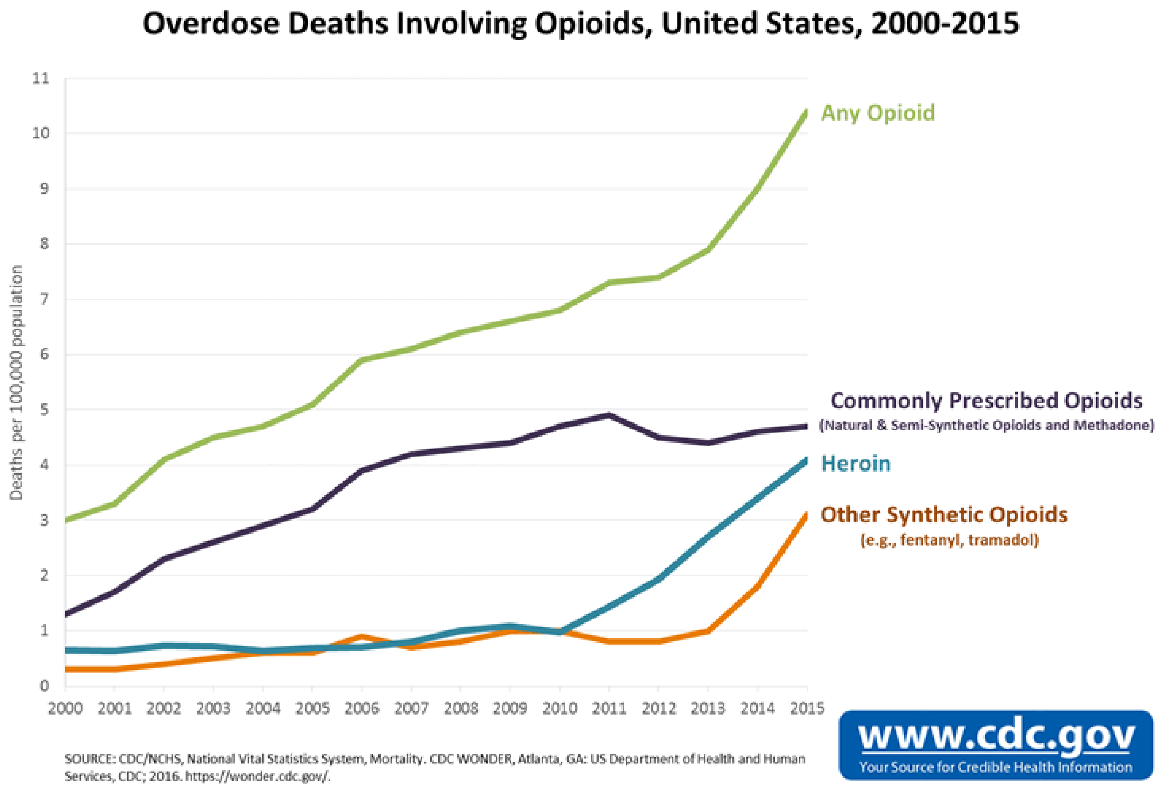
27. By 2006, millions of Americans were prescribed opioids each year, and the number of prescriptions filled continued to grow for the next six years. The trend peaked in 2012, when over 255 million opioid prescriptions were dispensed in the United States, or roughly 81 prescriptions for every 100 people. Over 200 million opioid prescriptions were filled each year from 2013 through 2016. In 2017, over 191 million such prescriptions were dispensed in the United States. This rapid increase in the use of opioid drugs in the United States since the 1990s has become known as the opioid crisis or opioid epidemic.

28. In May 2010, the Obama administration released its inaugural National Drug Control Strategy, which stated that "[p]rescription drug abuse is the fastest-growing drug problem in the United States," and recognized that "[o]piate overdoses, once almost always due to heroin use, are now increasingly due to abuse of prescription painkillers."

29. In July 2016, Congress passed and President Obama signed the Comprehensive Addiction and Recovery Act of 2016, which authorized $181 million in additional annual funding for initiatives aimed at addressing the opioid crisis. On October 26, 2017, President Trump declared the American opioid crisis a public health emergency.

30. The opioid crisis is the deadliest drug epidemic in U.S. history, with prescription opioids killing almost 218,000 people between 1999 and 2017. Between 2013 and 2017, approximately 46 people died every day from overdoses involving prescription opioids.

31. Thousands more have died from overdoses of heroin or other non-prescription opioids after first developing an opioid addiction through abuse of prescription pain medication. Between 2000 and 2015, the rate of opioid overdose deaths in the United States has more than tripled:



32. As noted in a January 7, 2017 article by *The New York Times*, titled "A Look at America's Opioid Crisis," "[p]ublic health officials have called the current opioid epidemic the worst drug crisis in American history, killing more than 33,000 people in 2015. Overdose deaths were nearly equal to the number of deaths from car crashes. In 2015, for the first time, deaths from heroin alone surpassed gun homicides."

33. ABC is one of the few distributors of opioids in the United States, and the Company's officers and directors were aware of the opioid crisis. The opioid crisis has been repeatedly, if not constantly, reported in the news recently and has been recognized as a public health emergency by numerous politicians, including

the U.S. Congress and U.S. President. These reports, to say nothing of the government enforcement actions and investigations related to ABC's specific opioid distribution activities detailed below, placed ABC's officers and directors on heightened alert for red flags in their anti-diversion and reporting procedures because the opioid crisis had become a major public health crisis, a widely acknowledged and reported fact.

34. Nevertheless, despite these warnings, ABC's officers and directors failed to implement and ensure the effectiveness of a legally compliant anti-diversion and reporting program, and thereby violated their fiduciary duties to shareholders. The breach of their fiduciary duties resulted in corporate waste and mismanagement that has already, and will undoubtedly continue to, burden shareholders with materials costs.

C. Government Investigations And Enforcement Actions Indicate ABC's Officers' And The Board's Knowledge Of, Or Reckless Disregard For, Unlawful Opioid Distribution

35. Although ABC refuses to provide Plaintiff with the documents to which she is entitled pursuant to Section 220, publicly available documents reveal that ABC's officers and directors have long known of ABC's non-compliance with the laws and regulations governing the distribution of opioids and of the investigations related thereto. These actions and investigations provide a credible basis for Plaintiff's inspection demand as they indicate that ABC's officers and

directors deliberately looked the other way as ABC shipped astounding numbers of opioids through the Company's legally-deficient controlled substance distribution network.

i. In 2007, The Drug Enforcement Agency Suspends ABC's Orlando Distribution Center's License To Distribute Controlled Substances, Including Opioids

36. On April 24, 2007, ABC announced that the DEA had suspended the Company's Orlando, Florida distribution center's license to distribute controlled substances and issued an ISO to stop sales of controlled substances from that facility. The DEA asserted that, "In spite of being warned by DEA about the characteristics of rogue internet pharmacies, [ABC's Orlando distribution center] distributed 3.8 million dosage units of hydrocodone, a common opioid, between January 1, 2006 and January 31, 2007 to four rogue pharmacies," and had not maintained effective controls against the diversion of hydrocodone. ABC had filled numerous, repeated opioid orders for over 100 times the amount of opioids that would be expected and normal for comparably sized pharmacies. In just thirteen months, ABC distributed 3.8 million doses of hydrocodone to those four rogue pharmacies, some of which were among ABC's largest customers for that distribution center.

37. Several months into the forced suspension of ABC's Orlando distribution center, on June 22, 2007, ABC announced that it had reached an

agreement with the DEA whereby the Company would implement an enhanced, more sophisticated order monitoring program in all ABC distribution centers by June 30, 2007 (the "2007 Settlement"). According to the DEA announcement at the time, "The new order monitoring program requires more rapid identification and daily reporting of orders that may indicate diversion of controlled substances, including in some instances, halting the shipment of orders that require further investigation by the Company." ABC was required to pass several DEA inspections of the new program for reinstatement of ABC's license to become effective.

38. On August 27, 2007, ABC announced that the new program had launched on July 1, 2007, that the program had passed DEA inspections, and that, as a result, the DEA had reinstated the Orlando distribution center's license to distribute controlled substances.

39. ABC's entry into the 2007 Settlement was reported in press releases approved by ABC's officers and directors. Upon information and belief, ABC's Board approved the 2007 Settlement. Three members of ABC's current Board—Jane Henney, Michael Long, and Henry McGee—were members of the Board at the time of the 2007 Settlement, while current CEO and Director Steven H. Collis was then Executive Vice President and President of AmerisourceBergen Specialty

Group. Accordingly, they knew that ABC had serious problems concerning the Company’s compliance with controlled substance laws and regulations.

40. ABC disclosed in its next Form 10-K, filed on November 28, 2007, the reinstatement of the Orlando distribution center’s license. While it expected that its new program would “continue to comply with all of the DEA’s requirements,” it added, “there can be no assurance that the DEA will not require further controls against the diversion of controlled substances in the future, or will not take similar action against any other of our distribution centers in the future.” Ms. Henney, Mr. Long, and Mr. McGee each signed that Form 10-K in their individual capacities as directors of ABC.

41. ABC’s subsequent Forms 10-K for 2008 through 2011 included a disclosure referencing the 2007 Settlement. It stated that the Company “expect[ed] to continue to comply with all of the DEA’s requirements,” suggesting that ABC was in compliance with its obligations under the 2007 Settlement. Ms. Henney, Mr. Long, and Mr. McGee signed each of those Forms 10-K. After filing its 2011 Form 10-K, no subsequent Forms 10-K mentioned the 2007 Settlement or ABC’s compliance with its terms.

42. The Board was additionally fully apprised of the critical nature of compliance with the Controlled Substances Act’s anti-diversion provisions as a result of the Board’s involvement in ABC’s acquisition of Bellco Drug

Corporation ("Bellco"). Bellco was a privately held pharmaceutical distributor with annual revenues of approximately $2 billion when acquired in 2007. The DEA, at the time of the negotiation of the acquisition, filed a federal lawsuit against Bellco for violation of the CSA due to Bellco's virtually complete failure to maintain anti-diversion controls on drugs such as hydrocodone. Bellco had not reported a single suspicious order, though it had filed over 2,300 highly suspicious orders in the New York Metropolitan area. As a result, Bellco agreed to an $800,000 fine and a Consent Order suspending its license to distribute controlled substances. *United States v. Bellco Drug Corp.*, Case No. 2:07-cv-02606 (E.D.N.Y. June 27, 2007). With the announcement of Bellco's failure to maintain reasonably effective anti-diversion controls and the legal consequences thereof, ABC renegotiated the acquisition at an approximately 20% discount:

> When AmerisourceBergen first announced the proposed acquisition in March 2007, the purchase price was estimated to be $235 million. The price was decreased due to a now resolved regulatory issue and other business matters.[1]

43. By 2007, the Board and ABC's officers were aware of the critical nature of compliance with anti-diversion laws. More specifically, the Board was

[1] *AmerisourceBergen Acquires Bellco Health for $190 Million*, AmerisourceBergen (Oct. 1, 2007), *available at* http://investor.amerisourcebergen.com/news-releases/news-release-details/amerisourcebergen-acquires-bellco-health-190-million.

fully apprised of: (1) the impact that a lack of adequate anti-diversion controls had had on Bellco's valuation; (2) the 2007 Settlement, including the Company's failure to comply with controlled substances laws and regulations by shipping inordinate amounts of opioids to specific locations that resulted in the 2007 Settlement; and, (3) the Company's ongoing obligations under the CSA, equivalent state laws, and the 2007 Settlement that required ongoing and stringent monitoring, controls, and oversight of ABC's opioid distribution to prevent future violations.

44. Despite this awareness of the need for continued monitoring and improvement of ABC's anti-diversion and reporting processes for opioids, ABC's officers and directors failed to ensure that such programs were effective. Rather, a number of subsequent government investigations and legal actions have revealed that ABC continued to sell and ship a multitude of suspicious orders of opioids far in excess of the needs for any specific geographic area while failing to report suspicious orders.

ii. Due To Ongoing Violations Of The 2007 Settlement Agreement From 2012 Through 2018, Federal And State Prosecutors Commence Investigations Into ABC's Distribution Of Controlled Substances, Including Opioids

45. On May 4, 2012, ABC's wholly owned subsidiary, AmerisourceBergen Drug Corporation ("ABDC"), through which ABC operates its pharmaceutical distribution segment, received a subpoena from the United States

Attorney's Office ("USAO") in New Jersey (the "NJ USAO"). The subpoena was issued in connection with a grand jury proceeding requesting documents concerning the Company's program for controlling and monitoring diversion of controlled substances, as well as information regarding specific customers' purchases of controlled substances. ABC also disclosed that it had received a similar subpoena from the DEA in connection with possible CSA violations. ABC did not disclose the full extent of the investigation.

46. On August 30, 2013, ABDC received a second subpoena from the NJ USAO requesting additional information including information regarding additional specific customers' purchases of controlled substances. ABDC received a third subpoena regarding its electronically stored information from the NJ USAO on December 31, 2013. These red flags of potential flaws in ABC's CSA compliance systems were ignored.

47. Also in 2013, ABC and ABDC received similar subpoenas from two more USAOs in the District of Kansas (the "KS USAO") and the Northern District of Ohio (the "NDOH USAO"). Both subpoenas sought documents regarding the Company's program for controlling and monitoring diversion of controlled substances and specific customers' purchases of controlled substances.

48. In 2014, the investigations by each of the USAOs continued, and the Company and ABDC received two additional subpoenas from the NJ USAO as

well as additional subpoenas from the KS and NDOH USAOs related to the Company's anti-diversion and monitoring programs for controlled substances.

49. These investigations continued throughout 2015 and 2016, and escalated in 2017. In July 2017, the NJ USAO and the DEA served ABDC with another subpoena related to the Company's diversion control programs seeking information from 2013 through the present. In September 2017, forty-one Attorneys General from a coalition of States sent the Company a request for information and documents regarding its distribution of prescription opioids.

50. Most recently, during fiscal year 2018, the Company received similar subpoenas from the USAOs for the Eastern District of New York, the District of Colorado, the Northern District of West Virginia, the Western District of Michigan, and the Middle District of Florida.

51. All of the investigations into ABC's anti-diversion, monitoring, and reporting programs related to its distribution of opioids as discussed in ¶¶45–50 remain ongoing per the Company's latest SEC filings.

iii. In 2017, ABC Settles With West Virginia Over Claims That ABC Violated The CSA In Distributing Opioids

52. The Attorney General for the State of West Virginia sued ABDC in state court in June 2012, alleging that ABDC, as a distributor of controlled substances, including opioids, failed to provide effective controls and procedures

to guard against diversion of opioids and negligently distributed opioids to pharmacies that serve individuals who abuse prescription pain medication.

53. Court documents in the West Virginia case, along with a December 19, 2017 U.S. Congress Energy and Commerce Committee report titled, *Red Flags and Warning Signs Ignored: Opioid Distribution and Enforcement Concerns in West Virginia*, reveal that ABC shipped nearly 250 million doses of hydrocodone and oxycodone to West Virginia pharmacies between 2005 and 2016, enough to supply every West Virginian with thirteen pain pills a year. Of the tens of millions of clearly not for legitimate medical use doses shipped, ABC reported (for the state of West Virginia) a high of 792 suspicious orders in 2013 and a low of three suspicious orders in 2016. That ABC was distributing hundreds of millions of opioid doses to a small state far in excess of any conceivable legitimate medical needs, virtually without reporting, to say nothing of stopping, any suspicious orders, indicates a shocking lack of an adequate anti-diversion system.

54. After ABC's motion to dismiss was denied, the Company settled with West Virginia, whereby all claims were dismissed on January 9, 2017 in exchange for a $16 million payment by the Company.

55. Six of the Board's current nine directors were on the Board at the time of the grand jury investigations in New Jersey, Kansas and Ohio, and the settlement of the West Virginia lawsuit. Chief Executive Officer Steven Collis,

and directors Jane E. Henney, Henry W. McGee, Michael J. Long, Richard W. Gochnauer, and Kathleen W. Hyle, were on the Board at the time of the filing of West Virginia's 2012 lawsuit, and were aware that the Company had failed to put in place adequate anti-diversion controls during the decade since the 2007 DEA ISO exposed the Company's lack of reasonably effective anti-diversion controls.

iv. In 2018, The McCaskill Report Details ABC's Failure To Maintain An Effective And CSA-Compliant Opioid Distribution Program

56. On July 12, 2018, the U.S. Senate Homeland Security & Governmental Affairs Committee, Ranking Member's Office released a report titled "Fueling an Epidemic," which was prepared, in part, based on information collected from the Big Three pharmaceutical distributors pursuant to requests issued by U.S. Senator Claire McCaskill, the Democratic Ranking Member of the Committee at that time (the "McCaskill Report").

57. The various investigations alleged substantial evidence indicating that ABC was not in compliance with its obligations under controlled substance laws. But the McCaskill Report, for the first time, publicly offered deeper insight of the violations at the heart of ABC's noncompliance. It detailed ABC's distribution of hundreds of millions of doses of opioids to Missouri from 2012 to 2017. ABC, however, reported only approximately 1% of the suspicious orders reported by McKesson, which had distributed a similar number of opioids to the State.

58. The McCaskill Report examined the efforts of ABC, McKesson, and Cardinal to prevent opioid diversion in Missouri, revealing that ABC's efforts had been wildly ineffective, leading to devastating results. Between 2012 and 2017, while both ABC and McKesson each shipped approximately 650 million doses of opioids to Missouri, ABC reported only 224 suspicious orders to the DEA, compared to McKesson's 16,714. And while Cardinal shipped fewer than half the opioid doses to Missouri that ABC shipped, Cardinal reported 5,125 suspicious orders over the same five year period.

59. ABC's shipment of 650 million opioid doses to Missouri constituted roughly 40% of the 1.6 billion total doses shipped to the state by the Big Three pharmaceutical distributors. That volume of opioids equated to more than 260 doses for every Missourian during the five-year period.

60. Given the extreme number of doses delivered to Missouri, combined with the near total lack of suspicious orders ABC reported to the DEA, there is a credible basis to believe that ABC's directors and officers breached their duties and did not satisfy their legal obligations to design, operate, and maintain an adequate program to control and report the diversion of opioids following the 2007 Settlement through at least the end of 2017.

v. In 2018, The Opioid MDL Court Denies Motions To Dismiss Claims Against ABC Related To Its Failure To Properly Control Distribution of Opioids

61. Over the past several years, hundreds of states, counties, municipalities, and other governmental entities have filed lawsuits against ABC, its subsidiary ABDC, and other pharmaceutical distributors and manufacturers. These actions generally allege damages caused, in relevant part, by ABC's violations of controlled substance laws, negligence, and unjust enrichment (among other causes of action) in distributing billions of doses of opioids while failing to maintain an effective anti-diversion and reporting program that satisfied ABC's legal obligations.

62. Over 150 of these lawsuits have been consolidated for multidistrict litigation before the United States District Court for the Northern District of Ohio before the Honorable Judge Dan A. Polster (the "Opioid MDL"). As a matter of practicality, a "bellwether" case will be tried first, before resolving the other cases in the MDL.

63. In April 2018, the DOJ, though not a party to the lawsuits, filed a motion to participate in ongoing settlement discussions in the Opioid MDL—which the Court granted on June 19, 2018—suggesting that the DOJ is also considering bringing claims against ABC related to its non-compliance with the CSA.

64. Following the completion of briefing on defendants' motions to dismiss the operative complaint, on December 19, 2018, the court largely denied those motions. In discussing the adequacy of plaintiffs' RICO claims, the court credited plaintiffs' allegations that ABDC and the other defendants "intentionally turned a blind eye to orders of opiates they knew were suspicious, thereby flooding the legitimate medical market and creating a secondary 'black' market at great profit to [d]efendants and at great cost to [p]laintiffs."

65. Similarly, in denying defendants' motions to dismiss claims of negligence against ABDC and the other defendants, the court found that, "taking [p]laintiffs' allegations as true, by failing to administer responsible distribution practices (many required by law), [d]efendants not only failed to prevent diversion, but affirmatively created an illegal, secondary opioid market" that plaintiffs were "responsible for combatting," causing them damage.

66. The bellwether case is advancing through discovery and is currently scheduled for trial starting in October 2019.

67. In short, in light of the 2007 Settlement and continuous governmental investigations, reports, and legal actions ever since, there is a credible basis to infer that ABC's officers and directors failed to implement and monitor effective anti-diversion and reporting programs related to ABC's distribution of controlled substances as required by law, despite those individuals' awareness of ABC's

previous non-compliance and the need for robust and ongoing compliance efforts. These actions have resulted in burdensome, ongoing, and costly investigations and litigations, which are a direct result of ABC's officers' and directors' collective failures to run the Company in compliance with controlled substance laws and regulations.

68. Meanwhile, as set forth below, ABC's officers and directors have personally profited hundreds of millions of dollars from their sales of ABC stock and receipt of other compensation from ABC. They have prioritized short-term stock gains driven, in part, by the sale of opioids, at the expense of long-term value given the outstanding opioid-related liabilities ABC has incurred by failing to control its opioid distribution network. By way of her Demand made pursuant to Section 220, Plaintiff is entitled to inspect the books and records that bear on these issues.

vi. ABC'S Officers And Directors Have Reaped Massive Compensation, Including Sales Of ABC Stock At Prices Buoyed By Opioid-Derived Revenue, While Resisting Proposals To Improve Governance and Disclosure

69. Notwithstanding ABC's repeated compliance failures, mounting lawsuits, and ongoing investigations by a plethora of governmental entities concerning ABC's practice of dumping prescription opioids into American communities, the Board lavishly compensated its directors and ABC's officers at

the expense of ABC and its shareholders. ABC's directors and officers paid themselves hundreds of millions of dollars through insider sales in the period following the 2007 Settlement through the present, profiting from an ABC stock price buoyed by the Company's sale of opioids through its defective distribution network. The individual officers and directors identified below, a mere subset of the insiders and directors, earned over $203 million in compensation and stock sales since 2007.

70. No one has profited more than Steven Collis, ABC's Chairman (since March 2016), President and Chief Executive Officer (since July 2011). Mr. Collis has worked for ABC since 1994, including as (i) Chief Operating Officer from November 2010 to July 2011, (ii) Executive Vice President and President of ABDC from September 2009 to November 2010, and (iii) Executive Vice President and President of ABC's Specialty Group from September 2007 to September 2009, prior to taking on his current roles. Following the 2007 Settlement, from 2008 through the present, Mr. Collis has received more than $93.8 million from sales of ABC stock. During that same time, aside from the value of stock and option awards from which Mr. Collis' derived his stock-sale profits, Mr. Collis has been paid over $30 million in salary, bonuses, and other compensation.

71. ABC's previous President and CEO, R. David Yost, similarly profited. From 2008 through the end of 2011, Mr. Yost obtained more than $7.3 million from sales of ABC stock. And in that same period, aside from the value of stock and option awards, Mr. Yost received nearly $20 million in compensation.

72. ABC's Chief Financial Officers have also benefitted. Tim Guttman, ABC's CFO from 2012 through 2018, gained over $9.2 million from stock sales during that time, as well as over $8.5 million in non-stock compensation. Michael DiCandilo, ABC's CFO from 1990 to 2012, gained over $11.6 million in stock sales made between 2008 and 2012, and earned nearly $8.25 million in non-equity compensation during that period.

73. ABC's directors, too, have received enormous compensation from their sales of ABC's stock. Mr. McGee, Ms. Henney, and Mr. Long, the three directors who were on the Board at the time of the 2007 settlement and remain on the Board today, have earned approximately $7.5 million, $3.3 million, and $1.6 million, respectively, from their sales of ABC stock from 2008 through the present. Those three directors have also received cash compensation of over $876,000, $951,000, and $802,000, respectively, during that time.

74. ABC's directors are also handsomely compensated for their service on the Board. Since 2012, ABC's director compensation program has provided for an

annual retainer of at least $100,000 and an annual equity award of at least $125,000 in restricted stock to each of its non-employee directors. For 2019, the equity component will increase to at least $175,000. And from 2007 to 2011, ABC's director compensation program provided an annual retainer of at least $60,000, an award of at least $50,000 in restricted stock, and at least $100,000 worth of stock options.

75. At the same time that executives and the Board were collecting massive profits, they were resisting shareholder proposals that would improve the Company's governance and increase transparency with regard to executive compensation.

76. In the months before the 2018 ABC shareholder meeting, and in the wake of allegations that ABC helped fuel the opioid crisis by failing to report suspicious drug orders, shareholders submitted proposals that would require the Company to: (i) adopt a policy that the Chairperson of the Board be an independent director; (ii) disclose annually whether it recouped any incentive compensation or caused an executive to forfeit incentive compensation in the previous fiscal year; and (iii) report to shareholders on the governance measures ABC has implemented since 2012 to more effectively monitor financial and reputational risks related to the opioid crisis. The Board actively opposed these reforms and recommended that shareholders vote against each of those proposals.

77. Although the shareholders' proposals were unsuccessful at the March 1, 2018 shareholder meeting, they garnered a substantial number of votes from ABC's independent shareholders. The proposal concerning increased reporting of the opioid crisis received 62% of independent shareholders' votes cast, and 52% of those votes cast were in favor of the proposal regarding executive incentive compensation claw backs and forfeiture. With respect to the proposal requiring that ABC appoint an independent director as Chairperson, 49% of independent shareholders' votes cast were in favor.

78. Before the 2019 meeting of ABC's shareholders, the City of Philadelphia's pension board, an ABC shareholder, proposed that ABC take into account legal costs from the opioid epidemic when determining executive compensation. The Board opposed the proposal, and it ultimately failed to garner a majority of the votes cast at the February 28, 2019 shareholder meeting.

79. These massive profits from stock sales, the tens of millions of dollars paid to ABC's officers in salary, bonuses, and other compensation, as well as the resistance of the Board to proposals that would improve the Company's governance and disclosures, collectively indicate that ABC's officers and directors were directly benefitting from ABC's performance, which was materially driven by illicit opioid sales, at the same time that they were failing to ensure that the

Company had an effective and legally compliant control program for ABC's opioid distribution business.

II. PLAINTIFF'S DEMAND STATED A PROPER PURPOSE AND A CREDIBLE BASIS

80. Plaintiff sent ABC the Demand on December 14, 2018. The Demand was made under oath and enclosed a copy of Plaintiff's recent brokerage statement, demonstrating her ownership of ABC's stock. The Demand and the documents enclosed therein are attached hereto as Exhibit A.[2]

81. The Demand stated a number of proper purposes. It detailed the facts described above and explained that Plaintiff was investigating "corporate waste, mismanagement or wrongdoing, and breach of fiduciary duties of loyalty and good faith on the part of ABC's officers and directors with respect to the above-describe[d] matters." Ex. A at 4. The Demand further explained that after reviewing the demanded books and records, Plaintiff would determine "whether the current directors are fit to continue serving on the Board" and would take "appropriate action in the event that the members of the Company's management and Board did not properly discharge the[ir] fiduciary duties,

[2] Plaintiff's recent brokerage statement has been redacted to remove irrelevant information and to protect Plaintiff's privacy.

including the preparation and filing of a shareholder derivative lawsuit, if appropriate." *Id.* at 4-5.

82. Plaintiff demanded to inspect fifteen tailored categories of the Company's books and records, including Board minutes and presentations related to the 2007 Settlement, the West Virginia lawsuit, the sale and distribution of opioids in Missouri between 2012 and 2017, and the Company's anti-diversion controls, among other related subjects, all of which are necessary for Plaintiff to evaluate whether ABC's officers and directors have satisfied their fiduciary duties and whether they should continue to lead ABC. *See* Ex. A at 5-6.[3]

83. By letter dated January 9, 2019, ABC substantively responded to the Demand. That letter is attached hereto as Exhibit B. The Company rejected the Demand, arguing that Plaintiff lacked a proper purpose and that the scope of documents requested by the Demand was overbroad. ABC implied that Plaintiff was seeking the requested documents for the limited purpose of filing derivative litigation and argued that, as the Company's governing documents contain a director exculpating clause that comports with 8 Del. C. § 102(b)(7), the facts

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[3] Plaintiff's Demand included only fourteen categories of documents, but Plaintiff subsequently included a fifteenth category in a letter dated February 13, 2019, as described below.

detailed above were "insufficient to establish a credible basis to suspect knowledge of wrongdoing by ABC's Board or management."

84. Plaintiff responded by letter on January 18, 2019, attached hereto as Exhibit C. In her response, Plaintiff explained that her purpose was not only to investigate possible derivative claims, but to determine the fitness of ABC's directors to continue serving on the Board, thereby distinguishing the Company's cited cases. Plaintiff also noted that the exculpatory clause did not apply to any actions by ABC's officers and, in any event, did not shield the Board from an inspection demand made for the purpose of evaluating the directors' fitness to serve. Plaintiff also reminded ABC that her burden to provide facts establishing a "credible basis" to suspect wrongdoing presents the lowest possible burden of proof under Delaware law and again detailed how the facts described above clearly provide such a basis.

85. With regard to ABC's objection to the scope of Plaintiff's Demand, Plaintiff cited this Court's recent opinion in *Amalgamated Bank v. Yahoo, Inc.*, holding that Board-level materials, of which twelve of the fifteen requests seek to inspect, are "indisputably subject to inspection" as a "corporation usually can collect and provide these documents easily and quickly with minimal burden." 132 A.3d 752, 790 (Del. Ch. 2016). Plaintiff explained that her remaining demands sought only "to identify employees who made direct reports to the Board and the

documents those employees exchanged with the members of the Board." These requests are squarely permissible under the Delaware Supreme Court's recent ruling in *Wal-Mart Stores, Inc. v. Ind. Elec. Workers Pension Tr. Fund IBEW*, wherein the Court affirmed an order requiring the production of officer and employee documents. 95 A.3d 1264 (Del. 2014). Nonetheless, Plaintiff offered to meet and confer regarding the scope of her Demand.

86. Even after Plaintiff's offer to meet and confer, ABC continued to categorically refuse the Demand. In a letter dated February 1, 2019, attached hereto as Exhibit D, ABC rehashed its arguments that Plaintiff's purpose for the Demand was limited to evaluating derivative litigation, that Plaintiff had not provided sufficient facts supporting a credible basis of wrongdoing by ABC's officers and directors so as to pursue such litigation in light of the Company's exculpatory clause, and that the Demand was overbroad. In particular, ABC improperly discounted the weight of each individual piece of evidence suggesting wrongdoing by the Company's officers and directors by noting that the settlements, investigations, and lawsuits had not yet resulted in any explicit findings of fault, while ignoring that the sheer volume of the evidence collectively requires little inference to suggest some wrongdoing.

87. It is unfair for the Board to characterize the stockholder's allegations as, "simply saying that the company has already been subject to lawsuits,

with nothing else." As mentioned in the Demand, ABC is facing hundreds of lawsuits—brought by virtually every major city, county, and state in the United States—regarding its failure to implement and enforce adequate anti-diversion controls. This is a far cry from "simply saying that the company has already been subject to lawsuits." Further, the existence of these complaints is meaningful to the extent that, as here, they are supported by documents, testimony, and/or credible and particularized factual allegations. *See In re UnitedHealth Grp., Inc. Section 220 Litig.*, No. CV 2017-0681-TMR, 2018 WL 1110849, at *7 (Del. Ch. Feb. 28, 2018), *aff'd sub nom. UnitedHealth Grp. Inc. v. Amalgamated Bank as Tr. for Longview Largecap 500 Index Fund*, 196 A.3d 885 (Del. 2018).

88. Plaintiff responded in a letter dated February 13, 2019, a copy of which is attached hereto as Exhibit E. Plaintiff reiterated that her purpose is not only to evaluate derivative litigation, but to "determine whether the Directors are fit to serve." Plaintiff also responded to ABC's factual arguments, detailing how the McCaskill Report, in particular, demonstrates that ABC shipped an inordinate number of opioids to Missouri while reporting only 1% of the suspicious orders reported by McKesson, "overwhelmingly supporting the claim that ABC sold and distributed opioids in violation of federal law." Plaintiff again expressed her willingness to meet and confer regarding the scope of the Demand and added a

request to inspect documents concerning the independence of the Board's directors.

89. In sum, despite multiple meet and confer letters, emails, and calls regarding the demanded books and records, Defendants have not produced any documents. Given this impasse, Plaintiff must file this suit to seek redress.

CAUSE OF ACTION
Demand for Inspection Pursuant to 8 Del. C. § 220

90. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

91. Plaintiff made a written demand upon ABC for the inspection of the books and records set forth in the Demand.

92. Plaintiff has fully complied with all requirements under Section 220 respecting the form and manner of making a demand for inspection of ABC's books and records.

93. Plaintiff's Demand is for a proper purpose, including investigating potential corporate waste, mismanagement, and/or breaches of fiduciary duty by ABC's officers and directors, determining whether the current directors are fit to continue serving on the Board, and taking appropriate action should the investigation reveal that ABC's officers and directors did not properly discharge

their duties to shareholders of ABC, including pursuing derivative litigation if appropriate.

94. ABC has not provided Plaintiff with access, or agreed to provide her with access, to the demanded books and records.

95. By reason of the foregoing and pursuant to Section 220, Plaintiff is entitled to an order permitting her to inspect and make copies of the books and records identified in the Demand and herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment in her favor and prays for relief as follows:

A. That the Court summarily order ABC to produce to Plaintiff and/or her designees the books and records detailed in the Demand and herein;

B. That the Court award Plaintiff her costs and expenses, including reasonable attorneys' fees, incurred in connection with this Section 220 action; and

C. That Plaintiff be awarded such other and further relief as is just.

DATED: April 18, 2019

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