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Case No. 2019-0332-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LORI R. GEARE,	)	
Plaintiff,	)	
v.	)	C.A. No. _____
ABBVIE INC.,	)	
Defendant.	)	

VERIFIED COMPLAINT PURSUANT TO 8 *DEL. C.* § 220 TO COMPEL INSPECTION OF BOOKS AND RECORDS

Plaintiff Lori R. Geare ("Plaintiff"), as and for her Complaint, herein alleges, upon personal knowledge as to her and her own actions, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. In this action, Plaintiff seeks to enforce its right to inspect certain corporate books and records of defendant AbbVie Inc. ("AbbVie" or the "Company"),[1] a Delaware corporation, pursuant to 8 *Del. C.* § 220 ("Section 220"). Plaintiff seeks to inspect these documents to investigate mismanagement and possible breaches of fiduciary duty by the directors and officers of the Company and its subsidiaries, and to investigate the independence and disinterest

[1] AbbVie is defined to include all AbbVie subsidiaries during the relevant period of January 1, 2013, through the date of this Complaint.

of the board of directors of AbbVie (the "Board")[2] to determine whether pre-suit demand is necessary or would be excused prior to commencing derivative litigation.

2. As explained in Plaintiff's Section 220 demand—which is attached as Exhibit 1 hereto (the "Demand") and fully incorporated by reference herein—there is a more than a credible basis to infer that senior officers and directors of AbbVie, engaged in possible mismanagement or wrongdoing, and/or that they breached their fiduciary duties by facilitating the Company's violation of state and federal law through the payment of kickbacks to physicians, permitting a stock buyback that served the interests of management over the interests of the Company, approving a compensation plan that incentivized management to focus disproportionately on sales of Humira, and permitting misconduct to persist or by failing to ensure proper oversight and enact adequate internal controls.

3. Indeed, as discussed further herein, there is a credible basis to believe that directors and senior officers at AbbVie may have breached their fiduciary duties by ignoring or failing to oversee, monitor, or mediate violations of law in the marketing of Humira.

[2] The "Board" is defined to include the boards of directors, including any committees thereof, of AbbVie and of any and all of its subsidiaries.

4. As this Court has held, "Delaware does not charter lawbreakers. Delaware law allows corporations to pursue diverse means to make a profit, subject to a critical statutory floor, which is the requirement that Delaware corporations only pursue 'lawful business' by 'lawful acts.'"

5. AbbVie has refused Plaintiff's Demand. Accordingly, Plaintiff is commencing this proceeding to enforce Plaintiff's Section 220 rights. Plaintiff requests that the Section 220 Demand be deemed proper and enforceable and that AbbVie be directed to produce immediately copies of all books and records sought by Plaintiff in the Section 220 Demand.

PARTIES

6. Plaintiff Lori R. Geare owns shares of AbbVie and has owned AbbVie shares continuously since at least 2013.

7. Defendant AbbVie is a Delaware corporation, with its principal offices located in North Chicago, Illinois. AbbVie's shares trade on the New York Stock Exchange under ticker symbol "ABBV." AbbVie, which was founded in 2013, began as a spin-off of Abbott Laboratories. It is a "global, research-based biopharmaceutical company." AbbVie currently has a market capitalization of approximately $118 billion. AbbVie reported net income of $5.69 billion in 2018. AbbVie also reported a litigation accrual balance of $350 million as of December 31, 2018.

FACTUAL BACKGROUND

8. Plaintiff has a reasonable basis to believe that directors and senior officers of AbbVie may have breached their fiduciary duties by condoning or failing to remedy misconduct in violation of federal law. The misconduct alleged in the Demand pertains to the below-described illicit scheme of using kickbacks, often disguised as physician support services, to promote sales of a dangerous pharmaceutical drug. The Demand also describes how management has an incentive to promote the drug at the expense of legal compliance, and how the Board authorized management to engage in an extraordinary stock buyback program that benefitted management over the Company's interests just prior to a foreseeable downturn in business.

AbbVie Faces Significant Legal Risk From Allegations of Kickbacks, Including "White Coat Marketing"

9. As discussed in the Demand, AbbVie currently faces significant legal risk—and potentially $6.6 billion in damages and civil penalties—arising from its marketing of its leading product, Humira (adalimumab).

10. Humira is an immunosuppressive drug sold by AbbVie. It is used in the treatment of a variety of diseases and conditions, including Crohn's disease, rheumatoid arthritis, ulcerative colitis, psoriasis, and other inflammatory conditions.

11. The Food and Drug Administration requires Humira to carry a "black-box warning"—the strictest form of drug warning. This label is necessary because it has been determined that Humira may increase the risk of serious and even fatal infections, and may increase the risk of patients developing lymphoma or other cancers. More specifically, the label warns:

WARNING: SERIOUS INFECTIONS AND MALIGNANCY

SERIOUS INFECTIONS

Patients treated with HUMIRA are at increased risk for developing serious infections that may lead to hospitalization or death [*see Warnings and Precautions (5.1)*]. Most patients who developed these infections were taking concomitant immunosuppressants such as methotrexate or corticosteroids.

Discontinue HUMIRA if a patient develops a serious infection or sepsis.

Reported infections include:

• Active tuberculosis (TB), including reactivation of latent TB. Patients with TB have frequently presented with disseminated or extrapulmonary disease. Test patients for latent TB before HUMIRA use and during therapy. Initiate treatment for latent TB prior to HUMIRA use.

• Invasive fungal infections, including histoplasmosis, coccidioidomycosis, candidiasis, aspergillosis, blastomycosis, and pneumocystosis. Patients with histoplasmosis or other invasive fungal infections may present with disseminated, rather than localized, disease. Antigen and antibody testing for histoplasmosis may be negative in some patients with active infection. Consider empiric anti-fungal therapy in patients at risk for invasive fungal infections who develop severe systemic illness.

• Bacterial, viral and other infections due to opportunistic pathogens, including Legionella and Listeria.

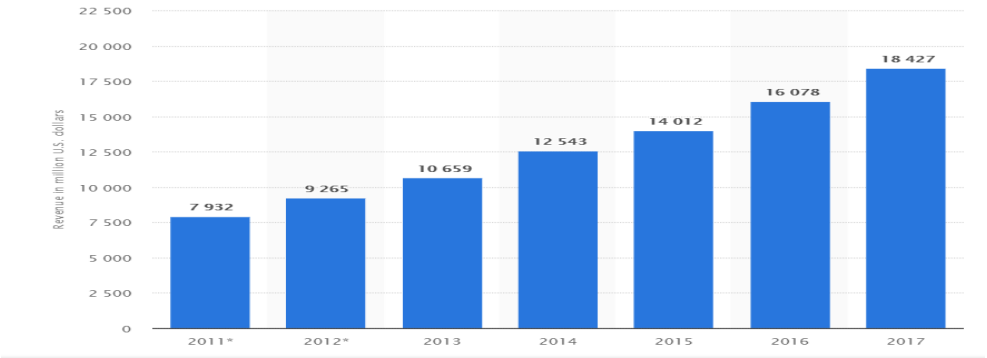
Carefully consider the risks and benefits of treatment with HUMIRA prior to initiating therapy in patients with chronic or recurrent infection.

Monitor patients closely for the development of signs and symptoms of infection during and after treatment with HUMIRA, including the possible development of TB in patients who tested negative for latent TB infection prior to initiating therapy [*see Warnings and Precautions (5.1) and Adverse Reactions (6.1)*].

MALIGNANCY

Lymphoma and other malignancies, some fatal, have been reported in children and adolescent patients treated with TNF blockers including HUMIRA [*see Warnings and Precautions (5.2)*]. Post-marketing cases of hepatosplenic T-cell lymphoma (HSTCL), a rare type of T-cell lymphoma, have been reported in patients treated with TNF blockers including HUMIRA. These cases have had a very aggressive disease course and have been fatal. The majority of reported TNF blocker cases have occurred in patients with Crohn's disease or ulcerative colitis and the majority were in adolescent and young adult males. Almost all these patients had received treatment with azathioprine or 6-mercaptopurine (6–MP) concomitantly with a TNF blocker at or prior to diagnosis. It is uncertain whether the occurrence of HSTCL is related to use of a TNF blocker or a TNF blocker in combination with these other immunosuppressants [*see Warnings and Precautions (5.2)*].

12. Despite the black-box warning, AbbVie has been remarkably successful in its sales of Humira. In 2018, Humira earned $19.9B in revenue for AbbVie. Indeed, it is considered the most prescribed medication in the world. Its sales have grown exponentially (sales figures in billions of dollars):



13. AbbVie had incentive to market Humira as quickly and aggressively as possible as competition is coming from biosimilars marketed by competitors (which had an adverse effect in Europe as of 2018, and will appear in the U.S. by 2023). Indeed, quite recently, AbbVie has been accused in antitrust class action lawsuits of dividing up markets with competitors so as to partly insulate itself from European competition. These co-conspirators are allegedly Amgen Inc., Samsung

Bioepis Co., Ltd., Mylan Pharmaceuticals, Inc., Sandoz, Inc., Fresenius Kabi USA, LLC, Pfizer Inc., and Momenta Pharmaceuticals, Inc.

14. Moreover, as detailed further below, AbbVie's executives (including its Chief Legal Officer) receive extravagant compensation, largely based on stock incentives. Indeed one of the five financial metrics that determines the level of the named executive officers' compensation is Humira sales. The level and structure of management's compensation may create a conflict of interest between the executives' desire to be lavishly compensated, and enforcing strict legal compliance which could slow Humira sales.

15. Some—perhaps billions of dollars worth—of sales may have been driven by an unlawful kick scheme. In 2015, a whistleblower filed a false claims case against AbbVie in the U.S. District Court for the District of Illinois titled *United States ex rel. Suarez and on behalf of The State of California et al. v. AbbVie, Inc., et ano*, Case No. 1:15-cv-08928 (RRP) (hereinafter, the "Federal Humira Case"). That case was under seal until 2018. Following the filing of the Federal Humira Case, the State of California initiated an investigation into marketing practices of Humira. Those investigations focused on AbbVie's alleged use of kickbacks to physicians for the purpose of encouraging them to prescribe Humira, and improper efforts to influence or misinform Humira patients through "nurse educators" or "nurse ambassadors" associated with AbbVie.

16. On September 18, 2018, California's Department of Insurance ("DOI") initiated a lawsuit against AbbVie in what it called the "largest health care fraud case" in DOI's history.[3] The complaint—filed in California's Alameda County Superior Court on behalf of the State of California and titled *State of California ex rel. Suarez v. AbbVie Inc.*, Case No. RG18893169 (Cal. Sup. Ct.) (the "California Humira Case")—alleged that AbbVie violated the State's Insurance Frauds Prevention Act and defrauded the state to the tune of $1.2 billion.[4] California is contending that AbbVie provided kickbacks in more traditional forms (such as meals, cash, gifts, drinks, and trips), as well as more sophisticated forms, including "free and valuable professional foods and services."[5] These services included marketing assistance, medical practice management technology, and free insurance processing services.[6]

17. One of the forms of services involved providing "AbbVie Ambassadors" to medical practices and for patients. These "Ambassadors" purportedly were there to act as patient advocates. In fact, however, "the

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[3] *Jones Sues Biopharma Giant AbbVie Alleging Illegal Kickbacks in Promoting Humira*, California Department of Insurance (Sept. 18, 2018) http://www.insurance.ca.gov/0400-news/0100-press-releases/2018/release111-18.cfm

[4] *Id.*

[5] *Id.*

[6] *Id.*

Ambassadors were HUMIRA advocates hired to do one thing, keep patients on a dangerous drug at any cost," explained DOI's Insurance Commissioner Dave Jones.[7] These "Ambassadors" would even visit patients in their own homes, giving AbbVie direct access that served its goal of promoting its drug over others. The "Ambassadors," who had nursing backgrounds, were trained to downplay the risks of the medication and deflect concerns about it. Nurses also assisted doctor's offices with handling insurance authorizations and claim processing, saving physicians time and money. AbbVie would only provide that assistance, however, so long as the physician continued to prescribe Humira.

18. The complaint in the California Humira Case is attached hereto as Exhibit 3. California's core allegations are summarized below:

- AbbVie's kickback scheme was uncovered by the State because of the courageous whistleblowing and cooperation of Relator Lazaro Suarez, RN. (¶ 22)

- Mr. Suarez his colleagues working as "Nurse Ambassadors" did not know was that they were effectively being used by AbbVie as runners and cappers, people working at the behest of AbbVie in connection with its concrete, internal financial goals. (¶ 26)

- Mr. Suarez attended national trainings wherein Nurse Ambassadors **were trained to hide HUMIRA's serious cancer and infection risks from patients.** In response to patient concerns about serious potential side effects, he and others **were explicitly trained to deflect the questions** and reply that while they were not able to discuss these side effects, they would help find a way to "get you your HUMIRA

[7] *Id.*

for five dollars or less." As a Nurse, he felt compelled to blow the whistle on AbbVie's fraud. (¶ 28)

- Humira is a dangerous medication, which carries a boxed warning concerning possible dangerous infections and cancers

- AbbVie offers additional staff at no cost to healthcare providers when they choose to prescribe HUMIRA. In this way, AbbVie provides extensive, costly, and time-consuming nursing-support services so prescribers and their practices do not have to. (¶ 49)

- This nursing kickback is aimed squarely at getting healthcare providers to write more HUMIRA prescriptions and refills. If given the choice between two medications, one which comes with free nurses and administrative staff and another that requires the provider to pay professional salaries, the provider cannot but help factor the substantial nursing kickback into their prescribing calculus. These kickback-motivated additional prescriptions then cause insurers to pay more HUMIRA-related claims. (¶ 51)

Red Flags

19. The AbbVie Board, and its Audit Committee, during the relevant period would be expected to closely monitor how Humira was being marketed, given the long line of cases over the years that have asserted unlawful and aggressive marketing tactics by various pharma companies.

20. The propriety of using Nurse Educators and Nurse Ambassadors, and the proprietary of their contacts with patients, has not been a hidden issue. One recent article notes:

> ***"This is the biggest topic in compliance circles, by far,"*** said Manny Tzavlakis, a managing partner at Helio Health Group, which advises drug makers on regulatory issues. "You're seeing patients becoming

> more of the center of commercial programs now. And this is the new area where the government can take on the industry."
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> Both Sanofi and Biogen have received notices from the federal government seeking information about clinical educator programs. And an upcoming industry conference devoted exclusively to nurse educator programs lists U.S. attorneys from Newark, N.J., and Philadelphia as speakers.
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> ***
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> David Schumacher, a former deputy chief of the health care fraud unit in the U.S. attorney's office in Boston, ***said there are long-standing concerns about white coat marketing.***
>
> "If you're a nurse who can gain access [to the patient] and use professional bona fides to cloak the real objective — to promote the drug — that relationship is of concern, if it's coercive and can lead to overuse or inappropriate use of a drug," said Schumacher, now a partner at the Hooper, Lundy & Bookman law firm. "That type of arrangement is going to be very closely scrutinized."[8]

21. Indeed, in the Illinois Humira Case, AbbVie's attorneys have even argued that its practices were well known, such that the *qui tam* plaintiff could not claim he had discovered anything new. In its Oct. 31, 2018 motion to dismiss, AbbVie asserts at p. 20 (emphasis added):

> Even if these allegations had merit—and they do not—the public disclosure bar requires their dismissal because the "facts . . . providing a basis for [Suarez's] inference that fraud has been committed" were already publicly available well before he filed his complaint.

[8] "Caregivers or marketers? Nurses paid by drug companies facing scrutiny as whistleblower lawsuits mount", Stat, Oct. 2, 2018, available at: https://www.statnews.com/2018/10/02/nurse-educators-humira-whistleblower-lawsuits/

Information about the alleged features of the Ambassador Program was readily available to the public before Suarez filed this complaint [in 2015].

22. Thus, AbbVie asserted anyone could have learned about these practices including, presumably the AbbVie Board, which had a duty to know all about them.

23. Ms. Geare has adequate grounds to investigate possible wrongdoing by AbbVie and its fiduciaries.

Management's Compensation Depends on Humira Sales

24. As discussed in the Demand, AbbVie has a lavish executive compensation plan. Indeed, top AbbVie executives enjoyed generous compensation packages over the last three years:[9]

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)(1)	Option Awards ($)(2)	Non-Equity Incentive Plan Compensation ($)(3)	Change in Pension Value and Non-qualified Deferred Compensation Earnings ($)(4)(5)	All Other Compensation ($)(6)	Total ($)
Richard A. Gonzalez	2018	$1,650,000	$0	$11,509,090	$2,760,764	$3,898,125	$463,205	$990,685	$21,271,869
Chairman of the Board and	2017	1,638,462	0	9,606,360	2,559,270	4,331,250	3,496,704	993,197	22,625,243
Chief Executive Officer	2016	1,600,000	0	9,318,854	2,360,323	3,600,000	3,232,531	859,216	20,970,924
William J. Chase	2018	1,038,773	0	4,134,594	991,720	1,954,549	309,063	296,087	8,724,786
Executive Vice President,	2017	1,008,526	0	3,681,906	980,980	1,954,549	4,223,300	195,332	12,044,593
Finance and Administration[7]	2016	979,369	0	3,483,919	882,450	1,626,000	1,697,232	162,406	8,831,376
Robert A. Michael	2018	553,654	0	724,041	173,724	950,000	679,532	37,937	3,118,888
Senior Vice President, Chief Financial Officer[7]									
Laura J. Schumacher	2018	1,043,582	0	4,134,594	991,720	1,954,549	2,739,969	518,745	11,383,159
Vice Chairman, External Affairs	2017	1,008,526	0	7,681,631	980,980	1,954,549	2,957,506	396,164	14,979,356
and Chief Legal Officer	2016	979,369	0	2,864,483	725,663	1,626,000	1,627,686	394,498	8,217,699
Carlos Alban	2018	1,016,526	0	4,005,388	961,216	1,836,219	821,930	341,800	8,983,079
Vice Chairman, Chief Commercial	2017	947,469	0	3,522,250	938,350	1,836,219	4,832,949	257,751	12,334,988
Officer	2016	920,077	0	2,916,922	738,798	1,510,000	1,884,312	246,809	8,216,918
Michael E. Severino	2018	1,100,605	0	4,176,037	1,002,105	1,818,200	359,057	151,355	8,607,359
Vice Chairman and President	2017	1,004,460	0	3,681,906	980,980	1,955,069	653,582	119,279	8,395,276
	2016	960,969	0	3,359,376	850,908	1,596,000	375,080	101,530	7,243,863

[9] AbbVie Inc., Proxy Statement (Sch. 14A), at 46 (Mar. 22, 2019) ("2019 Proxy").

25. CEO and Chairman Richard Gonzalez received over $6 million in 2016-18; CFO Chase, $29.5 million; General Counsel Schumacher, $34.4 million; EVP Alban, $29.4 million; and EVO Severino, $24 million. This is over $180 million for the top five executives.

26. The executives' compensation depends ***directly*** on sales of Humira. As AbbVie acknowledges in its 2019 Proxy Statement, certain financial goals determine the short-term incentives that executives earn:

Short-Term Incentives	**Performance Incentive Plan (PIP)** Based on non-GAAP performance measures such as: – Net revenues – Income before taxes – Operating margin – HUMIRA sales – Return on assets – Strategic and leadership goals

[10]

27. The dependence of the executives' compensation on Humira sales was akncowledged by Richard Gonzalez—AbbVie's CEO and Chairman—in testimony before Congress. In a February 26, 2019 hearing, Mr. Gonzalez confirmed that the compensation plans provide for cash bonuses of up to 200% of certain executives' base pay if designated revenue targets are met. Thus, Mr. Gonzalez admitted, sales of Humira have a material impact on his compensaiton:

[10] 2019 Proxy at 33.

A Senate panel on Tuesday grilled AbbVie Chairman and CEO Richard Gonzalez about tying executive bonuses to sales of the U.S. drugmaker's blockbuster arthritis treatment Humira.

Humira's $18.3 billion in 2017 sales — which rose 14.6 percent from the previous year and accounted for about 65 percent of the company's $28.1 billion in revenue — were a major factor in calculating the compensation for AbbVie's top executives last year, according to the company's most recent compensation data.

Humira sales comprise one of the company's four main financial targets — along with net revenues, operating margin and return on assets — that accounted for 60 percent of Gonzalez's short-term incentive plan. The plan pays out a cash award for each of the top five executives equal to up to 200 percent of their base salary, depending on if they meet the targets and other performance measures.

The company hit its internal target for Humira sales last year, helping its top five executives to nearly max out their cash bonuses with a payout equal to 175 percent of their annual base pay, the company said.

"In 2017 all financial and strategic goals were materially achieved, resulting in performance scores between 99% and 100% of target," the company said.

Gonzalez, 64, made a total of $22.6 million for his performance in 2017, $4.3 million of which was his cash bonus. The rest of his compensation was base salary and a mix of stock, restricted shares and options.

"This strikes me as problematic," Sen. Ron Wyden, D-Ore., said in questioning the CEO at a hearing on prescription drug costs before the Senate Finance Committee on Tuesday. "Would you make a smaller bonus if you dropped the price of Humira?"

In response, Gonzalez said, "Humira was one element of a set of financial factors that were evaluated as part of my compensation. It's

obviously a very significant product for us. So it is clear it would be a part of the evaluation."[11]

28. In this way, the executive compensation plans approve by the Board incentivize the Company's executives—including Mr. Gonzalez—to seek greater and greater Humira sales figures so that they can maximize their own personal compensation. Given the allegations in the whistleblower actions discussed above, this warrants investigation into the Company's compensation practices to the extent such compensation is driven by or dependent on sales of Humira.

Extraordinary Stock Buyback Program in 2018 Benefits Management, Not Company

29. AbbVie has traditionally engaged in very large stock buybacks. In 2016, the Company repurchased $5.9 billion worth of stock: $2.1 billion in open-market purchases and $3.8 billion by means of an "accelerated share repurchase program."[12] On February 16, 2017, AbbVie's board of directors authorized a $5.0 billion increase to AbbVie's existing stock repurchase program[13] and by the end of 2017, $1 billion worth of stock had been repurchased.

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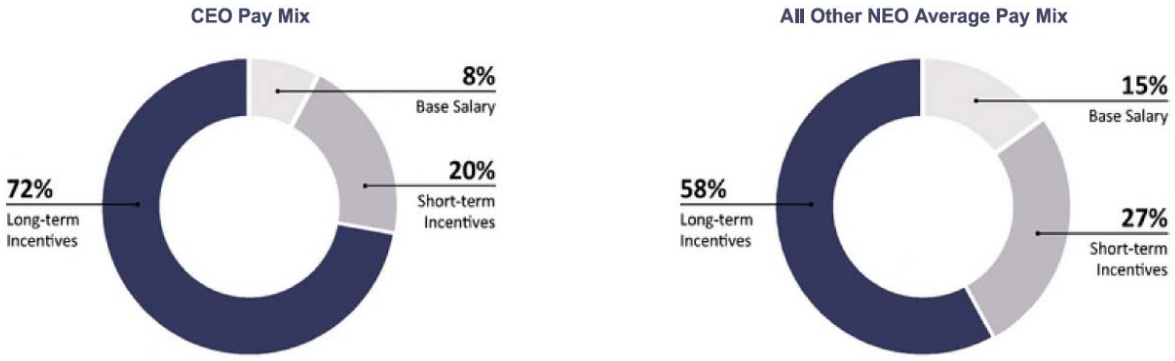
[11] Berkeley Lovelace, Jr., *Senate panel grills pharma CEO over executive bonuses and sales of AbbVie blockbuster drug Humira*, CNBC, available at https://www.cnbc.com/2019/02/26/senate-panel-grills-abbvie-ceo-over-bonuses-tied-to-sales-of-humira.html

[12] AbbVie Inc., Annual Report (Form 10-K), at 28 (Feb. 17, 2017).

[13] *Id.* at 26.

30. In 2018, though, AbbVie's Board decided to authorize the repurchase program at a level that far exceeded the prior levels. On February 15, 2018, the Board authorized a new ***$10.0 billion stock*** repurchase program, which superseded the Company's previous stock repurchase program.[14]

31. The 2018 buyback authorization coincided with the Board's annual review and grant of executive compensation, and the 2018 vesting of certain executive options. AbbVie's compensation mix consists of base salary, short term incentives and long-term incentives, with long-term incentives predominating.[15]



32. AbbVie described the basis for its executive compensation as follows: "Executive officers are evaluated based on quantitative financial metrics and qualitative factors, such as individual, strategic and leadership achievements, as well as relative accomplishments and/or developments in the company and the marketplace. The use of both quantitative and qualitative metrics effectively

[14] AbbVie Inc., Annual Report (Form 10-K) at 26 (Feb. 16, 2018) ("2017 10-K").

[15] 2019 Proxy at 37.

mitigate the impact of a single risk, such as dependence on drug pricing, on overall compensation."

33. Naturally, a robust strategic plan would affect the Board's view of executive performance, as well as the wisdom of a large share buyback. What is more, long-term performance awards, which were granted to all top executives in February 2018, are pegged in part to EPS and stock price. As the 2018 Proxy states on p. 38: "**Performance Shares (40% of total LTI award)**—These awards have the potential to vest at 0% to 250% of target after a three-year performance period and are earned based on company performance in earnings per share (EPS) and relative total stockholder return (TSR)."

34. EPS is always benefitted by large stock buybacks, and that benefit can last for years. Buybacks support the stock price. They should only be done, however, with the corporation's best interests in mind.

35. The plan to buy up to $10 billion worth of stock in 2018 was not spread over all of 2018, but rather concentrated early on, shortly before bad news could be announced. On May 1, 2018, AbbVie announced it would commence a "Dutch Auction" tender offer "to purchase for cash up to $7.5 billion of its common stock at a price not less than $99.00 per share and not more than $114.00 per share."

36. AbbVie wound up repurchasing over $7 billion worth of stock in the Dutch Auction. Why AbbVie would do so under the business circumstances then prevailing, raises serious questions. As the 2018 second quarter report recounted at p. 19, the buyback timing was under "*management's discretion*," not that of the Board:

> On February 15, 2018, AbbVie's board of directors authorized a new $10.0 billion stock repurchase program, which superseded AbbVie's previous stock repurchase program. The new stock repurchase program permits purchases of AbbVie shares from time to time in open-market or private transactions, including accelerated share repurchases, at management's discretion. The program has no time limit and can be discontinued at any time. Shares repurchased under this program are recorded at acquisition cost, including related expenses, and are available for general corporate purposes.
>
> As part of this repurchase program, on June 4, 2018, AbbVie completed a modified "Dutch auction" tender offer and paid an aggregate of $7.5 billion, excluding fees and related expenses, to repurchase 72.8 million shares at tender price of $103.00 per share.

37. In addition to the shares repurchased under the tender offer, AbbVie repurchased approximately 10.9 million shares in the open market for $1.3 billion during the six months ended June 30, 2018. These repurchases were made pursuant to the new $10.0 billion authorization. On December 13, 2018, the Board authorized yet *another* $5.0 billion increase to the stock repurchase program.[16] In

[16] AbbVie Inc., Annual Report (Form 10-K), at 24 (Feb. 27, 2019) ("2018 10-K").

total, AbbVie repurchased approximately 109 million shares at a price of $10.7 billion in 2018.[17]

38. Remarkably, all these shares were being repurchased as Humira was (unbeknownst to the public) experiencing its worst quarter ever. Over the previous two years, Humira sales growth had hovered around 14.6%. Growth in Q2 was *9.9%*, which was the first time growth had dropped below double digits. Moreover, Mylan was working on getting EC approval for later in 2018 on a biosimilar drug in collaboration with Fujifilm Kyowa Kirin Biologics.

39. On May 4, 2018, *Thepharmaletter* published an article entitled, "AbbVie needs to brace itself for Humira Competition in Europe." The article stated in part:

> Although US drugmaker AbbVie (NYSE: ABBV) has done a sterling job in fending off competition to its Humira (adalimumab), the world's biggest selling medicine and still growing, at least in Europe, ***that is all likely to come to an end later this year.*** Humira biosimilars will have significant uptake in the European Union since they are anticipated to be priced 10%-20% lower than the originator brand across the EU. This will be further facilitated by the quotas that healthcare authorities have in place for biosimilar prescription, says data and analytics company GlobalData.

40. At the time of these buybacks, AbbVie's executives and Board would have had a fair read on the Humira slow-down and the looming consequences of

[17] 2018 Form 10-K at 35.

growing competition in Europe in 2018—indeed, far better insight than the public or any stock analyst.

41. Within weeks of the close of these repurchases, on October 31, 2018, AbbVie lowered its European sales forecasts, due to discounting as low as 10% and as high as 80%. On October 31, 2018, AbbVie stock closed at $77.85, very far below the $103 buy back price of just weeks before. This reflected a $1.8 billion decline. The price has not significant recovered, and is presently approximately $81 per share.

42. These events raise a reasonable suspicion that the buyback was undertaken to support the stock price so that the executives might benefit (in 2018 or in the long term) and/or to mask weakness in AbbVie's competitive position. This matter plainly warrants investigation, as to how the buyback was approved and upon what information, so that the stockholders may be protected.

43. As discussed in the Demand, this conduct provides, at a minimum, a credible basis to infer mismanagement and breaches of fiduciary duty.

A. PLAINTIFF'S FEBRUARY 27, 2019 DEMAND

44. On April 8, 2019, Plaintiff's counsel delivered to AbbVie's registered agent in Delaware the narrowly tailored Section 220 Demand attached hereto as Exhibit 1 and fully incorporated by reference herein. In summary, the Demand seeks the inspection of AbbVie's books and records relating to the marketing of

Humira, the stock buyback program as discussed herein, and the compensation plan as it relates to Humira sales, including the books and records pertaining to AbbVie's subsidiaries. The Demand was accompanied by an affidavit and documents evidencing Plaintiff's beneficial ownership of AbbVie stock and a Power of Attorney signed under oath by Plaintiff, appointing Grant & Eisenhofer P.A., Paskowitz Law Form P.C., and Greenwich Legal, LLC, as Plaintiff's agents and attorneys-in-fact to act on Plaintiff's behalf to make the Demand pursuant to Section 220. A copy of the affidavit of service of the Demand is attached as Exhibit 2 hereto.

45. In the Demand, Plaintiff requested that the Company produce or allow the inspection of the following documents:

1. All Board Material[18] and Senior Management Material[19] at which any of the following topics were discussed or raised:

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[18] The term "Board Material" used herein means all documents provided, considered, discussed, prepared, or disseminated, including materials on board portals, in draft or final form, at, in connection with, in anticipation of, or as a result of any meeting of the Board or any regular or specially created committee thereof, including, without limitation, all presentations, Board packages, recordings, agendas, summaries, memoranda, charts, transcripts, notes, minutes of meetings, drafts of minutes of meetings, exhibits distributed at meetings, or resolutions.

[19] The term "Senior Management Material" as used herein means all documents – regardless of whether they were provided to the Board or any committee thereof – discussed by, created by, reviewed by, provided to, and/or sent by any Company officer or lower-level manager employed by the Company concerning the subjects of this demand: (i) to investigate potential mismanagement and wrongdoing in connection with the events, circumstances, and transactions described herein; and

a. The Nurse Ambassador Programs (by whatever name it was called internally); its purposes; activities; and risks.

b. The *Suarez qui tam* action, and the allegations it raises.

c. AbbVie's compliance with any federal or state anti-kickback laws;

d. AbbVie's compliance with any federal or state false claims act.

e. Complaints about the activities of the Nurse Ambassador Program received form anyone, included doctors, medical personnel, patients, whistleblowers, or regulators.

f. Any investigation, regulatory proceeding, or litigation by any U.S. or foreign federal, state, or local government or regulatory body, or any civil investigation, proceeding, or litigation, relating to any of the matters discussed in the grounds supporting this demand letter.

g. The reasons for the 2018 buybacks, including any risks of undertaking those buybacks.

h. Executive compensation as it relates to or is dependent on sales of Humira.

i. The 2018 discounting in Europe, whether actual or expected, and the first signs thereof, as well as the extent thereof.

2. Documents reviewed, considered, or produced by the Board or by officers of the Company in connection with any meeting during

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(ii) to investigate the ensuing response (including investigation, if any) to the events, circumstances, and transactions described herein. *See Wal-Mart Stores, Inc. v. Indiana Elec. Workers Pension Trust Fund IBEW*, 95 A.3d 1264, 1278-1283 (Del. 2014).

which any of the items enumerated above in paragraphs 1(a)-(h) were discussed.

3. Communications, including emails, between or among the Board and/or directors or officers of AbbVie and/or the Board in connection with any of the items enumerated in paragraphs 1(a)-(h).

4. Documents evidencing performance reviews of the Company's Chief Ethics Compliance Officer (CECO) for the years 2013 through 2019.

5. Documents sufficient to determine to whim the CECO reported from 2013-2018.

6. The full report of the Board's Compensation Committee.

7. Documents explaining the nature and extent of the compensation provided the General Counsel, including any peer bench-marking, and any conflicts of interest presented by the compensation scheme.

8. Documents related to any internal investigations, whether by AbbVie, outside counsel, and/or any other advisor or third party, including any presentations and reports created in connection therewith, relating to any of the matters set forth herein.

9. Documents sufficient to demonstrate how each of the directors serving on the Board was nominated for appointment and/or election to the Board or to any committee of the Board, and all documents considered by the Board in connection with such appointment or nomination, including all nominating and governance files, reports, and questionnaire responses.

10. Documents sufficient to show how the Company and/or the Board screened the directors serving on the Board to ensure they have no conflicts of interest or personal ties to any person or entity that may prevent them from acting in the best interest of AbbVie's stockholders.

11. Documents reflecting any and all personal, familial, financial, or business relationships, other than their service as directors of AbbVie, between or among any members of the Board.

12. Documents sufficient to show any transaction within the past five years between AbbVie and (a) any entity that employed a member of the Board at the time of the transaction, or (b) any entity in which a Board member beneficially owned an equity interest of 5% or more at the time of the transaction.

13. Documents sufficient to show the personal net worth and annual compensation from any source of each member of the Board.

14. Any documents that have already been produced or that the Company is planning or intending to produce to any other stockholders making demands for inspection of books and records under Section 220 or any analogous statute concerning any of the misconduct described herein.

46. The Demand enumerated the following legitimate and proper purposes for the inspection of the books and records:

(a) [to investigate] mismanagement by the directors and/or officers of AbbVie in connection with the matters discussed in the grounds supporting this demand set forth below;

(b) [to investigate] the possibility of breaches of fiduciary duty by directors and/or officers of AbbVie in connection with the matters discussed in the grounds supporting this demand set forth below;

(c) [to investigate] the independence and disinterest of the Board; and

(d) [to investigate] whether a pre-suit demand is necessary or would be excused prior to commencing any derivative action on behalf of the Company.

47. These purposes are reasonably related to Plaintiff's interest as a stockholder of the Company.

48. The books and records sought are narrowly tailored to serve Plaintiff's purposes in sending the Demand.

B. ABBVIE REFUSES PLAINTIFF'S DEMAND

49. AbbVie failed to respond to Plaintiff's April 8, 2019 Demand on or before April 15, 2019—which is five business days after Plaintiff's Demand was delivered to AbbVie.

50. AbbVie's failure to respond constitutes a refusal of Plaintiff's Demand.[20]

51. Accordingly, in light of AbbVie's refusal, Plaintiff is commencing this litigation for the prompt enforcement of Plaintiff's Section 220 rights.

C. PLAINTIFF'S DEMAND SETS FORTH PROPER PURPOSES FOR THE REQUESTED INSPECTION

52. The matters described in the Demand provide a credible basis from which possible mismanagement and breaches of fiduciary duty at AbbVie can be inferred.

53. Investigations of possible mismanagement and potential breaches of fiduciary duties, of possible *Caremark* violations and related wrongdoing, and of the independence and disinterest of AbbVie's board of directors, are entirely

[20] 8 *Del. C.* § 220(c) ("If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder . . . *or does not reply to the demand within 5 business days* after the

proper purposes for Section 220 demands, and this Court encourages the use of such demands by concerned stockholders.

54. Plaintiff's purposes for seeking books and records of AbbVie are proper, and the Court should find that Plaintiff is entitled to inspect the books and records set forth in the Demand.

D. THE DOCUMENTS SOUGHT BY THE DEMAND ARE ESSENTIAL TO THE ACCOMPLISHMENT OF PLAINTIFF'S PROPER PURPOSES

55. Each of the requests set forth in Plaintiff's Demand is tailored to an investigation of the books and records of AbbVie for Plaintiff's stated purposes.

56. AbbVie has failed to fulfill its obligation to permit Plaintiff to inspect the books and records identified in the Demand. As a result, Plaintiff now applies to this Court for an Order compelling AbbVie's compliance with the Demand.

E. THE DEMAND SATISFIES THE FORM AND MANNER REQUIREMENTS OF SECTION 220

57. On April 8, 2019, Plaintiff served a copy of the Demand on AbbVie through its registered agent.[21]

58. The Demand included a notarized affidavit stating that Plaintiff is a beneficial owner of AbbVie stock and attaching documentary evidence of such beneficial ownership, with a statement that such documentary evidence is a true

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demand has been made, the stockholder may apply to the Court of Chancery for an order to compel such inspection.") (emphasis added).

[21] Exhibit 1.

and correct copy thereof, and a notarized power of attorney authorizing Plaintiff's counsel to act in Plaintiff's stead "in all matters regarding the examination of books and records of ABBVIE INC. . . . "

59. Plaintiff has satisfied the form and manner requirements of Section 220.

COUNT I
(Demand for Inspection Pursuant to 8 *Del. C.* § 220)

60. Plaintiff repeats and re-alleges all of the preceding allegations as if fully set forth herein.

61. On April 8, 2019, Plaintiff served a written demand upon AbbVie for the inspection of the books and records set forth in the Demand.

62. Plaintiff has fully complied with all requirements under Section 220 of the Delaware General Corporation Law respecting the form and manner of making a demand for inspection of the books and records set forth in the Demand.

63. Plaintiff's demand for inspection is made for proper purposes. The documents identified in the Demand are essential to those proper purposes.

64. The Company has failed to permit the inspection sought by Plaintiff in the Demand.

65. AbbVie's reply to the Demand constitutes a refusal of the Demand on proper purpose and scope grounds.

66. By reason of the foregoing and pursuant to 8 *Del. C.* § 220, Plaintiff is entitled to an Order permitting Plaintiff to inspect and make copies of the books and records set forth in the Demand.

67. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for the following relief:

A. An Order requiring AbbVie to permit the inspection and copying of each and every book and record requested by Plaintiff's Demand immediately;

B. An Order directing AbbVie to pay reasonable attorneys' fees and expenses in connection with Plaintiff's Demand and any related litigation; and

C. Such other relief as this Court deems just and appropriate.

DATED: May 3, 2019

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry
Michael J. Barry (#4368)
Christine Mackintosh (#5085)
Rebecca A. Musarra (#6062)
123 Justison Street
Wilmington, DE 19801
(302) 622-7000

Counsel for Plaintiff Lori Geare

Of Counsel:

PASKOWITZ LAW FIRM PC
Laurence Paskowitz
999 Asylum Ave. #204
Hartford, CT 06105