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IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

JOSEPH NOVITZKI, Derivatively on Behalf of AXOGEN, INC., Plaintiff, v. KAREN ZADEREJ, GREGORY G. FREITAG, PETER J. MARIANI, AMY WENDELL, ROBERT J. RUDELIUS, MARK GOLD, GUIDO J. NEELS, and JAMIE M. GROOMS, Defendants, -and- AXOGEN, INC., a Minnesota corporation, Nominal Defendant.	Case No.: VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT FOR BREACH OF FIDUCIARY DUTY, WASTE OF CORPORATE ASSETS, AND UNJUST ENRICHMENT DEMAND FOR JURY TRIAL

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 1

Plaintiff, by his attorneys, submits this Verified Stockholder Derivative Complaint for Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment. Plaintiff alleges the following on information and belief, except as to the allegations specifically pertaining to plaintiff which are based on personal knowledge. This complaint is also based on the investigation of plaintiff's counsel, which included, among other things, a review of public filings with the U.S. Securities and Exchange Commission ("SEC") and a review of news reports, press releases, and other publicly available sources.

NATURE AND SUMMARY OF THE ACTION

1. This is a stockholder derivative action brought by plaintiff on behalf of nominal defendant Axogen, Inc. ("Axogen" or the "Company") against certain of its officers and directors for breach of fiduciary duties, waste of corporate assets, and unjust enrichment. These wrongs resulted in hundreds of millions of dollars in damages to Axogen's reputation, goodwill, and standing in the business community. Moreover, these actions have exposed Axogen to hundreds of millions of dollars in potential liability for violations of state and federal law.

2. According to its filings with the SEC, Axogen is "a leading medical technology company dedicated to peripheral nerve repair." The Company sells products primarily used to surgically repair peripheral nerves, the most important of which is Avance® Nerve Graft ("Avance"). Avance is a nerve segment derived from human cadavers typically used to repair significant gaps in injured nerves. It is responsible for approximately half of the Company's revenues.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 2

3. Between August 2, 2017 and December 18, 2018, the Individual Defendants (as defined herein) made a series of improper statements that created a fake illusion of Axogen's business and future prospects. In particular, these fiduciaries repeatedly emphasized that Axogen's total addressable market for its core peripheral nerve repair products was in the multibillion-dollar range and continuing to grow. On August 2, 2017, the Individual Defendants claimed the total addressable market for Axogen's products was $1.8 billion, including a $1.5 billion market for extremity trauma and a $129 million market for oral and maxillofacial surgery ("OMF"). On November 19, 2018, the Individual Defendants' increased Axogen's supposed market size to ***$2.7 billion*** (including $1.9 billion for extremity trauma and OMF), representing that the Company's potential market had increased by over 50% within just sixteen months.

4. The Company's multibillion-dollar market claims contrasted starkly with its comparatively paltry 2017 revenues of just $60 million. This exponential difference, the Individual Defendants assured, was because Axogen was still in the early phases of penetrating the "emerging" peripheral nerve market. They claimed that Axogen was "just scratching the surface of [its] available market potential." The Company's fiduciaries also reasoned "surgeons are initially cautious adopters for nerve repair products" while assuring investors that Axogen will overcome this hurdle through education programs financed by the Company, resulting in more widespread use of Axogen's products. The Individual Defendants thus conveyed that, in due time, Axogen will penetrate this multibillion-dollar potential market. In reality, however, Axogen is close to market saturation and this multibillion-dollar potential is nonexistent.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

5. While deceiving investors into believing that Axogen was on the precipice of exponential growth, the Individual Defendants conducted two secondary public offerings of common stock. In November 2017, Axogen and EW Healthcare Partners L.P. ("EW Healthcare") sold 1.95 million shares of the Company's common stock at an offering price of $21 per share for proceeds of approximately $41.05 million. Importantly, defendant Guido J. Neels ("Neels"), a member of the Company's Board of Directors (the "Board"), is an operating partner of EW Healthcare. Just six months later, in May 2018, the Company sold an additional 3.45 million shares of its common stock at an offering price of $41 per share for net proceeds of approximately $132.46 million. Certain of the Individual Defendants, including Axogen's entire Board, signed the registration statements for these offerings, and are therefore legally responsible for the misleading statements contained therein.

6. On December 18, 2018, Seligman Investments, an established investment management firm, issued a lengthy and detailed report unveiling the truth about Axogen's business and its disappointing growth prospects (the "Seligman Report"). The Seligman Report revealed Axogen's market was only a fraction of what the Individual Defendants repeatedly advertised. In fact, the report concluded that Axogen's extremity trauma market was just ***$52 million***, a far cry from the $1.9 billion figure most recently touted by the Individual Defendants. The Seligman Report also revealed the Company was not in the early phases of penetrating its "emerging" market, but that Axogen's market was close to saturation, with opportunities for growth quickly closing. Further, the report found the Company was masking decreasing sales with aggressive and unsustainable price increases,

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 4

which were alienating its customers and threatening its future sales. Finally, the Seligman Report revealed several red flags within the Company's "culture of fear," including allegations of channel stuffing and revenue backdating. The Seligman Report was based on a thorough investigation into the Company, which included an intensive review of Axogen's public statements and other publicly available information, including scientific journals, as well as interviews with various surgeons and former Axogen employees, among others.

7. Following the Seligman Report's publication, Axogen's market capitalization plunged more than 35%, or $9.64 per share, on December 20, 2018, to close at $17.89 per share compared to the closing of $27.53 per share on December 17, 2018, erasing almost $372.8 million in market capitalization in three days. The Company's stock has not recovered since, as it continues to languish in the $12-$16 range.

8. Even after the Seligman Report revealed that Axogen's multibillion-dollar market claim was grossly overestimated and founded upon inapplicable scientific literature, defendants have failed to acknowledge any wrongdoing. In Axogen's Proxy Statements filed with the SEC on March 29, 2018 (the "2018 Proxy") and June 27, 2019 (the "2019 Proxy") defendants incorrectly represented the size of Company's total addressable market size. In the 2018 Proxy, defendants claimed it was $2.2 billion. In the 2019 Proxy, defendants claimed it was $2.7 billion. Both the 2018 Proxy and 2019 Proxy issued by defendants urged Axogen's stockholders to reelect certain directors to the Board. In addition, the 2019 Proxy urged Axogen's stockholders to approve Axogen's 2019 Long Term Incentive Plan (the "2019 Plan").

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 5

9. In support of the bid to reelect certain directors, both the 2018 Proxy and the 2019 Proxy assured stockholders that the Board actively monitored the Company's risk exposure, including financial control risks and certain risks associated with compensation policies and practices. In reality, the Board was utterly failing in its oversight duties by allowing the Company to operate with inadequate internal controls and by continuing to misstate Axogen's total addressable market. In addition, contrary to its claimed oversight of risks associated with compensation practices, the Board promoted lucrative performance-based awards that incentivized and resulted in the wrongdoing discussed herein. In support of the bid to approve the 2019 Plan, the 2019 Proxy assured that performance-based awards were aligned with stockholders' interests. In reality, however, the recipients of these performance-based awards included defendants who breached, and continue to breach, their fiduciary duties to Axogen by misrepresenting the Company's business and growth prospects in order to achieve performance targets tied to lucrative awards. As a result, the Company's stockholders voted via uninformed votes to reelect certain defendants to the Board and approve the 2019 Plan.

10. Defendants, however, did not fare nearly as poorly as the Company. Certain of the Individual Defendants have unlawfully reaped over $34.7 million in illegal insider trading proceeds of Company stock. In addition, certain of the Individual Defendants collectively pocketed millions of dollars in executive compensation and directors' fees not justified by Axogen's actual performance while under their stewardship.

11. Further, as a direct result of this unlawful course of conduct, Axogen is now the subject of at least one federal securities class action lawsuit filed in the U.S. District

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 6

Court for the Middle District of Florida on behalf of investors who purchased Axogen's shares (the "Securities Class Action"). The Securities Class Actions brings claims against Axogen and certain of the Individual Defendants in connection with the Company's improper statements, including causes of action under sections 11 and 12(a)(2) of the Securities Act of 1933 (the "Securities Act") and under sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act").

JURISDICTION AND VENUE

12. This Court has jurisdiction because Axogen's business operates in the State of Florida.

13. This Court also has personal jurisdiction over all defendants because they either reside in this jurisdiction or have a substantial connection to this forum through their positions at Axogen and were involved in many of the relevant events addressed herein and occurring in this County.

14. Venue is proper because Axogen has offices in this County and a substantial part of the events and omissions giving rise to this action occurred in this County. In addition, one or more of the defendants either reside in, or maintain offices in, this County.

THE PARTIES

Plaintiff

15. Plaintiff Joseph Novitzki was a stockholder of Axogen at the time of the wrongdoing complained of, has continuously been a stockholder since that time, and is a current Axogen stockholder.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 7

Nominal Defendant

16. Nominal Defendant Axogen is a Minnesota corporation with principal executive offices located at 13631 Progress Boulevard, Suite 400, Alachua, Florida. Axogen is a medical device company that develops and commercializes products and technologies targeting peripheral nerve regeneration and repair. Axogen completed two separate secondary public offerings of its common stock on November 20, 2017 (the "November 2017 Offering") and May 11, 2018 (the "May 2018 Offering"). In connection with the November 2017 Offering, Axogen filed a Registration Statement on Form S-3 and a related Prospectus on Form 424B5 with the SEC on October 2, 2017 and November 17, 2017, respectively (together, the "November 2017 Offering Documents"). In connection with the May 2018 Offering, Axogen filed a Registration Statement on Form S-3 and related Prospectus on Form 424B5 with the SEC on May 7, 2018 and May 10, 2018, respectively (together, the "May 2018 Offering Documents"). The November 2017 Offering Documents and the May 2018 Offering Documents are referred to collectively herein as the "Registration Statements." As of December 31, 2018, Axogen had 297 employees.

Defendants

17. Defendant Karen Zaderej ("Zaderej") is Axogen's Chairman of the Board and has been since May 2018 and the Company's Chief Executive Officer ("CEO"), President, and director and has been since September 2011. Defendant Zaderej is also the CEO and a director of Axogen Corporation ("Axogen Corp."), a wholly owned subsidiary of the Company, and has been since May 2010. Defendant Zaderej was Axogen Corp.'s

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 8

Chief Operating Officer from October 2007 to May 2010 and Vice President of Marketing and Sales from May 2006 to October 2007. Defendant Zaderej signed the Registration Statements. Defendant Zaderej is named as a defendant in the Securities Class Action complaint that alleges she violated sections 11 and 12(a)(2) of the Securities Act, sections 10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5. Defendant Zaderej knowingly, recklessly, or with gross negligence made improper statements in the Company's press releases and public filings concerning the Company's: (i) business and growth prospects; (ii) total addressable market; and (iii) internal controls. While in possession of material, nonpublic information concerning Axogen's true business health, defendant Zaderej sold 25,000 shares of her stock for $829,620 in proceeds. Axogen paid defendant Zaderej the following compensation as an executive:

Year	Salary	Bonus	Stock Awards	Option Awards	All Other Compensation	Total
2018	$575,000	$419,175	$2,065,568	$593,418	$12,027	$3,665,188
2017	$462,500	$330,688	$1,903,500	$1,003,476	$4,808	$3,704,972

18. Defendant Gregory G. Freitag ("Freitag") is Axogen's General Counsel and a director and has been since September 2011. Defendant Freitag was Axogen's Chief Financial Officer ("CFO") from September 2011 to May 2014 and from August 2015 to March 2016, and Senior Vice President Business Development from May 2014 to October 2018. Defendant Freitag signed the Registration Statements. Defendant Freitag is named as a defendant in the Securities Class Action complaint that alleges he violated section 12(a)(2) of the Securities Act. Defendant Freitag knowingly, recklessly, or with gross negligence made improper statements in the Company's press releases and public filings concerning the Company's: (i) business and growth prospects; (ii) total addressable market;

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 9

and (iii) internal controls. While in possession of material, nonpublic information concerning Axogen's true business health, defendant Freitag sold 65,000 shares of his stock for $2,130,000 in proceeds. Axogen paid defendant Freitag the following compensation as an executive:

Year	Salary	Bonus	Stock Awards	Option Awards	All Other Compensation	Total
2018	$259,000	$113,549	$289,467	$183,890	$10,739	$856,645
2017	$189,000	$83,160	$299,700	$295,691	$7,879	$875,430

19. Defendant Peter J. Mariani ("Mariani") is Axogen's CFO and has been since March 2016. Defendant Mariani signed the Registration Statements. Defendant Mariani is named as a defendant in the Securities Class Action complaint that alleges he violated section 11 of the Securities Act, sections 10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5. Defendant Mariani knowingly, recklessly, or with gross negligence made improper statements in the Company's press releases and public filings concerning the Company's: (i) business and growth prospects; (ii) total addressable market; and (iii) internal controls. Axogen paid defendant Mariani the following compensation as an executive:

Year	Salary	Bonus	Stock Awards	Option Awards	All Other Compensation	Total
2018	$361,200	$157,989	$491,711	$415,492	$12,615	$1,439,007
2017	$336,000	$147,840	$558,900	$602,085	$11,326	$1,656,151

20. Defendant Amy Wendell ("Wendell") is Axogen's Lead Director and has been since May 2018 and a director and has been since September 2016. Defendant Wendell signed the Registration Statements. Defendant Wendell is named as a defendant in the Securities Class Action complaint that alleges she violated section 12(a)(2) of the

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 10

Securities Act. Defendant Wendell knowingly or recklessly made improper statements in the Company's press releases and public filing concerning the Company's: (i) business and growth prospects; (ii) total addressable market; and (iii) internal controls. Axogen paid defendant Wendell the following compensation as a director:

Fiscal Year	Fees Earned Or Paid in Cash	Option Awards	Total
2018	$48,752	$116,152	$164,904
2017	$40,500	$64,749	$105,249

21. Defendant Robert J. Rudelius ("Rudelius") is an Axogen director and has been since September 2010. Defendant Rudelius is a member of the Company's Audit Committee and has been since at least June 2019. Defendant Rudelius was the Chair of that Committee from at least April 2017 to at least June 2019. Defendant Rudelius signed the Registration Statements. Defendant Rudelius is named as a defendant in the Securities Class Action complaint that alleges he violated section 12(a)(2) of the Securities Act. Defendant Rudelius knowingly or recklessly made improper statements in the Company's press releases and public filing concerning the Company's: (i) business and growth prospects; (ii) total addressable market; and (iii) internal controls. While in possession of material, nonpublic information concerning Axogen's true business health, defendant Rudelius sold 16,143 shares of his personally held Company stock for $290,574 in proceeds. Axogen paid defendant Rudelius the following compensation as a director:

Fiscal Year	Fees Earned Or Paid in Cash	Option Awards	Total
2018	$66,252	$116,152	$182,404
2017	$58,000	$64,749	$122,749

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 11

22. Defendant Mark Gold ("Gold") is an Axogen director and has been since September 2011. Defendant Gold is also an Axogen Corp. director and has been since July 2007. Defendant Gold is a member of the Company's Audit Committee and has been since at least April 2017. Defendant Gold signed the Registration Statements. Defendant Gold is named as a defendant in the Securities Class Action complaint that alleges he violated section 12(a)(2) of the Securities Act. Defendant Gold knowingly or recklessly made improper statements in the Company's press releases and public filing concerning the Company's: (i) business and growth prospects; (ii) total addressable market; and (iii) internal controls. Axogen paid defendant Gold the following compensation as a director:

Fiscal Year	Fees Earned Or Paid in Cash	Option Awards	Total
2018	$63,752	$116,152	$179,904
2017	$55,000	$64,749	$119,749

23. Defendant Neels is an Axogen director and has been since August 2015. Defendant Neels is also an operating partner at EW Healthcare and has been since February 2013. EW Healthcare sold 1.15 million shares of Axogen stock in the November 2017 Offering. Defendant Neels signed the Registration Statements. Defendant Neels is named as a defendant in the Securities Class Action complaint that alleges he violated section 12(a)(2) of the Securities Act. Defendant Neels knowingly or recklessly made improper statements in the Company's press releases and public filing concerning the Company's: (i) business and growth prospects; (ii) total addressable market; and (iii) internal controls. While in possession of material, nonpublic information concerning Axogen's true business health, defendant Neels sold 1,150,000 shares of his stock for $22,701,000 in proceeds. Axogen paid defendant Neels the following compensation as a director:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 12

Fiscal Year	Fees Earned Or Paid in Cash	Option Awards	Total
2018	$53,752	$116,152	$169,904
2017	$44,500	$64,749	$109,249

24. Defendant Jamie M. Grooms ("Grooms") was an Axogen director from September 2011 to at least June 2019 and Chairman of the Board from September 2011 to May 2018. Defendant Grooms was Axogen Corp.'s CEO and a director from 2002 to at least May 2010. Defendant Grooms cofounded Axogen Corp. in 2002. Defendant Grooms was a member of the Company's Audit Committee from at least April 2017 to May 2019. Defendant Grooms signed the Registration Statements. Defendant Grooms is named as a defendant in the Securities Class Action complaint that alleges he violated section 12(a)(2) of the Securities Act. Defendant Grooms knowingly or recklessly made improper statements in the Company's press releases and public filing concerning the Company's: (i) business and growth prospects; (ii) total addressable market; and (iii) internal controls. While in possession of material, nonpublic information concerning Axogen's true business health, defendant Grooms sold 341,513 shares of his stock for $8,815,669 in proceeds. Axogen paid defendant Grooms the following compensation as a director:

Fiscal Year	Fees Earned Or Paid in Cash	Option Awards	Total
2018	$58,752	$116,152	$174,904
2017	$58,500	$64,749	$123,249

25. The defendants identified in ¶¶17-19 are referred to herein as the "Officer Defendants." The defendants identified in ¶¶17-18, 20-24 are referred to herein as the "Director Defendants." The defendants identified in ¶¶21-22, 24 are referred to herein as the "Audit Committee Defendants." The defendants identified in ¶¶17-18, 21, 23-24 are

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 13

referred to herein as the "Insider Selling Defendants." Collectively, the defendants identified in ¶¶17-24 are referred to herein as the "Individual Defendants."

DUTIES OF THE INDIVIDUAL DEFENDANTS

Fiduciary Duties

26. By reason of their positions as officers and directors of the Company, each of the Individual Defendants owed and owe Axogen and its stockholders fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to use their utmost ability to control and manage Axogen in a fair, just, honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of the best interests of Axogen and not in furtherance of their personal interest or benefit.

27. To discharge their duties, the officers and directors of Axogen were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of Axogen were required to, among other things:

(a) ensure that the Company operated in a diligent, honest, and prudent manner in compliance with all applicable laws, rules, and regulations;

(b) ensure that the Company complied with its legal obligations and requirements—including requirements involving the filing of accurate financial and operational information with the SEC—and refrain from engaging in insider trading and other deceptive conduct;

(c) conduct the affairs of the Company in an efficient, business-like manner in compliance with all applicable laws, rules, and regulations so as to make it

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 14

possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(d) refrain from engaging in acts of self-dealing to enrich themselves at the expense of the Company and its investors;

(e) remain informed as to how Axogen conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with applicable laws; and

(f) truthfully and accurately guide investors and analysts as to the business operations of the Company at any given time.

Axogen's Code of Business Conduct and Ethics

28. Beyond the duties outlined above, Axogen has adopted a Code of Business Conduct and Ethics (the "Code") setting forth "basic principles to guide all employees and officers of [Axogen]." Among other things, the Code explicitly mandates that the Individual Defendants comply with the law and "avoid even the appearance of improper behavior." Specifically, the Code states:

> Compliance with Laws, Rules and Regulations Obeying the law, both in letter and in spirit is the foundation on which this Company's ethical standards are built. All employees and officers must respect and obey the laws, rules and regulations of the cities, states and countries in which we operate. Although employees and officers are not expected to know the details of each of these laws, rules and regulations, it is important to know enough to determine when to seek advice from supervisors, managers or other appropriate personnel.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 15

29. Further, the Code specifically notes the importance of reporting financial information reasonably and accurately, stating that Axogen expects the Individual Defendants "to take this responsibility very seriously." In particular, the Code states:

> Financial Reporting. As a public company, it is necessary that the Company's filings with the United States Securities and Exchange Commission be accurate and timely. The Company expects employees and officers to take this responsibility very seriously and provide prompt and accurate answers to inquiries related to the Company's public disclosure requirements. The Company's policy is to comply with all financial reporting and accounting regulations applicable to the Company. If any employee, director, or officer has concerns or complaints regarding accounting or auditing matters of the Company, then he or she is encouraged to submit those concerns by one of the methods described in Section 20.

30. The Code includes a specific provision on insider trading, prohibiting the Individual Defendants from using or sharing nonpublic information about the Company for trading purposes. In particular, the Code provides:

> Insider Trading. All non-public information about the Company should be considered confidential information. Employees and officers who have access to confidential information about the Company or any other entity are not permitted to use or share that information for trading purposes in the Company or any other entity's securities or for any other purpose except the conduct of the Company's business. To use non-public information for personal financial benefit or to "tip" others who might make an investment decision on the basis of this information is not only unethical but also illegal. If you have any questions, please consult your supervisor.

Additional Duties of the Audit Committee Defendants

31. In addition to these duties, the Audit Committee Defendants, defendants Gold, Grooms, and Rudelius, owed specific additional duties to Axogen to provide oversight in relation to the Company's financial disclosures, system of internal controls, and accounting and financial reporting processes. Regarding the oversight of financial disclosures, the Audit Committee's Charter provides that the Audit Committee "[s]erve[s]

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 16

as an independent and objective party to oversee the Company's financial reporting process." Moreover the Audit Committee's Charter provides the Audit Committee must "[r]eview the Company's critical accounting policies and estimates."

32. In overseeing the Company's internal and disclosure controls, the Audit Committee is required to:

> Inquire of management, the Company's independent registered accounting firm, and the Company's internal audit firm about significant risks or exposures, and assess the steps management has taken to minimize such risk to the Company;
>
> * * *
>
> Oversee the assessment and effectiveness of the Company's internal control environment, oversee the internal audit function, and discuss any significant deficiencies in internal controls identified with management, including the potential impact to the Company's ability to accurately record, process, summarize or disclose accurate financial statements;
>
> * * *
>
> Consider and review with the independent registered accounting firm: (a) the adequacy of the Company's internal controls, including corporate governance controls, computerized information system controls and security; (b) any control deficiencies identified in its report of the design and effectiveness of the Company's system of internal controls and management's remediation plan….

Breaches of Duties

33. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as officers and directors of Axogen, the absence of good faith on their part, and a reckless disregard for their duties to the Company that the Individual Defendants were aware or reckless in not being aware posed a risk of serious injury to the Company.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 17

34. The Individual Defendants breached their duty of loyalty and good faith by allowing defendants to cause, or by themselves causing, the Company to make improper statements to the public and the Company's stockholders, an unlawful practice that wasted the Company's assets, and caused Axogen to incur substantial damage.

35. The Audit Committee had a duty to oversee the Company's financial disclosures and internal control systems. The Audit Committee Defendants breached their duty of loyalty and good faith by failing to properly oversee Axogen's public statements and internal control function.

36. The Individual Defendants, because of their positions of control and authority as officers and/or directors of Axogen, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein. The Individual Defendants also failed to prevent the other Individual Defendants from taking such illegal actions. In addition, as a result of defendants' improper course of conduct, the Company is now the subject of the Securities Class Action alleging violations of federal securities laws. As a result, and in addition to the damage the Company has already incurred, Axogen has expended, and will continue to expend, significant sums of money.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

37. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 18

Individual Defendants further aided and abetted and/or assisted each other in breaching their respective duties.

38. During all times relevant hereto, the Individual Defendants, collectively and individually, initiated a course of conduct that was designed to and did: (i) deceive the investing public, including stockholders of Axogen, as to the Company's business and future prospects; (ii) facilitate the Insider Selling Defendants' illicit sale of over $34.7 million of their personally held shares while in possession of material, nonpublic information; and (iii) enhance the Individual Defendants' executive and directorial positions at Axogen and the profits, power, and prestige that the Individual Defendants enjoyed as a result of holding these positions. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants, collectively and individually, took the actions set forth herein.

39. The Individual Defendants engaged in a conspiracy, common enterprise, and/or common course of conduct. During this time, the Individual Defendants caused the Company to issue improper financial statements.

40. The purpose and effect of the Individual Defendants' conspiracy, common enterprise, and/or common course of conduct was, among other things, to disguise the Individual Defendants' violations of law, breaches of fiduciary duty, waste of corporate assets, and unjust enrichment; and to conceal adverse information concerning the Company's operations, financial condition, and future business prospects.

41. The Individual Defendants accomplished their conspiracy, common enterprise, and/or common course of conduct by causing the Company to purposefully or

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 19

recklessly release improper statements. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants was a direct, necessary, and substantial participant in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

42. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Individual Defendant acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

FACTUAL BACKGROUND

Defendants Attempt to Grow Axogen Following Its Reverse Merger with a Troubled Intellectual Property Company

43. Axogen declares itself as "the preeminent nerve repair company" with an "[e]xclusive focus on peripheral nerve repair and protection solutions." Peripheral nerves form part of the peripheral nervous system, a network connecting the brain and spinal cord (the central nervous system) to the entire human body. These nerves are pathways for sensation, movement, and motor coordination. Such functions may be impaired when a peripheral nerve is injured or damaged.

44. In 2002, defendant Grooms cofounded Axogen Corp. as a privately held Florida company. Previously, defendant Grooms was the founding CEO of a company now known as RTI Surgical Holdings Inc. ("RTI Surgical"), which, like Axogen, also sells products derived from cadavers. In 2001, defendant Grooms departed from the company

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 20

after it announced it was delaying its financial results due to accounting issues. On January 31, 2002, CBS News published an article detailing questionable practices at RTI Surgical concerning "improperly pressuring grieving families to hand over body parts" and "cash bonuses calculated on the number of donors per financial period." In 2006, four years after defendant Grooms cofounded Axogen Corp., it was dissolved and reestablished under Delaware law. Avance, the Company's flagship product, was launched into the market in 2007.

45. Axogen went public through a reverse merger, a backdoor entry that avoids the scrutiny associated with a typical initial public offering. Specifically, in 2011, Axogen Corp. merged with a wholly owned subsidiary of LecTec Corporation ("LecTec"), a failing intellectual property ("IP") licensing and holding company that went public in 1986. Following the merger, Axogen Corp. was renamed to Axogen, Inc. and shares of the Company's common stock began trading on the Over-the-Counter Bulletin Board. Defendant Zaderej, who was the CEO of Axogen Corp., became the CEO of Axogen while defendant Freitag, the CEO and CFO of the troubled IP company, was appointed as Axogen's CFO. Defendants essentially abandoned LecTec's legacy IP portfolio after disclosing it was unexpected to produce material value and instead set their sights on growing Axogen. Defendant Zaderej said the merger "provides the financial, operation and management capabilities to accelerate the growth of Axogen's portfolio of peripheral nerve solutions."

46. Defendants began spending heavily in pursuit of growth following Axogen's transition to a publicly held company. Costs and expenses increased by over

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 21

87% in the first quarter of 2012, compared to the previous year's quarter, primarily due to sales and marketing costs. By comparison, the Company's revenues of $1.65 million represented an increase of just 47% in that quarter.

47. In 2013, Axogen's stock began trading on The Nasdaq Stock Market. The Company's common stocked hovered between $2 and $5 until 2016.

48. Although the Company's revenues have increased over time, so too has its costs and expenses. These costs and expenses largely related to sales and marketing efforts, as well as surgeon education programs sponsored by the Company. Axogen also sponsored and presented at industry conferences and provided training programs featuring its products. The Company's revenue growth, however, was not exclusively the result of increasing sales volume. Axogen also employed heavy-handed annual price increases for its products.

49. Axogen was still operating at a loss over nine years after introducing Avance. In 2016, the Company's net loss of $14.4 million represented a 50% increase from its 2012 results. On August 2, 2017, Axogen reported a net loss of $5.8 million for the first six months of that year.

50. While operating at a loss and driving revenue growth through aggressive price increases, Axogen held a secondary public offering in November 2017 and again in May 2018 premised on a supposed multibillion-dollar market for its products. The Individual Defendants consistently brought this metric to the forefront of investors' minds, referring to it at times as "market opportunity," "addressable market opportunity," or "total addressable market."

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 22

51. Axogen described its addressable market in several ways. One way Axogen expressed its market was the number of procedures in which its products could be used each year in the U.S. Axogen claimed there were over 900,000 total procedures, including over 700,000 procedures involving extremity trauma. Axogen also expressed the dollar value of the market for its products, which started at $1.8 billion on August 2, 2017, and was increased several times thereafter up to $2.7 billion. The Company also specified its market by procedure-type. Axogen claimed a $1.5 billion to $1.9 billion extremity trauma market existed for its products—comprising the substantial majority of the Company's claimed total market. Finally, Axogen divvied up its total addressable market by product.

Axogen's Product Market Featuring Avance

52. The Company's primary portfolio comprises four products: Avance, AxoGuard® Nerve Connector and the AxoGuard® Nerve Protector (together, the "AxoGuard Product Line"), and Avive™ Soft Tissue Membrane ("Avive"). According to the Company's 2017 Annual Report, the market for the Company's total product portfolio was $2.2 billion. The Company stated Avance represented $976 million of this total figure, or approximately 45%, while AxoGuard Nerve Connector, AxoGuard Nerve Protector, and Avive comprised $391 million, $433 million, and $439 million, respectively.

53. Avance, in addition to representing a claimed 45% of the Company's total market, also accounts for approximately half of Axogen's revenues. Avance is a nerve segment derived from human cadavers and used by surgeons to repair peripheral nerve injuries with a significant gap in the nerve. Avance may be used to treat such gaps and is offered in a variety of lengths (from 15 mm to 70 mm) and diameters (from 1-2 mm to 4-

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 23

5 mm). Avance reportedly costs over $1,500 for 15 mm segments and over $6,000 for 70 mm segments. Avance nerve segments are harvested from human cadavers, and then treated and cleaned to reduce risks of infection or rejection. They are then shipped, stored frozen, and thawed before use.

54. Injuries to peripheral nerves do not always result in a gap. When a peripheral nerve has no gap, or only a small gap, it generally can be repaired by suturing the nerve together. Significant gaps to transacted nerves are typically caused by severe trauma or delayed treatment that results in necrosis. Even when there is a significant gap, a surgeon has several options to repair the peripheral nerve. One option includes neurotization, which involves cutting a nerve segment on one end and suturing it to another location, and then using hollow-tube conduits to guide the regenerating nerve. Other options include autograft and allograft. Avance is an allograft, meaning organ or tissue from one individual is transferred to another individual. Autografts are transfers of organ or tissue from an individual's body to another location in the same individual. For example, nerve segments from a less critical area on a patient's body, such as an ankle, may be taken to repair nerve trauma in the same patient's arm. Autografts are preferred among many surgeons because they are both less expensive and present less chance of rejection than allograft.

55. Avance's principle market is thus a portion of peripheral nerve injury procedures involving a significant gap. According to Axogen, nearly 70% of Avance's market was in the area of extremity trauma. The Company also claimed Avance could be used to bridge nerve gaps in OMF.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 24

IMPROPER STATEMENTS

56. Between August 2, 2017 and December 18, 2018, the Individual Defendants made or caused Axogen to make a series of improper statements concerning the Company's business and future prospects in press releases, public filings with the SEC, during earnings calls, and at Company presentations. In particular, the Individual Defendants routinely emphasized the market size for Axogen's products, which they originally claimed was $1.8 billion and increased several times thereafter to ***$2.7 billion***. The Company's fiduciaries also repeatedly highlighted Axogen's growth opportunities within the "emerging" peripheral nerve repair market while assuring investors that the Company was in the early phases of penetrating this market. In addition, the Individual Defendants touted Axogen's growing number of active accounts and represented that the Company's internal controls were effective. These representations were all woefully inaccurate.

The Individual Defendants Make a Series of Improper Statements and Increase the Company's Market Size to $2 Billion Prior to the November 2017 Offering

57. On August 2, 2017, Axogen filed its Quarterly Report on Form 10-Q with the SEC for the period ended June 30, 2017 (the "Q2 2017 Form 10-Q"). The Q2 2017 Form 10-Q reported revenue of $15.16 million and net loss of $2.06 million. The Q2 2017 Form 10-Q touted the Company's number of active accounts, which the Company claimed had grown to 510 during the quarter, representing a 36% increase from the previous year's quarter. In truth, Axogen overstated its number of active accounts and the market for the Company's products was saturated such that new accounts and growth were increasingly difficult to obtain. Further, although Axogen's revenue growth was driven by unsustainable price increases, the Q2 2017 Form 10-Q claimed that "revenue growth is primarily due to

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 25

increased purchases from active accounts, followed by revenue growth from new accounts." In particular, the Q2 2017 Form 10-Q stated:

> We have experienced that surgeons initially are cautious adopters for nerve repair products. Surgeons typically start with a few cases and then wait and review the results of these initial cases which can take from six to twelve months, or longer. Active accounts are usually past their initial wait period and have developed some level of product reorder. These active accounts have typically gone through their buying committee approval process, have at least one surgeon who has converted a portion of his or her treatment algorithms of nerve repair so as to use at least one of AxoGen's products and have ordered such product(s) at least six times within the last twelve months prior to the review date. ***The number of active accounts at the end of the second quarter of 2017 were approximately 510, representing an increase of 36% compared to the second quarter of 2016***.
>
> ***As such, revenue growth is primarily due to increased purchases from active accounts, followed by revenue growth from new accounts***. Each new period of measurement is thus benefited from growth in active accounts which may include those that were new accounts in the prior measurement period. We have continued to broaden our sales and marketing focus which we expect to have a continuing positive contribution to our revenue growth in the long term.

58. Additionally, the 2Q 2017 Form 10-Q assured investors that the Company had implemented changes to the design of its internal controls over financial reporting. In the Company's Annual Report for the year ended December 31, 2016, Axogen disclosed material weaknesses in its internal controls concerning count procedures for consigned inventories. The 2Q 2017 Form 10-Q stated that the changes to the design of Axogen's internal controls addressed these previously disclosed material weaknesses. Specifically, the Q2 2017 Form 10-Q stated:

> During the three months ended June 30, 2017, the Company made the following changes to the design of its internal controls over financial reporting:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 26

- Improved procedures to test, evaluate and document the assumptions utilized in significant estimates; and

- Enhanced the scope and procedures of the testing and documentation of quarterly cycle counts of consignment inventory.

> We believe these changes in internal controls over financial reporting address the material weaknesses relating to the design and operation of key controls around the use of judgment and calculations of significant estimates, as well as quarterly cycle count procedures related to consigned inventories, described in our 2016 Annual Report. Although these changes have been made, the material weaknesses or deficiencies will not be considered remediated until the applicable remedial controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. Weaknesses or deficiencies in our internal control over financial reporting may be identified when we assess the effectiveness of the Company's internal control over financial reporting as of December 31, 2017, or during the audit by our independent registered public accounting firm of the Company's internal control over financial reporting as of December 31, 2017.

59. On the same day, the Company hosted an earnings call with analysts and investors. During her opening statement, defendant Zaderej announced that Axogen's "addressable market opportunity" had ***increased to $2 billion***. In particular, defendant Zaderej stated:

> We're also pleased to announce a change in our ***addressable market opportunity*** due to expanded use of the Axogen product portfolio in oral and maxillofacial procedures…. We believe this additional application of our product portfolio moves the ***current addressable market opportunity to $2 billion in our current markets of trauma, upper extremity, and oral and maxillofacial surgery***.

60. This market size, defendant Zaderej conveyed, was supported by the "more than 900,000 nerve repair surgeries annually in the U.S.," a figure subsequently revealed to be grossly overstated. Defendant Zaderej further assured investors of the Company's

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 27

growth prospects due to Axogen's supposed "early stage of [market] penetration." Specifically, defendant Zaderej stated:

> There are more than 900,000 nerve repair surgeries annually in the U.S., pointing to a market opportunity of over $2 billion for Axogen's products. The vast majority of these procedures are being performed in approximately 5,100 centers. In the second quarter, 510 of these centers were active Axogen accounts. Most of these active accounts are still at an early stage of penetration and provide additional opportunities for growth. ***As a result, we believe we are just scratching the surface of our available market potential***.

61. Defendant Zaderej concluded her opening statement by continuing to highlight Axogen's bright growth opportunities in its "emerging" market. Defendant Zaderej stated: "We are pleased with our progress and with the opportunity to continue to develop ***the emerging nerve repair market*** and drive long-term sustainable growth."

62. Defendant Mariani reiterated defendant Zaderej's remarks during the call, stating in response to an analyst's question about the Company's growth that Axogen was "just barely scratching the surface of this opportunity."

63. As a potential explanation for why the Company's revenues stood at just 2% of the claimed market opportunity—even though Axogen's flagship product, Avance, was introduced nearly a decade earlier—defendant Zaderej claimed that surgeons are cautious and wait to see the results of Axogen products before adopting them more widely. Specifically, defendant Zaderej stated that "surgeons are initially cautious adopters for nerve repair products. They typically start with a few cases and then wait and see the results."

64. Defendant Zaderej assured investors that Axogen had a robust strategy to overcome the hurdle of surgeon caution and seize on the claimed $2 billion market.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 28

Defendant Zaderej described the extensive sales and marketing and surgeon education programs that would be overseen by the Company's new Chief Commercial Officer, Jon Gingrich ("Gingrich"), who joined Axogen a month prior. In particular, defendant Zaderej stated:

> ***As a member of the Axogen executive leadership team, he will report directly to me*** and will oversee the development and execution of the company's sales and marketing strategies.
>
> These efforts, along with the continued development of our surgeon education events, market awareness activities, and further development of clinical data are allowing us to help surgeons develop confidence in the adoption of the Axogen portfolio of products. We're pleased with the first half of 2017 and believe we're demonstrating our ability to successfully execute our strategy and continue to drive awareness and growth in the ***emerging peripheral nerve repair market***.

65. On September 25, 2017, defendant Zaderej presented on behalf of Axogen at the Cantor Fitzgerald Global Healthcare Conference. The presentation included a slide claiming that the Company's current target market was $2 billion and that extremity trauma represented $1.5 billion of this total, $668 million of which was addressable by Avance. The slide further claimed OMF accounted for $293 million of Axogen's market, with carpal and cubital tunnel procedures accounting for the remaining $188 million. In particular, Axogen presented:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 29

66. Axogen cited a source "Noble, et al. J. of Trauma Injury Infection and Critical Care [1998]" (the "Noble Article") to support its claim that the current targeted nerve markets comprised "Over 900,000 Procedures Annually in U.S.," including 719,000 extremity trauma procedures. Even though the Noble Article was published in 1998, Axogen wrote 2008 as the publication date in order to give investors the impression that the article was more recent, and therefore more authoritative, than it actually was.

67. During conference, the Company touted its sales execution and "[i]ncreasing [m]arket [p]enetration," while routinely highlighting its purported $2 billion market. In reality, the market was already saturated and the $2 billion figure was grossly overstated.

68. On November 1, 2017, Axogen filed its Quarterly Report on Form 10-Q with the SEC for the period ended September 30, 2017 (the "Q3 2017 Form 10-Q"). The

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 30

Q3 2017 Form 10-Q reported revenue of $16.04 million, net loss of $2.12 million, and 563 active accounts.

69. On the same day, the Company hosted an earnings call with analysts and investors, during which defendant Zaderej continued to tout the Company's growth opportunities within the supposed $2 billion addressable market. In particular, defendant Zaderej stated:

> As a reminder, last quarter we announced a change in our addressable market opportunity due to expanded use of the Axogen product portfolio in oral and maxillofacial procedures, including nerve repair during mandible reconstruction due to benign tumor resection. We believe this additional application of our product portfolio moved the current addressable market opportunity to $2 billion in our current markets of trauma, upper extremity, and oral and maxillofacial surgery.

70. Defendant Zaderej also repeated there were "more than 900,000 nerve repair surgeries annually in the U.S." and that Axogen was "just scratching the surface of [its] available market potential." Specifically, defendant Zaderej stated:

> Axogen is generating strong and consistent revenue growth in a nerve repair market that remains largely untapped. There are more than 900,000 nerve repair surgeries annually in the U.S. pointing to a ***market opportunity of over $2 billion for Axogen's products***. The vast majority of these procedures are being performed in approximately 5,100 centers.
>
> In the third quarter, 563 of these centers were active Axogen accounts. Most of these active accounts are still in the early stage of penetration and provide additional opportunities for growth. As a result, we believe we're ***just scratching the surface of our available market potential***.

71. Defendant Zaderej continued to mischaracterize Axogen's market as "emerging" while claiming that surgeon caution was the reason Axogen had not yet penetrated the nonexistent $2 billion market. Specifically, defendant Zaderej claimed:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 31

> We're pleased with 2017 to date and believe we are demonstrating our ability to successfully execute our strategy and continue to drive awareness and growth in the ***emerging peripheral nerve repair market***. We are building awareness of peripheral nerve repair and expanding usage of our products with innovator and early-adopter surgeons, and are ***excited to be moving towards developing the middle adopters who are the majority segment of the nerve repair market***.
>
> We find surgeons are initially cautious adopters for nerve repair products. They typically start with a few cases and then wait and see the results.

The November 2017 Offering

72. Beginning on or about November 15, 2017, Axogen held a secondary public offering in which Axogen and EW Healthcare sold 805,000 shares and 1.15 million shares, respectively, of Axogen common stock at $21 per share for proceeds of approximately $41.05 million.

73. The November 2017 Offering was conducted pursuant to a Registration Statement filed with the SEC on Form S-3 on October 2, 2017, for the issuance of up to 4,861,111 shares of common stock, which was declared effective on October 11, 2017 (the "October 2017 Registration Statement"). The October 2017 Registration Statement contained the signatures of defendants Zaderej, Mariani, Freitag, Grooms, Rudelius, Gold, Neels, and Wendell, with defendant Zaderej signing on behalf of the Company.

74. On November 17, 2017, Axogen filed a Prospectus on Form 424B5 with the SEC, which was supplemented by a filed Prospectus Supplement (collectively, the "November 2017 Prospectus"). The November 2017 Offering was conducted pursuant to the November 2017 Offering Documents.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 32

75. The November 2017 Prospectus claimed that the Company's addressable market was $2 billion, with Axogen's core extremity trauma market—the majority of the Company's revenues—comprising approximately $1.5 billion of the total figure.

> ***Peripheral Nerve Repair Market***
>
> Based on our estimates, we believe the U.S. peripheral nerve injury ("PNI") market for our current product portfolio for Extremity Trauma, Oral and Carpal Tunnel is nearly ***$2.0 billion*** (the "Market"). ***We estimate that the Extremity Trauma portion of the Market is approximately $1.5 billion***. The estimated size of the Extremity Trauma portion of the market is based upon epidemiological studies regarding the general number of trauma patients, physician interviews and incidence of PNI in the population. We believe that, each year in the United States, more than 1.4 million people suffer traumatic injuries to peripheral nerves, resulting in over 700,000 extremity nerve repair procedures.
>
> We estimate that ***the Oral portion of the Market is approximately $293 million.*** This estimate is based upon research that has indicated approximately 80,000 PNI occur in the U.S. each year that are related to third molar extractions, anesthetic injections, dental implants and benign pathology. AxoGen has applied the average sales price of the Avance Nerve Graft and AxoGuard Nerve Protector that address Oral PNI in order to derive the Oral portion of the Market.

76. The November 2017 Prospectus and the October 2017 Registration Statement both incorporated by reference the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (the "2016 Form 10-K"), filed with the SEC on March 1, 2017. The 2016 Form 10-K was signed by defendants Zaderej, Mariani, Freitag, Grooms, Rudelius, Gold, Neels, and Wendell. The 2016 Form 10-K stated:

> Based on estimates prepared by AxoGen, it believes the United States PNI market ***for its current product portfolio*** for Extremity, Oral and Carpal Tunnel Revision is $1.8 billion (the "Market"). We estimate that the Extremity portion of the Market is approximately $1.5 billion. The estimated size of the Extremity portion of the market is based upon epidemiological studies regarding the general number of trauma patients, physician interviews and incidence of PNI in the population. AxoGen

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 33

> believes each year in the U.S. more than 1.4 million people suffer traumatic injuries to peripheral nerves. AxoGen estimates that traumatic injuries to peripheral nerves result in over 700,000 extremity nerve repair procedures.

77. The 2016 Form 10-K claimed these figures were supported by the following three sources: (i) "'Health', United States, 2011, Publication of U.S. Department of Health & Human Services" (the "2011 HHS Report"), which was published by the National Center for Health Statistics, a federal government institution within the Department of Health and Human Services; (ii) the Noble Article; and (iii) "Kurt Brattain, MD, Magellan Medical Technology Consultants, Inc., Minneapolis, Minnesota 2013" (the "Brattain Article").

78. The November 2017 Prospectus also misleadingly warned investors that Axogen's operating results will be harmed if it is unable to sustain its future growth or maintain the price of its products. In reality, those risks had already transpired: the Company's growth was stagnating and Axogen attempted to conceal this stagnation with aggressive and unsustainable price increases. In particular, the November 2017 Prospectus stated:

> ***AxoGen's operating results will be harmed if it is unable to effectively manage and sustain its future growth or scale its operations.***
>
> There can be no assurance that AxoGen will be able to manage its future growth efficiently or profitably. Its business is unproven on a large scale and actual revenue and operating margins, or revenue and margin growth, may be less than expected. If AxoGen is unable to scale its production capabilities efficiently or maintain pricing without significant discounting, it may fail to achieve expected operating margins, which would have a material and adverse effect on its operating results. Growth may also stress AxoGen's ability to adequately manage its operations, quality of products, safety and regulatory compliance. If growth significantly decreases it will negatively impact AxoGen's cash reserves, and it may be required to obtain additional financing, which may increase indebtedness or result in dilution to shareholders. Further, there can be no assurance that AxoGen would be able to obtain additional financing on acceptable terms if all at.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 34

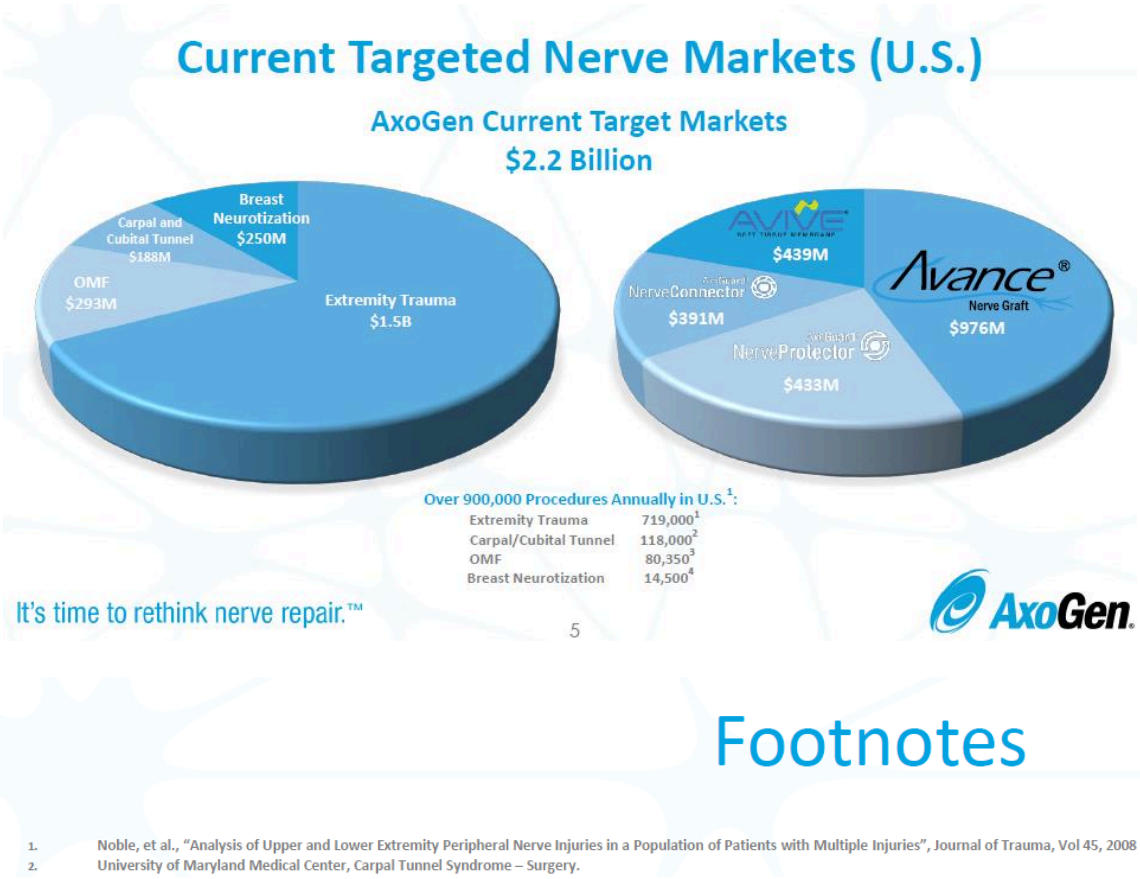
79. On November 20, 2017, the November 2017 Offering closed. Axogen received net proceeds of approximately $15.4 million while EW Healthcare received net proceeds of approximately $22.7 million.

The Improper Statements Continue as the Individual Defendants Raise the Company's Market Size a Second Time Prior to the May 2018 Offering

80. On November 20 2017, Axogen issued a press release announcing that it had significantly increased its estimated market size to ***$2.2 billion*** from the $2 billion figure announced just three months prior. Axogen explained that it "currently estimates that the addressable market for Breast Reconstruction Neurotization is $250 million, which increases the total addressable market across all of its current applications from $2.0 billion to $2.2 billion." The press release further described Axogen as having "evolved from an initial niche product company in a new market to one with a comprehensive platform for nerve repair in an ***emerging*** peripheral nerve market."

81. On November 20, 2017, Axogen hosted its Second Annual Analyst and Investor Day, with defendants Zaderej and Mariani presenting on behalf of the Company. A presentation slide from the event shows the supposed $2.2 billion market while claiming that the market for Avance was ***$976 million***. Axogen further represented the market was based on over 900,000 relevant procedures annually in the U.S., including 719,000 extremity trauma procedures. To support these figures, Axogen again cited the Noble Article and claimed it was published in 2008. In particular, Axogen presented:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 35

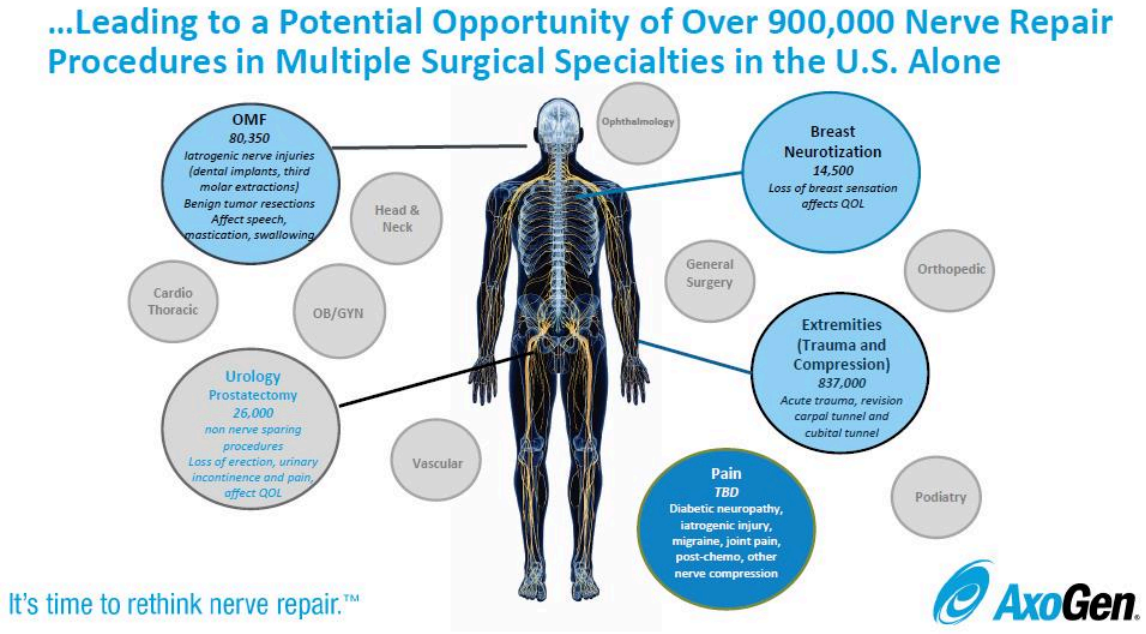


Footnotes

1. Noble, et al., "Analysis of Upper and Lower Extremity Peripheral Nerve Injuries in a Population of Patients with Multiple Injuries", Journal of Trauma, Vol 45, 2008
2. University of Maryland Medical Center, Carpal Tunnel Syndrome – Surgery.

82. In another presentation slide, the Company boasted a "Potential Opportunity of Over 900,000 Nerve Repair Procedures … in the U.S. Alone." Axogen claimed that this encompassed 837,000 procedures each year in the field of "Extremities (Trauma and Compression)" which included carpal and cubital tunnel surgeries. Specifically, Axogen presented:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 36



83. On February 28, 2018, Axogen filed its Annual Report on Form 10-K with the SEC for the fiscal year ended December 31, 2017 (the "2017 Form 10-K"), which was signed by defendants Zaderej, Mariani, Freitag, Grooms, Rudelius, Gold, Neels, and Wendell. The 2017 Form 10-K reported revenue of $60.42 million, net loss of $10.44 million, and 591 active accounts.

84. In the 2017 Form 10-K, the Individual Defendants reiterated the claimed $2.2 billion market for peripheral nerve applications for Avance, Avive, and the AxoGuard Product Line. The 2017 Form 10-K again represented that the estimated market size for extremity trauma is $1.5 billion, $976 of which was addressable by Avance. Again, the Company justified these claims with the supposed 1.4 million peripheral nerve injuries and 700,000 resulting procedures each year in the U.S. Further, even though the Individual Defendants claimed the Company's market size was 22% greater than it was in the previous year, the 2017 Form 10-K cited the same three sources as the 2016 Form 10-K: the Noble

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 37

Article, the 2011 HHS Report, and the Brattain Article. In particular, the 2017 Form 10-K stated:

> We estimate the United States PND [peripheral nerve damage or discontinuity] market for our current product portfolio for Extremity Trauma, OMF, Breast and Carpal Tunnel is ***$2.2 billion*** (the "Market"). From a product prospective as to these targeted markets, we estimate that Avance® Nerve Graft represents $976 million, AxoGuard® Nerve Connector $391 million, AxoGuard® Nerve Protector $433 million and Avive® Soft Tissue Membrane $439 million.
>
> We estimate that the Extremity Trauma portion of the Market is approximately $1.5 billion. The estimated size of the Extremity Trauma portion of the market is based upon epidemiological studies regarding the general number of trauma patients, physician interviews and incidence of PND in the population. We believe that each year in the U.S., more than 1.4 million people suffer damage or discontinuity to peripheral nerves resulting in over 700,000 extremity nerve repair procedures ("Health", United States, 2011, Publication of U.S. Department of Health & Human Services; Noble, et al. J of Trauma Injury Infection and Critical Care 1998; Kurt Brattain, MD, Magellan Medical Technology Consultants, Inc., Minneapolis, Minnesota 2013). We have estimated the portion of these extremity nerve repair procedures that would be addressed by our Gap Repair, Primary Repair, Nerve Protection and Proaction products and applied the average sales price of the appropriate product (Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector and Avive® Soft Tissue Membrane, respectively) to determine that the probable market sizes. Within the Extremity Trauma portion of the Market, our Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector and Avive® Soft Tissue Membrane products are approximately $668 million, $161 million, $238 million and $439 million, respectively.
>
> We estimate that the OMF portion of the Market is approximately $293 million.

85. The 2017 Form 10-K again offered surgeon caution as a potential explanation for the disparity between the Company's huge market size and comparatively meager revenues, the 2017 Form 10-K again offered surgeon caution. In particular, the 2017 Form 10-K stated:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 38

> We have experienced that surgeons initially are cautions adopters for peripheral nerve repair products. Surgeons typically start with a few cases and then wait and see the results of these initial cases.

86. In addition, the 2017 Form 10-K claimed the previously-reported material weaknesses in Axogen's internal controls were "effectively remediated." Specifically, the 2017 Form 10-K stated:

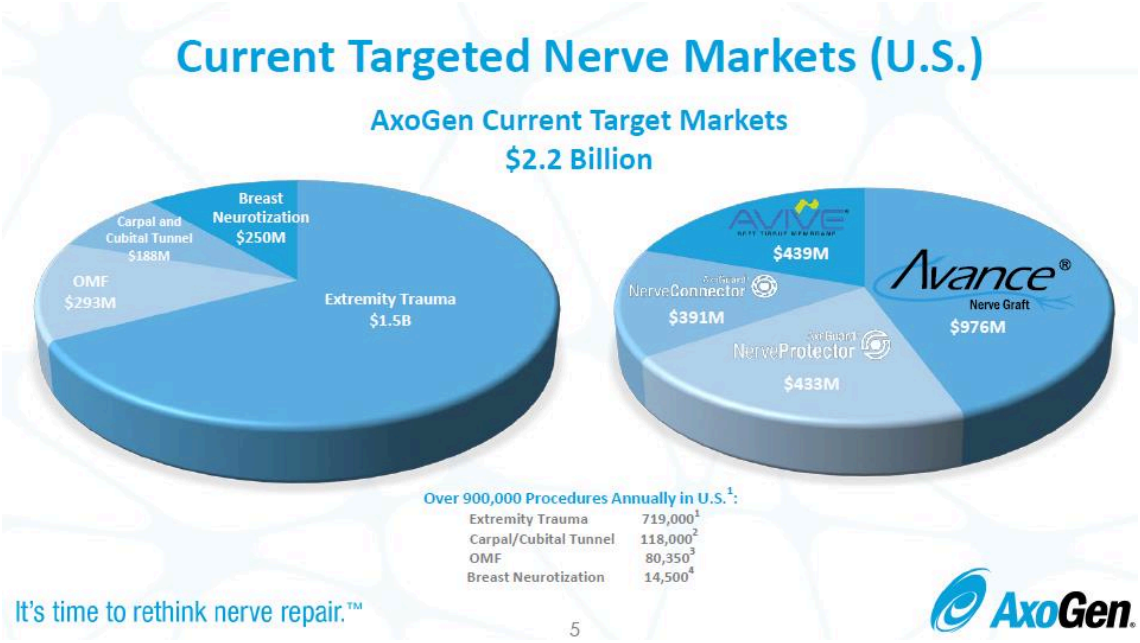
> Our management, including our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our internal control over financial reporting using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework (2013).
>
> As a result of this evaluation, ***management determined the Company had effectively remediated the material weaknesses in its internal controls that existed as of December 31, 2016 relating to the design and operation of key controls around the use of judgment and calculations of significant estimates, as well as quarterly cycle count procedures related to consigned inventories, and that as of December 31, 2017, our internal control over financial reporting was effective***. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim consolidated financial statements will not be prevented or detected on a timely basis.
>
> During 2017, we reviewed the design of internal controls over the judgments, calculations and assumptions of significant estimates, as well as our processes and procedures related to our quarterly cycle counts. As a result, we modified our procedures and controls to address the material weaknesses that existed as of December 31, 2016, and have determined that these modifications have resulted in the effective remediation of those material weaknesses.

87. Also on February 28, 2018, Axogen hosted an earnings call with analysts and investors. During the call, defendant Zaderej emphasized the new $2.2 billion market resulting from "new application in breast reconstruction neurotization, along with the expanded use of the Axogen product portfolio and [] oral and maxillofacial procedures."

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 39

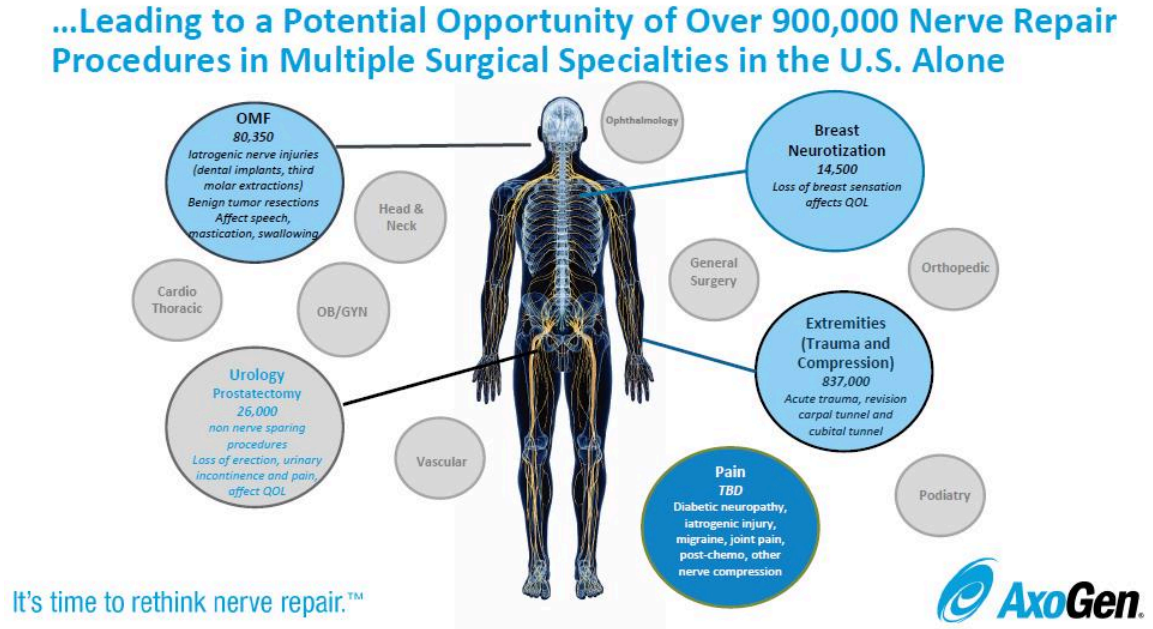
To assure investors that the $2.2 billion market size was supported, defendant Zaderej stated, "[t]here are more than 900,000 nerve repair surgeries annually in the U.S. pointing to a market opportunity of over $2.2 billion for Axogen's products." Defendant Zaderej continued to portray Axogen's market as emerging, stating yet again that "***we're just scratching the surface of our available market potential***."

88. On or about March 6, 2018, Axogen presented at the Canaccord Genuity Musculoskeletal Conference. At the event, the Company's senior management presented the same November 20, 2017 Analyst and Investor Day slide claiming Axogen's current target markets were $2.2 billion, including $1.5 billion for extremity trauma and $976 million for Avance. The Company claimed these figures were supported by the purported 900,000 nerve repair procedures each year in the U.S., including 719,000 extremity trauma procedures. Again, Axogen cited the Noble Article.



11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 40

89. On another slide, Axogen claimed there were 837,000 annual procedures in the "Extremities (Trauma and Compression)" field, which also includes carpal and cubital tunnel procedures. The Company represented this proposition was likewise supported by the Noble Article.



90. On March 29, 2018, the Company issued its 2018 Proxy for the 2018 Annual Meeting of Shareholders. The 2018 Proxy listed a number of "business highlights for the past year." One of these highlights included that Axogen had "[i]ncreased [its] total addressable market across all current applications to $2.2 billion."

91. On April 30, 2018, Axogen filed its Quarterly Report on Form 10-Q with the SEC for the period ended March 31, 2018 (the "Q1 2018 Form 10-Q"). The Q1 2018 Form 10-Q reported revenue of $17.25 million, net loss of $5.63 million, and 604 active accounts.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 41

92. On the same day, the Company held an earnings call with analysts and investors. During the call, defendant Zaderej highlighted Axogen's $2.2 billion market while assuring investors of the Company's growth opportunities within this "largely untapped" market. In particular, defendant Zaderej stated:

> Axogen is generating strong and consistent revenue growth in a nerve repair market that remains ***largely untapped***. There are more than 900,000 nerve repair surgeries annually in the U.S., pointing to a market opportunity of over $2.2 billion for Axogen's products. The majority of these procedures are being performed in approximately 5,100 centers. Most of our 604 active accounts are still at an early stage of penetration and provide additional opportunities for growth. As a result, ***we believe we're just scratching the surface of our available market potential***.

93. Defendant Zaderej continued to promote Axogen's market as "emerging" and repeated the claim that surgeons are cautious adopters. Specifically, defendant Zaderej stated:

> We're building awareness of peripheral nerve repair and expanding usage of our products with innovator and early adopter surgeons, and are excited to be moving towards developing the middle adopters who are the majority segment of the nerve repair market.
>
> We find surgeons are initially cautious adopters for nerve repair products. They typically start with a few cases and then wait and see the results.

The May 2018 Offering

94. Beginning on or about May 7, 2010, Axogen conducted the May 2018 Offering. On the same day, the Company filed a Registration Statement on Form S-3 as part of a shelf registration which automatically became effective upon filing (the "May 2018 Registration Statement"). The May 2018 Registration Statement contained the signatures of defendants Zaderej, Mariani, Freitag, Grooms, Rudelius, Gold, Neels, and Wendell, with defendant Zaderej signing on behalf of the Company.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 42

95. On or about May 10, 2018, the Company filed its Prospectus on Form 424B5 with the SEC, which was supplemented by a filed Prospectus Supplement (the "May 2018 Prospectus").

96. The May 2018 Registration Statement touted the Company's recently increased $2.2 billion market, with the extremity trauma portion of the market comprising $1.5 billion of the total figure. In particular, the May 2018 Registration Statement stated:

> We estimate the United States PND market for our current product portfolio for Extremity Trauma, OMF, Breast and Carpal Tunnel is $2.2 billion (the "Market"). From a product prospective, as to the Market, we estimate that Avance Nerve Graft represents $976 million, AxoGuard Nerve Connector represents $391 million, AxoGuard Nerve Protector represents $433 million and Avive Soft Tissue Membrane represents $439 million.
>
> We estimate that the Extremity Trauma portion of the Market is approximately $1.5 billion. The estimated size of the Extremity Trauma portion of the market is based upon epidemiological studies regarding the general number of trauma patients, physician interviews and incidence of PND in the population. We believe that each year in the U.S. more than 1.4 million people suffer damage or discontinuity to peripheral nerves resulting in over 700,000 extremity nerve repair procedures.
>
> We estimate that the OMF portion of the market is approximately $293 million.

97. The May 2018 Prospectus specified that "[t]he 'Extremity Trauma' portion of the Market (as defined below) encompasses the traumatic PND described above but excludes the OMF, Breast and Carpal Tunnel … portions of the Market." The May 2018 Prospectus defined OMF as follows: "Nerve damage or discontinuity can occur during dental and oral surgery procedures such as third molar extractions, placement of dental implants and removal of tumors during which one or more sections of the trigeminal nerve can be damaged or discontinued ('OMF')."

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 43

98. The May 2018 Prospectus incorporated by reference the 2017 Form 10-K and thus included the following statement:

> We estimate the United States PND market for our current product portfolio for Extremity Trauma, OMF, Breast and Carpal Tunnel is ***$2.2 billion*** (the "Market"). From a product prospective as to these targeted markets, we estimate that Avance® Nerve Graft represents $976 million, AxoGuard® Nerve Connector $391 million, AxoGuard® Nerve Protector $433 million and Avive® Soft Tissue Membrane $439 million.
>
> We estimate that the Extremity Trauma portion of the Market is approximately $1.5 billion. The estimated size of the Extremity Trauma portion of the market is based upon epidemiological studies regarding the general number of trauma patients, physician interviews and incidence of PND in the population. We believe that each year in the U.S., more than 1.4 million people suffer damage or discontinuity to peripheral nerves resulting in over 700,000 extremity nerve repair procedures ("Health", United States, 2011, Publication of U.S. Department of Health & Human Services; Noble, et al. J of Trauma Injury Infection and Critical Care 1998; Kurt Brattain, MD, Magellan Medical Technology Consultants, Inc., Minneapolis, Minnesota 2013). We have estimated the portion of these extremity nerve repair procedures that would be addressed by our Gap Repair, Primary Repair, Nerve Protection and Proaction products and applied the average sales price of the appropriate product (Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector and Avive® Soft Tissue Membrane, respectively) to determine that the probable market sizes. Within the Extremity Trauma portion of the Market, our Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector and Avive® Soft Tissue Membrane products are approximately $668 million, $161 million, $238 million and $439 million, respectively.
>
> We estimate that the OMF portion of the Market is approximately $293 million.

99. The May 2018 Prospectus also misleadingly warned investors that Axogen's operating results will be harmed if it is unable to sustain its future growth or maintain the price of its products. In reality, those risks had already transpired: the Company's growth was stagnating and Axogen attempted to conceal this stagnation with aggressive and unsustainable price increases. In particular, the May 2018 Prospectus stated:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 44

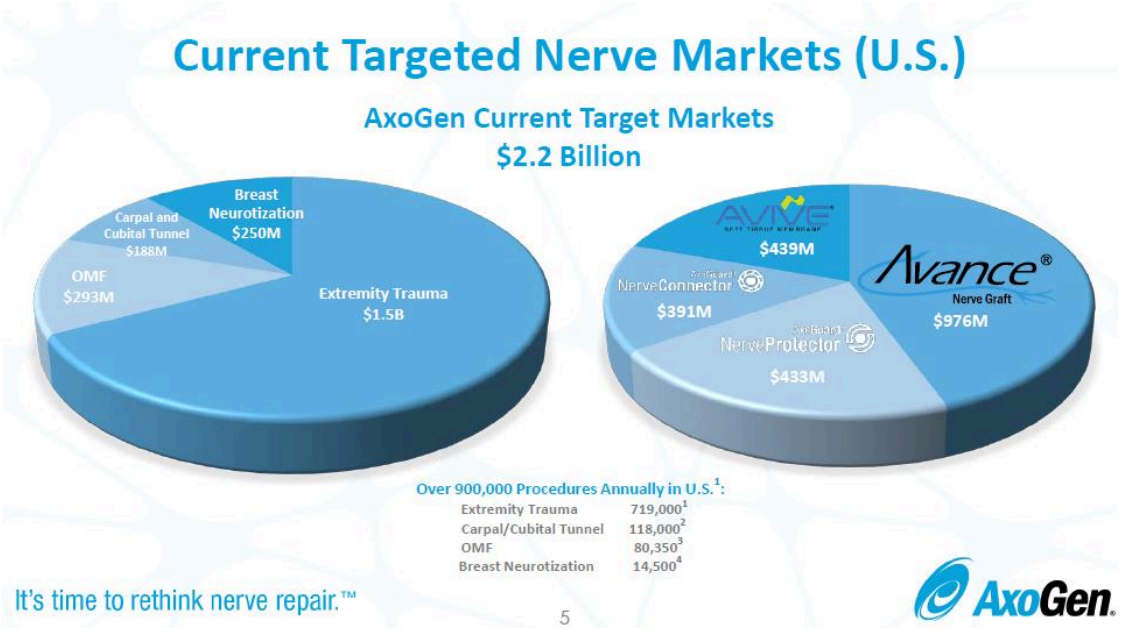
> ***AxoGen's operating results will be harmed if it is unable to effectively manage and sustain its future growth or scale its operations.***
>
> There can be no assurance that AxoGen will be able to manage its future growth efficiently or profitably. Its business is unproven on a large scale and actual revenue and operating margins, or revenue and margin growth, may be less than expected. If AxoGen is unable to scale its production capabilities efficiently or maintain pricing without significant discounting, it may fail to achieve expected operating margins, which would have a material and adverse effect on its operating results. Growth may also stress AxoGen's ability to adequately manage its operations, quality of products, safety and regulatory compliance. If growth significantly decreases it will negatively impact AxoGen's cash reserves, and it may be required to obtain additional financing, which may increase indebtedness or result in dilution to shareholders. Further, there can be no assurance that AxoGen would be able to obtain additional financing on acceptable terms if all at.

100. On May 11, 2018, the May 2018 Offering closed. Axogen sold 3,450,000 shares of common stock at $41 per share for net proceeds of approximately $132.46 million.

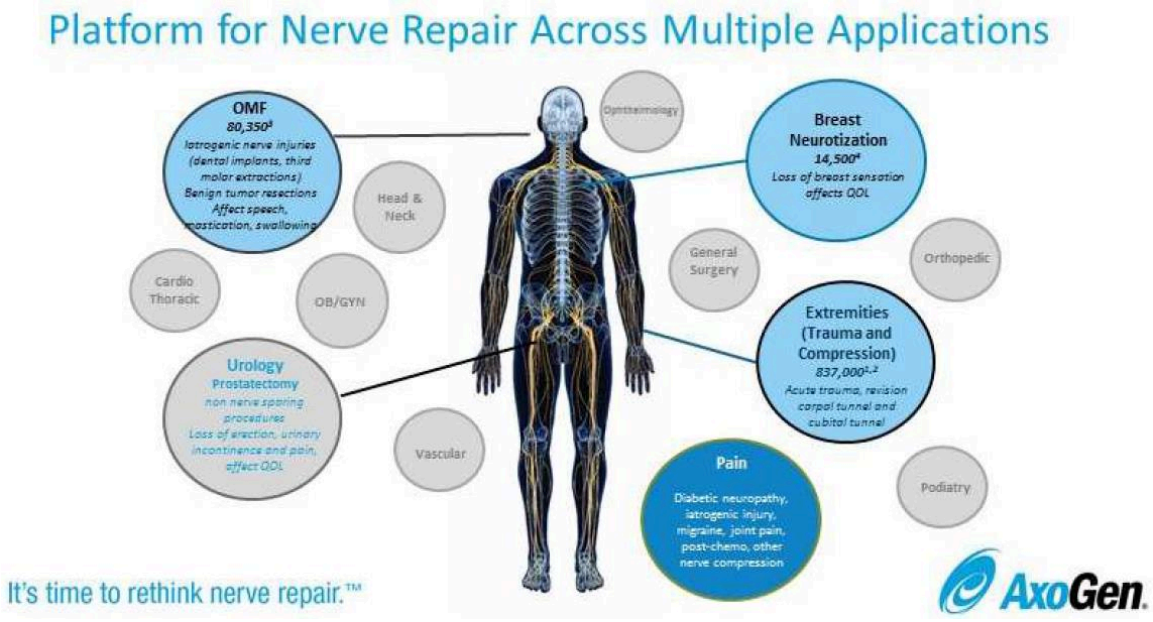
The Individual Defendants Continue to Make Improper Statements and Increase the Company's Market Size a Third Time to $2.7 Billion

101. On June 14, 2018, Axogen presented at the William Blair 38th Annual Growth Stock Conference. Axogen presented the same slide claiming its current markets were $2.2 billion, including $1.5 billion for extremity trauma and $976 million for Avance. The Company claimed these figures were supported by the purported over 900,000 nerve repair procedures each year in the U.S., including 719,000 extremity trauma procedures. Again, Axogen cited the Noble Article.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 45



102. On another slide, Axogen claimed there were 837,000 annual procedures in the "Extremities (Trauma and Compression)" field, which also includes carpal and cubital tunnel procedures. The Company represented this proposition was likewise supported by the Noble Article.



11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 46

103. On August 1, 2018, Axogen filed its Quarterly Report on Form 10-Q with the SEC for the period ended June 30, 2018 (the "Q2 2018 Form 10-Q"). The Q2 2018 Form 10-Q reported revenue of $20.58 million, net loss of $7.42 million, and 634 active accounts.

104. On the same day, the Company held an earnings call with analysts and investors. During the call, defendant Zaderej continued to tout the $2.2 billion figure while characterizing Axogen's market as emerging and noting that surgeons are cautious adopters. In particular, defendant Zaderej stated:

> We are building awareness of advances in peripheral nerve repair and see expanding usage of our products with innovator and early adopter surgeons, and are ***excited to be moving toward developing the middle adopters, who are the majority segment of the nerve repair community***. We find surgeons are initially cautious adopters for nerve repair products. They typically start with a few cases and then wait to see the results. Active accounts are usually past this wait period and have developed some level of product reorder.
>
> * * *
>
> Axogen is generating strong revenue growth in a nerve repair market that remains largely untapped. There are more than 900,000 nerve repair surgeries annually in the U.S., pointing to a market opportunity of over $2.2 billion for Axogen's products. The majority of these procedures are being performed in approximately 5,100 centers.
>
> Most of our 634 active accounts are still at an early stage of penetration and provide additional opportunities for growth. As a result, we believe we're just scratching the surface of our available market potential.

105. Defendant Zaderej concluded her opening remarks by claiming the $2.2 billion figure is expected to grow even further. In particular, defendant Zaderej stated: "[the] peripheral nerve repair market … currently represents more than $2.2 billion in existing applications and we expect will continue to grow."

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 47

106. On October 29, 2018, Axogen filed its Quarterly Report on Form 10-Q with the SEC for the period ended September 30, 2018 (the "Q3 2018 Form 10-Q"). The Q3 2018 Form 10-Q reported revenue of $22.66 million, net loss of $4.10 million, and 679 active accounts.

107. On the same day, the Company hosted an earnings call with analysts and investors. During the call, defendant Zaderej boasted Axogen's growth, assuring investors that despite the consistent net losses, Axogen was "continu[ing] to develop [its] market through the execution of [its] strategic initiatives … will allow [the Company] to build long-term sustainable growth." Defendant Zaderej again concluded her opening remarks by claiming the $2.2 billion figure is expected to grow even further. In particular, defendant Zaderej stated: "the peripheral nerve repair market … currently represents more than $2.2 billion in existing applications and we expect will continue to grow."

108. In response to an analyst's question regarding revenue guidance, defendant Zaderej gave investors the mistaken impression that Axogen was still in the early adoption cycle among surgeons. In particular, defendant Zaderej stated:

> We've been thoughtful in selecting what will be our guidance for next year and thinking about how you want to model our business going forward. We still fundamentally believe that ***the market in peripheral nerve repair is very strong and that we're just scratching the surface of what is a large growth opportunity***. We know from the work that we've done with surgeons in the past and what we see continuing is that surgeons in this market convert their nerve repair solutions in a very deliberate way as they see results in their own hands as they make changes. And we believe we're uniquely positioned in this market to really capitalize on those factors with a very differentiated product portfolio, the substantial amount of clinical evidence that we've built to date and a pipeline of surgeons who are in that trial process. And we look to all of those things as we think about the future and combine that with the productivity of our expanding sales team to lay out what we think is ***a very thoughtful model that shows continued growth***

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 48

> ***for the long term***. So, it is with ***quite a bit of thought and looking at what we've learned over the last many years in the peripheral nerve repair market*** that we've put together the guidance and think that would be a good guidance for you in setting your model.

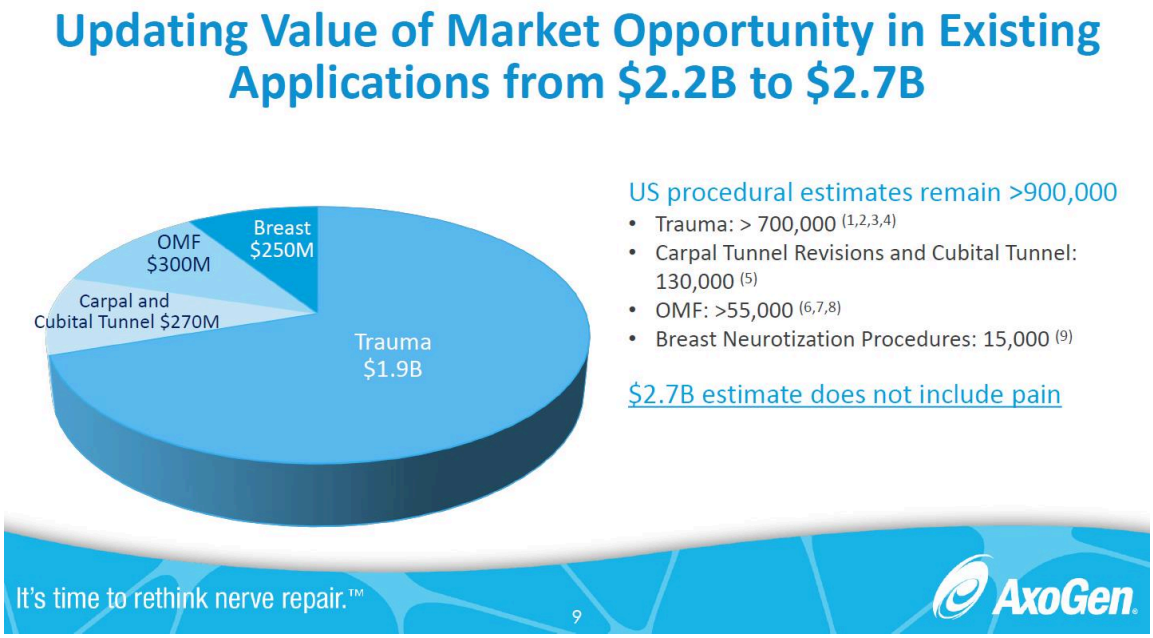
109. Defendant Zaderej continued to characterize Axogen's market as emerging in response to another analyst question regarding the Company's plan for growth. Specifically, defendant Zaderej stated:

> We have a foundation in our core trauma market that we believe is still at early ***stages, not with depth of penetration***, we layer on top of that, the OMF market, which has -- is actually getting some good traction with, certainly, the early adopters and excitement especially in the mandible reconstruction segment, and our emerging opportunity in breast neurotization and we think all of those will contribute to a solid opportunity for overall growth in 2019 and certainly beyond that.
>
> …Like all of the markets that we've talked about, peripheral nerve repair is slow, but we see that as a substantial long-term driver for our business and see that as another growth area.

110. On November 19, 2018, Axogen issued a press release titled "AxoGen Advances Its Platform for Nerve Repair at Annual Analyst and Investor Day." Consistent with defendant Zaderej's stated expectation during the October 29, 2018 conference call that the Company's market "will continue to grow," the press release announced an ***additional increase to Axogen's addressable market***, this time by $500 million to a total of ***$2.7 billion***. This announcement headlined the press release, and was also included as the first point in the Company's "Key Updates." The Company described this as an "[u]pdate value of the market opportunity in existing applications of the peripheral nerve repair market from $2.2 billion to $2.7 billion." Axogen explained the increase was "primarily driven by updated assumptions for net procedure values, and increased prevalence of Connector Assisted Repair in trauma cases."

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 49

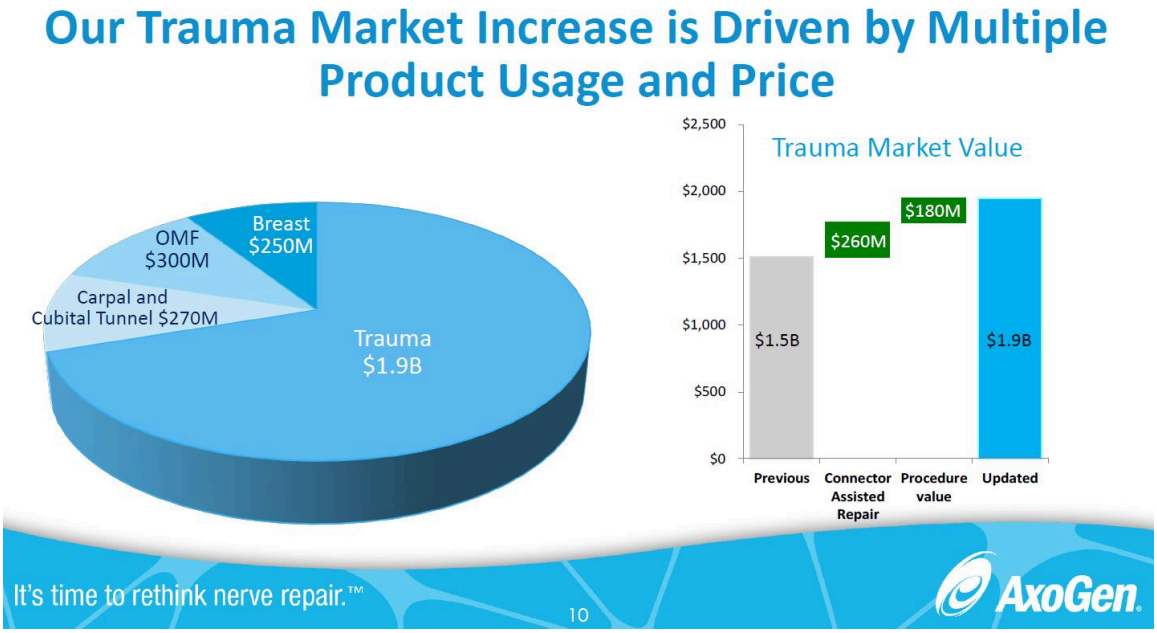
111. Also on November 19, 2018, Axogen hosted its Third Annual Analyst and Investor Day, with defendants Zaderej and Mariani presenting on behalf of the Company. A presentation slide informs investors that Axogen had updated the value of market opportunity in existing applications from $2.2 billion to $2.7 billion. This updated value, the slide reveals, primarily resulted from a $400 million increase in the trauma market, which Axogen now claimed was ***$1.9 billion*** rather than $1.5 billion. Although Axogen increased its trauma market, it still claimed the market size was based on over 700,000 relevant procedures each year. In support of the 700,000 figure, Axogen cited the Noble Article and added a source citation to the 2015 National Hospital Ambulatory Medical Care Survey by the U.S. Census Bureau. In particular, Axogen presented:



11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 50

(1) National Hospital Ambulatory Medical Care Survey: 2015 Emergency Department Summary Tables – Table 18
(2) Noble, et al: J Trauma, Volume 45(1).July 1998.116-122
(3) Uzun, et al: J Clin Neuromusc Dis 2006;7:97–103
(4) Portincasa et al: Microsurgery 27:455–462, 2007
(5) Medicare_National_HCPS_Aggregate_Summary_Table_CY2016.xls
(6) Shih-Yun Wu et al: Systematic Review and Meta-Analysis on Incidence of Altered Sensation of Mandibular Implant Surgery - PLoS ONE 11(4): e0154082
(7) Souheil Hussaini, Procedure frequency in the jaws related to implant location, Dent Oral Craniofac Res, 2016 Volume 2(2): 230-233
(8) Nguyen. Et al: Risk Factors for Permanent Injury of Inferior Alveolar and Lingual Nerves DuringThird Molar Surgery; J Oral Maxillofac Surg. 2014 Dec;72(12
(9) ASPS statistics – Annual comprehensive report 2017 – www.plasticsurgery.org/documents/News/Statistics/2017/plastic-surgery-statistics-full-report-2017.pdf
(10) www.upi.com/Lyrica-ineffective-for-chronic-pain-from-traumatic-nerve-injury/5131537877458/

112. Axogen explained that its trauma market increase was "[d]riven by [m]ultiple [p]roduct [u]sage and [p]rice." In particular, the Company presented:



113. The Company continued to characterize its market as emerging in the presentation, stating that Axogen's "[c]omprehensive product portfolio addresses [a] ***large and untapped market opportunity***." Axogen further described itself as focusing on "[d]riving deeper awareness and penetration by sub-segment" in the trauma field, and as having a "[f]oundation for [l]ong-term [s]ustainable [g]rowth" in its nerve repair product portfolio.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 51

REASONS THE STATEMENTS WERE IMPROPER

114. The statements referenced above were each improper when made because they failed to disclose and misrepresented the following material, adverse facts, which the Individual Defendants knew, consciously disregarded, or were reckless in not knowing that:

(a) Axogen overstated its total market, the extremity trauma portion of its market, and the number of peripheral nerve injuries occurring annually in the U.S.;

(b) scientific literature, including the Noble Article, did not support the Company's claimed market size and runs afoul of Axogen's stated figures;

(c) Axogen's growth opportunities were limited as it had already reached market saturation, especially in the extremity trauma area;

(d) the Company aggressively increased prices to mask lower sales, alienating customers and threatening the Company's future growth;

(e) Axogen's inventory consignment model was reasonably likely to lead to channel stuffing;

(f) Axogen's sales representatives were encouraged to backdate revenue to artificially inflate the Company's metrics;

(g) the Company was experiencing known but undisclosed deficiencies in its internal controls;

(h) Axogen's key operating metrics, including the number of active accounts, were overstated; and

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 52

(i) as a result of the foregoing, Axogen's representations concerning its business, operations, and prospects were improper.

THE TRUTH EMERGES WHILE THE IMPROPER STATEMENTS CONTINUE

115. On December 18, 2018, the truth behind the Company's business prospects and Individual Defendants' wrongdoing began to emerge, as Seligman Investments issued a detailed report titled, "AxoGen: An Overhyped, Cash-Burning Reverse Merger at 12x Revenue." The Seligman Report revealed for the first time a litany of material adverse facts concerning Axogen's business, operations, and prospects. These revelations included that: (i) the Individual Defendants grossly overstated Axogen's market size; (ii) the Company's market was not emerging, but close to saturated; (iii) Axogen's revenue growth was driven by aggressive and unsustainable price increases rather than increasing sales volume; (iv) the Company depended on a small number of high volume surgeons receiving payments from Axogen; and (v) there were red flags in the Company's culture, accounting, and controls.

The Seligman Report Reveals Axogen Grossly Overstated Its Market

116. The Seligman Report thoroughly analyzed Axogen's claimed multibillion-dollar market and concluded that it was a mere fraction of what the Individual Defendants had repeatedly claimed. In fact, contrary to the claimed $1.9 billion figure, the Seligman Report concluded that the Company's market in the field of extremity trauma was just ***$52 million***. These findings were based on extensive research including analysis of scientific literature, consultation with subject matter experts, and interviews with former Axogen employees and surgeons—many of whom are longtime customers of Axogen's products.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 53

117. The Seligman Report scoured the Noble Article that Axogen repeatedly cited and found that it ran afoul of the Company's claims concerning its total addressable market for extremity trauma—which comprised the vast majority of Axogen's total market. Although the Noble Article was used to support Axogen's proposition that there were over 700,000 trauma procedures annually in the U.S., the Seligman Report pointed out that the Noble Article discussed only one trauma center in Ontario, Canada, and that it was published in 1998, not 2008. More importantly, the Seligman Report observed the Noble Article makes "no mention of [700,000] extremity trauma procedures annually." In fact, the Seligman Report found the Noble Article "concludes the exact opposite: that peripheral nerve injuries as a percentage of trauma cases are extremely infrequent." The Noble Article found a peripheral nerve injury prevalence rate of just 2.8% rather than the 4.76% rate employed by Axogen. Further, the Seligman Report pointed out that the Noble Article's focus on a level 1 trauma center skewed its findings towards a dramatically higher peripheral nerve injury prevalence rate. Axogen's citations to the Noble Article to support its claim that "each year in the U.S. more than 1.4 million people suffer traumatic injuries [resulting in an estimated] 700,000 extremity nerve repair procedures" lead investors to believe that Axogen's claimed market size was justified.

118. After examining more recent studies that directly address the prevalence of peripheral nerve injuries as percentage of trauma patients involving larger number of patients in the U.S., the Seligman Report found the prevalence of peripheral nerve injuries is significantly lower than the rates Axogen relied upon.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 54

119. The Seligman Report discussed a study titled "Traumatic Injury in the United States: In-Patient Epidemiology 2001-2011," which was published in 2016 in *Injury*, peer-reviewed international journal dealing with all aspects of trauma care and accident surgery (the "2016 Trauma Study").[1] The 2016 Trauma Study analyzed a massive database of 20.6 million traumatic injury discharges from 2000 to 2011. The database was obtained from the U.S. Agency for Healthcare Research and Quality, a federal agency charges with improving the quality of the U.S. health care system. The 2016 Trauma Study analyzed injuries by location and type and found that: ***(i) "[t]he average annual rate of trauma discharges remained steady at 524.3 per 100,000 population"; and (ii) extremity nerve injuries comprised 0.46% of all trauma injuries.*** Unlike the Noble Article, the 2016 Trauma Study examined all trauma discharges for over a decade and examined the U.S. as a whole, rather than a single trauma facility in Canada. The 2016 Trauma Study and its resulting 0.46% peripheral nerve injury prevalence rate thus provides a better basis for determining Axogen's addressable market, and further demonstrates that the figures Axogen relied upon were unfounded.

120. The Seligman Report also examined "The Incidence of Peripheral Nerve Injury in Extremity Trauma" which was published in 2008 in a peer-reviewed scientific journal called *American Journal of Physical Medicine & Rehabilitation* (the "2008

[1] DiMaggio, Charles et al., *Traumatic Injury in the United States: In-patient Epidemiology 2000–2011*, Injury 47(7) at 1393-1403 (July 2016).

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 55

Extremity Trauma Article").[2] The 2008 Extremity Trauma Article examined a database of over sixteen million individuals in the U.S. to find the prevalence of peripheral nerve injuries associated with limb trauma. The term "limb" in the 2018 Extremity Trauma article included numerous relevant body parts including wrist, foot, ankle, hand, etc. The 2008 Extremity Trauma Article found that "***significant peripheral nerve injuries are rare in people with limb trauma, with an overall rate of 1.64%***. These low rates were likely related to the fact that nerves require considerable trauma to be injured, and that for people with uncomplicated fractures – the primary type of injury incurred – nerve injuries are infrequent." Further, the 2008 Extremity Trauma Article points out that these rates are lower than studies focused on single trauma centers (like the Noble Article) and consequently "likely reflect the population rates more accurately than single centers."

121. Using the data from these two more authoritative articles, Seligman Investments then calculated the actual estimated size of Axogen's extremity trauma market. Applying the trauma discharge rate of 524 per 100,000 individuals (as set forth in the 2016 Trauma Study) to the estimated total U.S. population of 326 million, the Seligman Report determined there are approximately 1.7 million total trauma discharges each year. Then, the Seligman Report applied the peripheral nerve injury prevalence rate of 1.64% in extremity trauma patients (as set forth in the 2008 Extremity Trauma Article) to calculate there are approximately ***28,000*** peripheral nerve injuries each year in the U.S., ***not 700,000***.

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[2] Christopher A. Taylor *et al*., *The Incidence of Peripheral Nerve Injury in Extremity Trauma*, American Journal of Physical Medicine and Rehabilitation 87(5) (May 2008).

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 56

122. Next, the Seligman Report assumed allografts were an option for 50% of all peripheral nerve injury cases. The Seligman Report noted this assumption was "aggressive and unrealistic," given that "most nerve injuries are small gap and can be repaired without use of autograft or allograft" and "[a] certain percentage of surgeons prefer autograft and remain opposed to cadaver allografts." Nevertheless, after applying the generous 50% rate, the Seligman Report determined that Axogen's allograft products could be used in approximately 14,000 peripheral nerve injury cases each year. Finally, using the nonweighted average price for the smallest ($1,500 for a 15 mm segment) and longest ($6,000 70 mm segment) lengths of Avance on the market (yielding an average selling price of $3,750), the Seligman Report determined that Axogen's total addressable market for Avance in the trauma market is only ***$52 million***—a far cry from the $976 million figure that the Company repeatedly touted to investors. In particular, the Seligman Report revealed:

Key assumptions

• Average annual rate of trauma discharges in the US from 2000-2011 – "The average annual rate of trauma discharges remained steady at 524.3 per 100,000 population" between 2000 to 2011	**524 per 100,000 population**
• Implied total trauma discharges per year, using 326MM US population	**1,708,240**
• Peripheral nerve injury prevalence in trauma patients – Prevalence indicated by most the most recent and credible US study. – A second check is a comparative study of six other studies on rates of PNI, which points to an average of 1.79%	**1.64%**
• Implied total number of PNI cases annually	**28,015**
• Percentage of PNI cases where nerve allograft is an option – Surgeon interviews indicate that most nerve injuries are small gap and can be repaired without use of autograft or allograft – A certain percentage of surgeons prefer autograft and remain opposed to cadaver allografts – Therefore, 50% is an aggressive and unrealistic assumption as the likely percentage is far smaller, but we apply it to be generous	**50%**
• Axogen nerve allograft ASP, using average of the smallest and longest lengths ($1500 for 15mm, $6000 for 70mm)	**$3,750**
• **Resulting total addressable market**	**$52MM**

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 57

123. The Seligman Report noted these findings "explain[] the mystery of why sales of Axogen's flagship allograft product [Avance] are a mere $39 [million] by our estimate, 11 years after product launch."

124. The Seligman Report corroborated its conclusion that the Company hyperbolized its actual market size by including the testimony of several former Axogen employees, including sales representatives, area managers, executives, and former independent distributers. Their accounts "describe widespread skepticism within Axogen of the [C]ompany's promoted market size and describe the numbers as "comical," "flawed," and "misleading."' The Seligman Report includes the following statements:

> "For market size they throw out a $1B+ number quite a bit. They took all peripheral nerve injuries and defined them as a revenue generator. They added up all the CPT codes and came up with a number in the billions. **It's not true. It's comical. All the reps know that. It's fluff. It's not realistic. It's maybe a $150-200mm market. It would be the kiss of death if anyone questioned that number.** No one in middle management can challenge it or make a joke about it. Have to say yes ma'am and do your job and make sure you keep it." – Former sales rep
>
> **"I've always been highly critical of the $2B nerve market size. It's a highly flawed number. I in no way believe that.** I know where that number came from and it's based on hospital admissions, percent of reported nerve cases, a lot of if's. When you look at the clinical side, things like nerve palsy etc. are self resolving and the rest are simple repairs that don't need Axogen's product. **There is a lot of conversation among Axogen's reps about the market size figure. It's a misleading number."** – Former sales manager

125. This widespread skepticism also existed among surgeons that Seligman Investments interviewed in preparing the report, which included "key opinion leaders" ("KOLs") who are the highest volume users of Avance and "in many cases are recipients of significant payments from the [C]ompany." Thus, the Seligman Report noted that any

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 58

bias on the part of these surgeons would slant positively towards Axogen. Even with this favorable bias, their testimony demonstrates the rarity of nerve allograft procedures and thus the fallacy of Axogen's claimed market size. The Seligman Report stated:

> **"Why are Axogen's graft revenues only $35mm? These injuries just aren't that common."** – Surgeon in middle US
>
> **"20,000 nerve cases per year is a ballpark. That's probably a reasonable estimate."** – Surgeon in eastern half of US
>
> **"[T]he case volume is limited. These kinds of injuries are not common…. Axogen is basically a trauma product used in academic facilities**." – Surgeon in eastern half of US
>
> "It's just the volume of these cases. There's a 10:1 ratio between lacerations and those with a gap…. **What does that say about market size? Yeah digital nerve injuries are a small market [...] Why are Axogen revenues so small after 11 years? A lot of injuries can be repaired just otherwise without a graft**." – Surgeon in eastern half of US

126. The Seligman Report thus revealed to investors that Axogen's total market size—which was repeatedly advertised as a major selling point—was a shockingly small fraction of the $2.7 billion figure most recently touted by the Individual Defendants. Further, the Seligman Report unearthed that defendants incorrectly represented the statement "each year in the U.S. more than 1.4 million people suffer traumatic injuries [resulting in an estimated] 700,000 extremity nerve repair procedures" was supported by recent and applicable scientific data. In reality, the Noble Article does not reflect recent extremity trauma procedures in the U.S. and, in fact, concludes the exact opposite: that peripheral nerve injuries are rare even in trauma cases.

127. Seligman Investment's calculations of Axogen's market size are supported by the findings of a nationally-known expert consulting firm (the "Expert Firm") retained

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 59

by the lead plaintiff in the Securities Class Action. The Expert Firm, as revealed by the Securities Class Action, calculated that the actual market opportunity for Axogen's core products in trauma and OMF is only ***$112 million***. The Expert Firm based its calculations on publicly available data from the Centers for Medicare & Medicare Services ("CMS") and the Kaiser Family Foundation, as well as Axogen's data concerning product pricing.

128. CMS's data for 2016 informs there were 4,415 nerve procedures performed in the traditional Medicare program. This data includes ***all*** nerve procedures and encompasses approximately 68% of all Medicare enrollees. After scaling this number up to the total number of Medicare enrollees and then to the total U.S. population, the Expert Firm determined there are approximately ***38,192 nerve procedures performed annually in the U.S.***, far below the 700,000 figure claimed by Axogen, and much closer to the approximate 28,000 determined by the Seligman Report. The Securities Class Action points out this calculation is backed by reliable data concerning over 11% of the total U.S. population, unlike the Noble Article focusing on a single trauma facility in Ontario. The Expert Firm's analysis demonstrates that Axogen's claimed 700,000 extremity nerve repair procedures and 68,000 to 80,350 OMF procedures were overstated by a factor of almost twenty.

129. The Expert Firm then calculated the portion of the trauma and OMF market that Axogen's products were capable of servicing in light of competition and other circumstances under two different scenarios. Assuming a rate of 50%, Axogen's serviceable market size for nerve procedures resulting from trauma or OMF is ***$56 million***,

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 60

close to the $52 million market size determined by the Seligman Report. Even with a more generous rate of 75%, the Expert Firm found the resulting market size is just $84 million.

130. In addition to incorrectly representing that the Noble Article supported Axogen's market claims, the Individual Defendants also conveyed that the Company's claims were justified by the 2011 HHS Report and the Brattain Article. Defendants cited to these articles in the 2016 and 2017 Forms 10-K to support the claim that there are "over 700,000 extremity nerve repair procedures" performed annually in the U.S. However, none of these articles support this claim.

131. The 2011 HHS Report, as mentioned above, was published by the National Center for Health Statistics, a federal government institution within the Department of Health and Human Services. The report "assesses the Nation's health by presenting trends and current information on selected measures of morbidity, mortality, health care utilization, health risk factors, prevention, health insurance, and personal health care expenditures." While seemingly broad and encompassing, the 2011 HHS Report provides nothing concerning the size of the market for peripheral nerve repair. The report spans 583 pages, never mentions the word "nerve," and only uses the word "trauma" as it relates to birth trauma and in a citation to the National Traumatic Occupational Facilities database. The 2011 HHS Report thus provides no support for Axogen's market claims.

132. As for the Brattain Article, although it states that "the U.S. market for the repair of transected peripheral nerves in the extremities is $1.32 to $1.96 billion dollar per year," its findings are as unsurprising as they are suspicious given that Axogen funded the article, as stated on its first page. In addition, the Brattain Article was never published in

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 61

a medical or scientific journal, thereby escaping the scrutiny of the peer review process. Instead, the Brattain Article was published by Magellan Medical Technology Consultants, Inc., a "full service consulting organization focused exclusively on the medical technology industry."

133. The Brattain Article inflates Axogen's market size largely by relying upon an online survey of U.S. nerve repair surgeons, specifically, a miniscule sample of responses received from "25 surveyed nerve injury surgeons (with a combined annual PNI caseload of 2,824)." The Brattain Article's method would almost certainly fail the peer review process. The article does not indicate how the sampling was conducted, nor does it mention the population of surgeons the survey was sent to or the response rate to the survey. The Brattain Article also accounts for the assumption that surgeons will be more receptive to using Axogen's products in the future, a theory that mirrors the Individual Defendants' claims. The article is riddled with puffery nearly identical to defendant Zaderej's statements during earnings calls. For example, the Brattain Article states, "we've only scratched the surface of this market." More marketing material than it is scientific research, the Brattain Article strives to support Axogen's market claims rather than objectively determine the peripheral nerve injury market's actual size. The Individual Defendants thus camouflaged this marketing material funded by Axogen as legitimate scientific research and used it to misleadingly justify Axogen's claimed market size to the public.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 62

The Seligman Report Revealed Axogen's Market Is Not "Emerging" but Close to Saturated

134. The Seligman Report further revealed the Individual Defendants improperly represented that Axogen was in the early stages of penetrating the "emerging" peripheral nerve repair market—a logical corollary to the claim that Axogen's market opportunity was fifty times greater than its revenues. However, contrary to the Individual Defendants' repeated claims that Axogen was "just scratching the surface" of this market, the Seligman Report found the Company's market was close to saturation.

135. Former employees interviewed by Seligman Investments, especially sales representatives, "consistently indicated … that Axogen is close to saturated and that new accounts and growth are becoming increasingly difficult to find." In particular, the Seligman Report stated:

> **"The number of new customers is on the way down. The number of new big customers is declining. Axogen won't secure a ton of new business.** It's partly due to pricing. A trauma hospital's price for a case goes up if they use this. It costs the hospital for nerve grafts. A trauma case could cost $25k [if they use the product]. Getting a new customer of magnitude is far and few between. The cost of sales is huge. **In peripheral nerve trauma, the market is flattening out. The company has been around for 13 years and still not made it to $100mm in sales."** – Former independent distributor
>
> **"I think Axogen is close to saturated. All the docs I've talked to around the country think that they're saturated. There's no next step, no innovation**. Everyone has the perception that Axogen is trying to sell. Unclear how much longer they can maintain this growth rate. **Only so many nerves you can do.** There's a perception in the market that the company is desperate to sell. I wasn't blown away by quality of competence of management at Axogen. Weren't investing or building infrastructure. Same nerves, same old song. Two years ago they crossed a bridge in convincing surgeons to do motor nerves not just sensory. Now they've already captured that opportunity. **No place else to grow."** – Former independent distributor

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 63

"Growth is now more challenging to achieve. It is hard to achieve." – Former sales rep

* * *

"My penetration in extremities is extremely high**. I reached a saturation rate in my territory**. I had to expand to other markets. I had to move to smaller markets. I had 80% of the extremity trauma business […] Extremity is the bread and butter of peripheral nerve. **It's saturated […] [The] market is very mature. Things became saturated a year ago.**" – Former sales rep

* * *

"**My market became flat because of a contracting issue with [the largest hospital system in my territory].** If no contract with them, no access. They've taken over a large volume of facilities. **Contracting has become more of an issue.** GPO contracting was not an issue for nerves before, but **over the over last year or so there's been a push to scrutinize it. There are some markets in my territory where Axogen could grow but not that much."**– Former distributor

136. Surgeon interview excerpts similarly contradicted Axogen's claims on early market penetration, demonstrating that the Company's products are widely known and "well-penetrated in its niche." In particular, the Seligman Report stated:

"In my circle, I have 30 surgeons in a hand surgery club. All 30 of us use Axogen. It definitely has widespread usage."– Surgeon in western half of US

"**Surgeons are definitely aware of Axogen. It's widely known. It's not new**." – Surgeon in eastern half of US

"In the last five years I've seen tremendous growth in Axogen's awareness. **Used to be that maybe 1 or 2 hands would go up if you asked at a conference. Now pretty much three-fourths of the hands in the room know their products and have some experience with them.** It's been adopted." – Surgeon in middle US

137. The Seligman Report's surgeon interviews show the Company's products are not just widely known, but also widely used in appropriate cases. These interview

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 64

excerpts further reveal that surgeons are "quick to use [Axogen] today," disaffirming the Company's claims that surgeons are "cautions adopters." Specifically, the Seligman Report provided:

> **"Over the past ten years, all my hand fellows have been using Axogen**. Ten years ago there were none. Over the last 5-6 years, they all use it." – Surgeon in western half of US
>
> "**I do 750 procedures per year…. 30 cases per year with an Axogen product. I'm maxed out. All my partners – 4 doctors – use it maximally**." – Surgeon in western half of US
>
> * * *
>
> **"Most high volume hand surgeons today, level 1 trauma center docs, are all people who stay current with newer [nerve] implants.** I do know some at high volume facilities who are reluctant to use allograft, but **most are quick to use it today.**" – Surgeon in middle US

138. Despite widespread adoption of the Company's products, the Seligman Report revealed, "Axogen is used infrequently. Surgeon after surgeon indicated that their usage of Axogen's products, already at a low percentage of their total procedures, is maxed out, providing further evidence of market saturation and a negligible market opportunity." Specifically, the Seligman Report stated:

- One of Axogen's most prominent surgeons uses the company's core product in only 30-50 procedures annually out of 500-800 total. His usage has actually declined over time.

  "I do 500-800 procedures per year. 30-50 a year use Axogen Avance graft alone. If I include their Axoguard line, then it's another 20-30 procedures with a wrap. I started using it in 2010. […] **Early on I used more Axogen […] I'm at steady state with my Axogen volume."**– Surgeon in eastern half of US

- These comments are echoed by other Axogen KOL's or speakers, whose usage of Axogen remains small relative to their total procedure

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 65

volumes. All three are at academic centers with clusters that are among Axogen's largest accounts.

"I started using Axogen five years ago. The majority of my use is trauma. **I do 750 procedures per year.** I average two to three Axogen events per month. **30 cases per year with an Axogen product. I'm maxed out. All my partners – 4 doctors – use it maximally."** – Surgeon in western half of US

"I do 4-500 surgeries per year. I use Axogen once every 2 weeks. 20-25 Avance grafts annually, maybe 30-40. I started using Axogen five years ago. As far as my colleagues, there are 10 surgeons here. Half of them use it. Collectively we use more than 200 allografts per year." – Surgeon in eastern half of US

"My practice in the next 2-3 years won't change. I and my partners are at capacity for Avance usage." – Surgeon in middle US

- Another Axogen advocate, at one of the highest volume trauma centers in the US, also indicated modest overall usage despite being a recipient of payments from AXGN and working with a cluster of pro-Axogen surgeons.

"40-50% of my practice is peripheral nerve surgery. **I do 500-600 procedures per year. My allograft usage is about 50-75 cases a year, maybe a little more.** My mean volume is 1.25 grafts per case. I mostly use 5cm grafts, 50-75% of the time. Some 3cm and 7cm. The mean length is 3-4cm. I started using Axogen 5-6 years ago seriously […] Among hand surgeons at [hospital name redacted], every one of us uses Axogen though to different degrees. It's a similar algorithm to me for trauma. Globally speaking, **the other surgeons do 20-30% of my volumes.** I do more procedures than they do in general, and a lot of nerve surgeries, so people send me those patients. I'm the go to guy for nerve repair." – Surgeon in eastern half of US

139. Seligman Investments cemented the conclusion that Axogen's market opportunity is negligible by pointing out that autograft is still the preferred method among surgeons, who tend to use Axogen's products in just a small number of cases when the cost is justified. In particular, the Seligman Report stated:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 66

"**My volume is about 700 procedures per year.** Most are elective. Some hand trauma. Majority are soft tissue injuries. Compression neuropathy, neuroma. Of the 700, the majority are upper extremity. Hand is 60%. I don't use Axogen's connector. I use their Avance nerve graft. I use Integra's Neuragen tube. **My preference is still autograft. I only use Axogen a few times a year. Less than 10 cases per year. […] I started using their allograft at least 5 or 6 years ago. I've always had small usage. It's my personal bias. Most surgeons think autograft is better. If you have a nerve injury, people want to use their own nerve to graft it.**" – Surgeon in eastern half of US

"**Axogen's claims about operating room time reduction are partially true. However, harvesting an autograft nerve from the patient doesn't take that long.** If someone is diabetic I'll use allograft because the foot is hard to heal. Allograft is costly. If I need a 40 cm graft, I can get it from one side. You'd need 6-7 pieces of allograft which would cost a fortune. Allograft is maybe economical for a small gap, where you can pay $1-2k. **The reduction in operating room time doesn't justify paying for Axogen. An ankle autograft takes a few minutes. Maybe 10-15 minutes. If no one's waiting for the room it doesn't matter. …** – Surgeon in eastern half of US

The Seligman Report Revealed Axogen's Revenue Growth Was Driven by Unsustainable, Aggressive Price Increases

140. Additionally, the Seligman Report uncovered the Company's revenue growth did not result from increasing sales volume, but rather aggressive price increases. These unsustainable price increases—employed by the Individual Defendants to maintain elevated stock prices—camouflaged Axogen's staggering sales, alienated customers, and threatened the Company's future growth.

141. Former Axogen employees and sales representatives interviewed by Seligman Investments described how Axogen routinely raised the prices of its products by as much 40% each year, explaining further that these increases are unusual relative to the medical market and render Axogen's products "more expensive than the competition." In particular, the Seligman Report stated:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 67

"The longest Avance graft is about $6,000 for 7cm. It comes in 15mm, 30mm, 50mm, 70mm lengths, and then diameters of 1-2mm, 2-3mm, 3-4mm, and 4-5mm. So there are about 4 lengths and 4 diameters. **7cm lengths with 3-4mm or 4-5mm are more robust and cost $6,200 to $6,300.** 7cm with a smaller diameter was $6,000. The 5cm length was $5,000. The 3cm was $2,800 and the 15mm was $1,500 to $1,600. Axoguard products started at $700 to $1400 and had the same price though different diameters up to 7 mm. The wraps were a bit more expensive, about 30% more than tubes." – Former sales manager

* * *

"Our pricing for tubes and wraps **is more expensive than the competition**." –Former sales manager

* * *

"The shortest Axoguard tube was $700. **It went up 40% each year**. It's now at $1400. **The Avance 7cm graft went from $3100 to $6200."** – Former sales manager

"The published list price on connectors is $1600-1700 for smaller ones. For protectors larger ones are at $2400, starting at $1800. Smaller connectors are $1200-1300. Larger connectors are $1500-1600. **Some sku's have doubled in price. Axogen has been very aggressive in price increases relative to the medical market**. The most common lengths for Avance autograft are 2-3mm. So put a premium on 3-4mm, 4-5mm lengths." – Former sales manager

142. These former employees explained that Axogen's abrasive price increases strained the Company's relationships with price-sensitive customers, including surgeons and hospitals. As a result, many customers canceled their accounts with Axogen and began using competitors' products. In particular, the Seligman Report stated:

"Axogen is exploiting their unique position in nerve allograft cost or price wise **but pissing a lot of people off, including surgeons and hospitals**. – Former independent distributor

"The reactions to price increases **got pretty ugly**. Hospital administrators would complain." – Former sales manager

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 68

"Axogen provides zero discount if not some revenue minimum. Just list price. No one wants to pay list. **Axogen is feeling pressure across the country on pricing.** They think a $200k account is nothing. They barely discount on the east and west coast. They even have 400k accounts with no discount, so they definitely wouldn't do it in my territory […] [**The academic center that was 45% of my territory's revenue] comes hard at surgeons on cost.** Surgeons were using two nerves plus wraps. **Surgeons told me they need a lower price. Axogen wouldn't do much**. We did a 5% increase vs. 15%. **Axogen does 1 year contracts and raises the price every year. Facilities don't like that. On average, it's a 15-20% price increase every year.** They say they only raise it 6% but that's not the case." – Former independent distributor

* * *

"We've been removed from accounts after price increases and then negotiated our way back in. **Axogen is not a friend at the largest institutions. There is disdain toward the company.** Most institutions have issues with consistent high price increases and the lack of contract incentives. Axogen rarely writes contract over one year. They won't guarantee pricing. **Hospitals and IDN's have taken notice.** Hospitals are used to 50% discounts and when they get only a 5-15% discount for significant volume, they're taken aback relative to other medical markets. **Sensitivity to Axogen's price increases is now higher. Negotiations are getting more intense every year.** Price increases will have to get close to 3-4%/year vs. double digit every year. The annual price increase over the product line is 10-15% every March." – Former sales manager

"I worked with [a large hospital system] to try and get a contract and they wouldn't finalize it. **Axogen's new price increase may lead [them] to say remove your protectors and connectors. Some of my surgeons have moved over to Integra recently**. I have a hard time with Axogen's board and decision making." – Former independent distributor

* * *

"There's a cap on how much Axogen can grow. There is acceptance of their product but also **dissatisfaction that they're charging as much as they can. The seeds of discord have been sown. As soon as there's a competitor, customers will shift** […] It's so easy to compete [against Axogen] when it's all about price. There's nothing to differentiate Axogen. The doctors don't care. No loyalty. **If someone cuts Axogen price by 50%, it will be a race to the bottom**." – Former independent distributor

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 69

> **"The pricing has grown so exponentially that it leaves Axogen vulnerable to someone dropping the price or someone with modest pricing.** Ambulatory surgery centers will always open their door. **We lost major accounts because of pricing**. Sometimes they would come back or sometimes not. **Not sure how long that will last. You can only turn your back on so many customers.** Their technology is muddled by economics." – Former sales manager

143. The Seligman Report further revealed that through its pricing, Axogen effectively excluded itself from entering into a significant and growing market for the Company's products—ambulatory surgery centers. Ambulatory surgery centers are out-patient surgery centers often owned by surgeons who compete with hospitals, are especially sensitive to price, and are dependent on reimbursement. Due to these factors and in light of the Company's aggressive prices, ambulatory surgery centers are unable to use Axogen's products. As a result, the Seligman Report explains, Axogen has pigeon-holed itself into a limited number of trauma centers who are "willing to eat the cost of [Axogen's] product[s] themselves." In particular, the Seligman Report stated:

> Price sensitivity in the ambulatory surgery center ("ASC") channel poses a critical threat to Axogen's business. ASC's are non-hospital outpatient surgery centers, which comprise a large and growing share of procedure volumes in AXGN's core market. Surgeons often own these facilities and have a vested interest in diverting volumes away from hospitals. Former AXGN employees as well as surgeons indicate that Axogen is shut out of this market due to aggressive pricing and lack of reimbursement, and is therefore dependent on a small number of level 1 trauma centers – typically academic centers willing to eat the cost of AXGN's product themselves.
>
> - Former sales reps and other ex-employees we spoke to universally pointed to lack of acceptance by ASC's as a significant vulnerability in AXGN's business, with ASC's owning 40-65% or more of the procedure volumes in territories we queried.
>
> **"[…] A lot of these cases are happening in ASC's. [Axogen] will lose that business** […] A lot of docs are trying to take things to surgery centers. […] We had a really hard time with ASC's. So the company's

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 70

strategy was to focus on trauma centers and level one's. Reimbursement was the reason. ASCs were transactional. Hospitals could swallow it. **The company's strategy is level ones but the field would tell them more and more [procedures] go to ASC's."** –Former sales manager

"It's much more difficult to be doing Axogen in ASC's. Axogen is priced out. Doctors like to do fingers at ASC's. They can do more cases per day and they own the center. Even if you say use Axogen for two cases per month, **the business manager will say you can't use it.** Occasionally you can get workers comp. **In my territory, easily 65% of hand surgeries were done in ASC's**." – Former sales rep

"Axogen has a very concentrated customer base in trauma centers. The business may move to surgery centers as doctors line their pockets. Then they can't get an Avance graft there because it's a premium product […] Surgery centers are different. They have a set fee, so they have to pay the bill [for Axogen] from one charge. **They can't eat up $1,400 [procedure fee] with $10,000 of Axogen products.**" – Former independent distributor

"**A lot of hand surgery is done in outpatient clinics but they're not friendly to expensive implants.** Our cheapest product is $1500 and it's a hard sell in a surgery center. **Try telling a surgeon he has to schlep to a major hospital to get reimbursed. We were getting booted out of surgery centers all the time**. They'd say I'm only using it for the worst cases and at a hospital." – Former employee

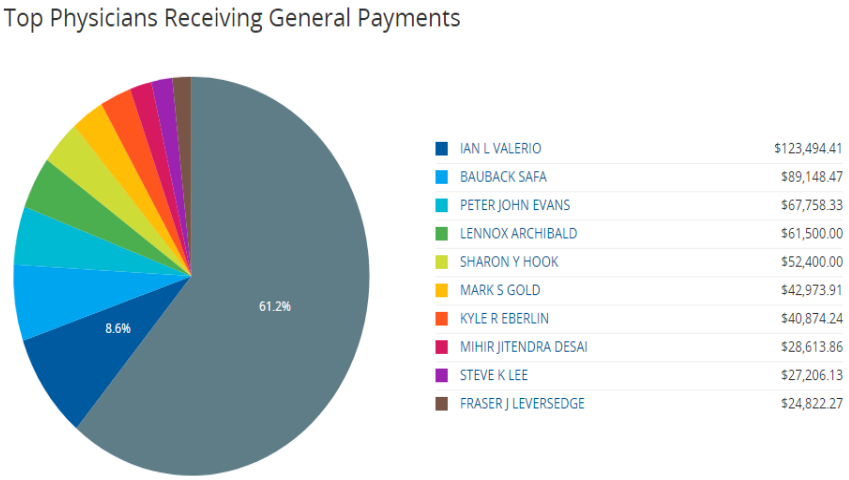
The Seligman Report Revealed the Company Depended on a Small Number of High Volume Surgeons Receiving Payments from Axogen

144. Seligman Investments also discovered that "surgeons receiving payments from [Axogen] are critically important to the [C]ompany's revenues" pointing out that this dynamic is troubling because it elevates the Company's risk of violating anti-kickback laws. In particular, the Seligman Report stated:

> Former employees and distributors indicated that surgeons receiving payments from AXGN are critically important to the company's revenues, a dynamic we find troubling, as we have observed other medtech and pharma/biotech companies become the targets of legal/regulatory action based on allegations of violating anti-kickback laws.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 71

145. Seligman Investments reviewed Open Payments, a national transparency program that collects and publishes information about financial relationships between the health care industry and providers, enabling the public to view surgeons who have received payments from companies. The Seligman Report found that "the top ten physicians receiving payments from [Axogen] … received 44% of [Axogen's] total reported general payments of $1.6MM in 2017, indicating a high risk that [the Company's] sales volumes may be concentrated at a relatively small number of surgeon groups." The data from Open Payments corroborates:

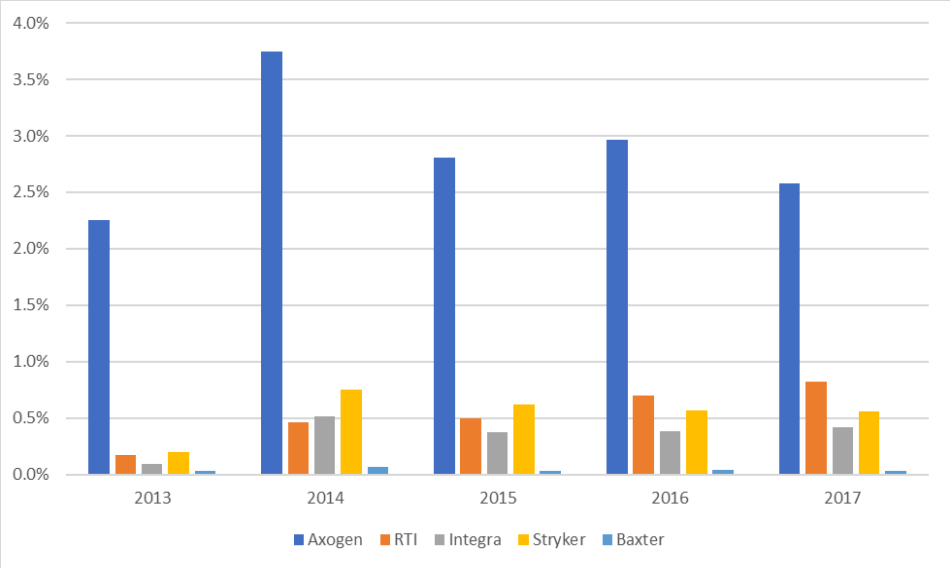


146. When compared to similar companies, the Seligman Report revealed, Axogen "stands out as an outlier," spending far greater a percentage of its revenues on payments to surgeons than those comparable companies. In particular, the Seligman Report stated:

> We compared the total general payments listed on Open Payments for AXGN to those of other companies, and analyzed them as a percentage of revenue for the past 5 years. 2017 is the latest data available. AXGN stands out as an outlier, spending a remarkable percentage of its revenues on payments relative to RTI, its closest comp, as well as versus other companies that overlap with its product offering or which AXGN describes as competitors, such as Integra (IART), Stryker (SYK) and Baxter (BAX).

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 72

Total General Payments Listed on OpenPaymentsData.CMS.gov, As A Percentage of Company Revenue



The Seligman Report Unveils Red Flags in Company Culture, Accounting, and Controls

147. Seligman Investments further revealed that Axogen's corporate culture was marked by "fear," "stock promotion," and "low morale." In particular, the Seligman Report stated:

> Virtually every former employee we spoke with described a culture of fear within the salesforce, resulting in what they described as instability in the field, rampant turnover, and low morale. In our experience with medtech companies, salesforce instability is a key warning sign before growth turns negative.
>
> * * *
>
> Former employees describe an internal culture of stock promotion, as well as skepticism of the company generally.
>
> **"The culture is 100% focused on the stock. It is 100% of the company's focus. Churn and burn."** – Former sales rep
>
> "There has been a cultural change from a clinical to a shareholder, stock focused company. **They're focused on driving the stock and story. It's a**

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 73

big part of the company culture now. Meeting the street projection has become the dominant talk at the company […] I think the company is overvalued. The burn rate is out of control. There's no strategy behind it. Not one profitable quarter or even trending to it. Huge salaries for the management team." – Former sales manager

"I left Axogen because of their style. **Once they became listed on Nasdaq, they became very street centric, not patient or employee centric. [T]he mentality is let's torch this market as fast as possible and get out.** They look good but don't look good in other regards." – Former independent distributor

148. The Seligman Report also revealed that "[f]ormer sales reps state either indirectly or bluntly that the [C]ompany has engaged in channel stuffing" thus indicating that the Company's internal controls concerning its consignment model remain ineffective, despite the Company's representations to the contrary. In particular, the Seligman Report stated:

Former sales reps state either indirectly or bluntly that the company has engaged in channel stuffing. Axogen uses a consignment model where company-owned inventory of nerves is stored in fridges at medical facilities. The company offers incentives to reps and customers for one-time, bulk purchases of the inventory on site, creating obvious potential for abuse ahead of quarters. We note the potential for control issues, as each fridge has to be checked at regular intervals to determine usage and billing for each period.

"I'm sure some channel stuffing went on." – Former sales rep

"A lot of channel stuffing is happening." – Former sales rep

"I did a lot of consignment. Property is retained by Axogen but is stored by the facility. Axogen has incentives for direct reps to convert accounts to owned where hospitals purchase the inventory. **The company incentivizes accounts for bulk purchase.** With heavy price increases, the consignment list price is 15-20% more expensive if it's consigned vs. owned by the facility. **Reps try to convert consignment to purchase inventory. […] This happens mostly in March with the annual price increase. Axogen has been doing bulk purchase incentives aggressively for 3-4 years."** – Former sales manager

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 74

149. "More disturbingly" the Seligman Report stated, "former employees allege revenue recognition practices" indicating that Axogen was "improperly backdating revenue." Specifically, the Seligman Report stated:

> **"The only shady thing is the close of months. Axogen extends the close of the month. They count contracts that went out after the end of the month. Previously end of the month was a relative term [laughing].** Any product delivered for surgery but not invoiced at the end of the month had a stub period to count it in the previous month. **They tried stopping that […] I'm not sure how successful that was.** It's usually 7-10 days into the following month." – Former sales manager
>
> "If I did a case on consignment or shipped for a big case and a train wreck came, and the hospital said ship us seven each of these sizes, we'd bill for whatever they use and ship the rest back. **We had 7 days for purchase orders for procedures into the last month. A lot of channel stuffing is happening. Every month I had one week to shore up purchase orders from the previous month. Seven business days. So if its seven days after Labor Day, I would have had until Sep 13th to clean up August. Always within a day or two, you could sneak a case one way or the other.** Just shipping some of September sales back into August. Or hold the purchase order for September vs. August." – Former sales rep

150. Following the Seligman Report's publication, Axogen's market capitalization plunged more than 35%, or $9.64 per share, on December 20, 2018, to close at $17.89 per share compared to the closing of $27.53 per share on December 17, 2018, erasing almost $372.8 million in market capitalization in three days.

Following the Seligman Report, Suspicious Departures Occur While Defendants Maintain a Claimed $2.7 Billion Market and Continue to Disappoint Investors

151. The Individual Defendants have refused to publicly acknowledge the Seligman Report or admit to any wrongdoing. However, in the immediate wake of the report's publication, Axogen's salesforce leadership suspiciously departed from the Company, indicating that the Seligman Report's revelations concerning red flags in

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 75

Axogen's culture, accounting, and controls were well-founded. Further, the Individual Defendants continue to disseminate improper statements touting Axogen's claimed $2.7 billion market while ignoring the overwhelming evidence demonstrating how grossly overestimated this claim is.

152. On January 7, 2019, the Company filed a Current Report on Form 8-K with the SEC announcing that, as of January 3, 2019, Shawn McCarrey ("McCarrey"), the Company's Vice President, U.S. Sales, "no longer works at the Company." Axogen provided no explanation for McCarrey's departure. On January 18, 2018, Axogen filed a Current Report on Form 8-K disclosing the terms of McCarrey's separation agreement, pursuant to which he would receive "a separation payment in the amount of $417,000."

153. On January 16, 2019, the Company filed a Current Report on Form 8-K with the SEC announcing that Gingrich, Axogen's Chief Commercial Officer, agreed to resign from the Company effective February 15, 2019. While Axogen provided no explanation for Gingrich's departure, the Company disclosed that he would receive a lump sum separation payment in the amount of $471,395.

154. On February 26, 2019, the Company issued a press release announcing its financial results for the fourth quarter and fiscal year ended December 31, 2018. In the press release, Axogen maintains that its "total addressable market estimate for current applications [is] $2.7 billion." In addition, the press release provided a revenue guidance of between $109 million and $114 million for fiscal 2019.

155. Also on February 26, 2019, the Company filed its Annual Report on Form 10-K for the fiscal year ended December 31, 2018 (the "2018 Form 10-K") with the SEC,

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 76

which was signed by defendants Zaderej, Mariani, Freitag, Grooms, Rudelius, Gold, Neels, and Wendell. While the Individual Defendants maintain Axogen's $2.7 billion market claim in the 2018 Form 10-K, these fiduciaries revised the Company's discussion on market opportunity. Specifically, the 2018 Form 10-K includes a new disclaimer on the "challenging" nature of estimating the total addressable market for nerve repair, contrasting with the Individual Defendants' previous confidence in calculating and consistently increasing this estimate. In particular, the 2018 Form 10-K stated:

> We estimate the United States PNI has a potential total addressable market for our current product portfolio for Trauma, OMF, Breast and Upper Extremity Compression of ***$2.7 billion*** (the "Total Addressable Market"). ***Estimating the Total Addressable Market for nerve repair is challenging as there is not a simple data source for the incidence of peripheral nerve issues***. This is further complicated by the fact that nerves can be injured in many traumatic and surgical injuries and can be impacted from the head to the toe of a patient. In addition, we believe nerves are often one of many structures injured in a trauma (i.e. amputation) or in surgery and the incidence of these nerve injuries are often not coded or tracked.

156. Yet, despite this conceded uncertainty, and despite knowledge of data sources that cut against Axogen's previously claimed market, the Individual Defendants continue to hold out their insincerely held belief that Axogen's total addressable market is $2.7 billion. Further, the 2018 Form 10-K continues to claim there are 700,000 nerve repair procedures each year in the U.S. while citing to the Noble Article, despite knowledge that its findings focused on a level 1 trauma center in Canada and that it was published over twenty years ago. Importantly, in the 2018 Form 10-K, the Individual Defendants withdrew their citations to both the 2011 HHS Report and the Brattain Article, thus

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 77

acknowledging that their citations to those sources in the 2016 and 2017 Forms 10-K were unfounded. In particular, the 2018 Form 10-K states:

> We estimate that the Trauma portion of the Total Addressable Market is approximately $1.9 billion based upon epidemiological studies regarding the general number of trauma patients, clinical literature review reporting PNI incidence and physician interviews. There are almost 137 million emergency department visits in the U.S. each year of which approximately 30 million are related to traumatic injuries (2015 National Hospital Ambulatory Medical Care Survey, Publication of U.S. Department of Health & Human Services). We believe that this injury population includes more than 1.4 million patients suffering damage or transection to peripheral nerves resulting in over 700,000 nerve repair procedures (Noble, et al. J of Trauma Injury Infection and Critical Care 1998; Portincasa et al: Microsurgery 27:455-462, 2007).

157. On the same day, Axogen held an earnings call with analysts and investors to discuss its fourth quarter and fiscal 2018 results. During the call, despite the conceded uncertainty of estimating Axogen's total addressable market, defendant Zaderej doubled down on Axogen's $2.7 billion market claim and brazenly declared that a new application "could add more than $1 billion to our total addressable market." In particular, defendant Zaderej stated:

> In November, we updated our total addressable market to be $2.7 billion. The increase is primarily based on revised assumptions for net procedure revenue values and increased prevalence of Connector Assisted Repair in trauma cases. We also announced that we will begin market development and clinical initiatives to further study the surgical treatment of chronic neuropathic pain, an application that we believe could add more than $1 billion to our total addressable market.

158. During the call, an analyst asked whether defendants had considered "any other market resizing resources" to validate Axogen's $1.9 billion trauma market. In response, defendant Zaderej admitted that "it's very hard to quantify" traumatic injury to peripheral nerves, effectively conceding that the Company had been offering its core

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 78

market size as a key selling point to investors—and increasing it—without actually being able to determine its size. She continued by reasoning that not all nerve repair procedures are reported because "nerves are really a step of a procedure, rather than most of the time a procedure in and of themselves." Reasoning that since payers sometimes "limit the number of codes … they will pay in a given procedure" defendant Zaderej argued, "nerve[s] may or may not be represented on the list." Because there is the ***potential*** that nerve repair procedures will not be coded in ***all*** trauma cases, defendant Zaderej stated the Company uses "more empirical methods," or methods that are even more uncertain and subject to biases. Axogen never explained it used empirical methods to determine its market size before. Further, this explanation stands in contrast to the Company's routine citations to scientific research. While defendant Zaderej began by admitting that peripheral nerve injuries were "hard to quantify," at the end of her longwinded explanation, she contradicted herself by stating "we've been confident we're still in the right size." In particular, the analyst asked and defendant Zaderej responded:

> **Brian David Weinstein** - *William Blair & Company L.L.C., Research Division - Partner & Healthcare Analyst*
>
> Okay. Great. And then as a follow-up. Have you guys looked at or considered any other market resizing resources, which may be broader in scope than what you've used in the past to get even more comfortable to validate again that this is $1.9 billion market on the trauma side, which you guys have been very clear about kind of where you've come up with those numbers. But is there any other validation work that you guys have done or are considering doing just to validate that?
>
> **[Defendant Zaderej]:**
>
> Yes. We've actually done a number of projects to look at primary market research with surgeons, it's ***very hard to quantify this area of -- in particular, the traumatic injury to peripheral nerve***. Those who aren't as

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 79

> familiar with the issue is that this is -- nerves are really a step of a procedure, rather than most of the time a procedure in and of themselves. And so you can't go to procedure codes. We had started originally thinking CPT codes, which is something that measures the surgeons' work. But in surgeons' work there -- many payers limit the number of codes that they will pay in a given procedure, that's typically going to be less than 5 or 5 or less. And so often in a trauma, there's a lot of things that are going on in a trauma. And nerve may or may not be represented on the list, but they end up reporting. They do the work, but it's just not coded because they don't get paid for that additional work or they don't get it recorded for that additional work. And so we've used ***more empirical methods***. We've supplemented that with direct research with surgeons, we will continue to do that. I'm not sure -- I think for us, it's a picture that we try and triangulate that says, here's multiple ways that we've looked at it and we come up with pretty much the same number each time that we do it. And we've given you one of the ways that we've looked at it, but yes, we continue to think about other ways to evaluate that. And so far, when we've done that, we've been ***confident*** we're still in the right size.

159. During the call, defendant Zaderej continued to boast Axogen's growth prospects, stating that Axogen was "building a strong foundation for long-term sustainable growth." She reiterated the revenue guidance of between $109 million and $114 million for 2019, stating that Axogen's revenue growth would be driven by the hiring of new sales representatives and guided by Axogen's new Chief Commercial Officer and Vice President of U.S. Sales. In particular, defendant Zaderej stated:

> I am proud of the progress our team made in 2018 and all we've accomplished to provide surgeons with improved nerve repair techniques to offer patients better quality of life outcomes. We have a big opportunity in front of us and are confident that we're building a strong foundation for long-term sustainable growth.
>
> We enter 2019 with a renewed and sharpened focus on consistent commercial execution. We made a number of changes to enhance our broader commercialization capabilities, including the addition of a clinical sales specialist focused on the development of our OMF and breast reconstruction applications. The expansion of our sales leadership structure, and the enhancement of our sales training programs. These changes allowed us to add 25 new sales representatives during 2018. Of which 9 were added

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 80

> in the fourth quarter, we ended the year with a total of 85 direct sales representatives.
>
> We announced the appointment of Chris Crisman as our VP of U.S. Sales, and Eric Sandberg as our new Chief Commercial Officer. Both executives joined us in January and bring extensive experience, launching new therapies that change the standard of care and leading and scaling commercial organizations to deliver results. The transition is ongoing, these new leaders are integrating quickly and we're encouraged by the energy and commitment to execution across our commercial team.
>
> * * *
>
> We expect 2019 revenue will be between $109 million and $114 million. The revised range we provided will be largely driven by revenue growth from the sales representatives onboard at the end of 2018, and includes only a modest contribution from the representatives we hire in 2019. We expect to hire more than 30 direct sales representatives in 2019, and end the year with more than 115 sales representatives.

160. On May 2, 2019, Axogen issued a press release and filed a Current Report on Form 8-K with the SEC announcing that defendant Grooms, the Company's cofounder who made proceeds of over $8.8 million in illicit insider sales, "determined that he will not stand for reelection to the [B]oard" at the August 14, 2019 Annual Meeting of Stockholders. Axogen provided no explanation for defendant Grooms' departure other than it "was not due to any disagreement with the Company."

161. On August 6, 2019, Axogen issued a press release disclosing that it was lowering its 2019 revenue guidance to range between $106 million and $110 million.

162. During the earnings call held on the same day, defendant Zaderej explained the guidance reduction resulted from lower than expected sales "due primarily to delayed productivity growth." Defendant Zaderej explained on the call that Axogen's sales failed

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 81

to grow even as the Company increased its number of sales reps. In particular, defendant Zaderej stated:

> Sales in the quarter came in at the low end of our annual guidance range due primarily to delayed productivity growth. As a result, we're updating our guidance for the year to reflect this current run rate. We now expect revenues will be in the range of $106 million to $110 million, representing growth of 26% to 31% for the full year.

163. Also during the call, defendant Mariani revealed that Axogen's sales and marketing as well as research and development expenses had sharply increased compared to the previous year. In particular, defendant Mariani stated:

> Sales and marketing expense in the second quarter was $18.5 million, up 32% over the prior year. As a percentage of revenue, sales and marketing expense in the quarter increased to 69% compared to 68% in the prior year. Research and development spending in the second quarter was $4.3 million compared to $2.6 million in the prior year. Our increased investment in R&D includes additional clinical and product development programs as well as expenditures supporting our BLA for our Avance Nerve Graft. As a percentage of revenue, R&D expense for Q2 was 16% compared to 13% in the prior year.

164. Defendant Mariani further disclosed that the Company's general and administrative expenses of $7.4 million during the second quarter of 2019, representing a 30% increase from the previous year's quarter, resulted from ***higher compensation expenses*** as well as ***litigation costs***, stating:

> General and administrative expense in the second quarter was $7.4 million, up 30% over the prior year. The increase includes higher compensation expenses, including higher noncash stock compensation and litigation and related costs.

165. On this news, Axogen's stock plunged yet again, this time by more than 29%, or $5.14 per share, on August 7, 2019, to close at $12.44 per share compared to the

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 82

previous trading day's closing of $17.58 per share, erasing over $201 million in market capitalization in a single day.

THE DIRECTOR DEFENDANTS MADE IMPROPER STATEMENTS IN THE COMPANY'S 2018 PROXY AND 2019 PROXY

The 2018 Proxy

166. On March 29, 2018, the Company issued the 2018 Proxy for the Annual Meeting of Shareholders, which was held on May 14, 2018. In the 2018 Proxy, defendants Zaderej, Freitag, Wendell, Rudelius, Gold, Neels, and Grooms solicited stockholder votes to, among other things, reelect themselves and one another to the Board.

167. In support of their bid for reelection to the Board, defendants Zaderej, Freitag, Wendell, Rudelius, Gold, Neels, and Grooms, made improper statements and omissions concerning the Company's business and growth prospects, the Board's risk oversight, and Axogen's executive compensation policies and governance.

168. The 2018 Proxy emphasized as a "business highlight[] for the past year," that Axogen had "[i]ncreased [its] total addressable market across all current applications to $2.2 billion." The 2018 Proxy thus represented that Axogen's management had improved the Company's business and growth prospects by expanding its total addressable market across current applications from $2 billion to $2.2 billion. In reality, the multibillion figure was grossly overestimated and unsupported by scientific literature.

169. Defendants Zaderej, Freitag, Wendell, Rudelius, Gold, Neels, and Grooms either knew or recklessly disregarded that the $2 billion claimed market was overestimated. Had these defendants been exercising their oversight duties, they would have known that Axogen's market claims were overstated and based on erroneous applications of irrelevant

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 83

scientific literature (the Noble Article), or the Company's own marketing material disguised as legitimate research findings (the Brattain Article). In addition, the vast majority of Axogen's total addressable market related to extremity trauma, and therefore Avance, the Company's core product. The Board therefore either knew or recklessly disregarded the actual size of the market for Avance was not as high as Axogen claimed.

170. The 2018 Proxy also highlighted the Board's supposed oversight of the Company. In particular, the 2018 Proxy assured stockholders that the Board "takes an active role in risk oversight" and regularly discusses and analyzes the risks facing Axogen, including operational, competitive, and legal risks, as well as risks associated with compensation policies and practices. Specifically, the 2018 Proxy stated:

> **Risk Oversight by our Board of Directors**
>
> Our Board of Directors takes an ***active role*** in risk oversight related to AxoGen and primarily administers its role during Board of Directors and committee meetings. During regular meetings of our Board of Directors, members of our Board of Directors discuss the operating results for each fiscal quarter. These meetings allow the members of our Board of Directors to analyze any significant financial, operational, competitive, economic, regulatory and legal risks of our business model, as well as how effectively we implement our goals. During regular Audit Committee meetings, Audit Committee members discuss the financial results for the most recent fiscal quarter with our independent auditors and our CFO. Our Audit Committee also meets with, and provides guidance to, our independent auditors outside the presence of management and oversees and reviews with management the liquidity, capital needs and allocation of our capital, our funding needs and other finance matters. In addition, our Audit Committee reviews our legal and regulatory risks and our procedures regarding the receipt, retention and treatment of complaints regarding internal accounting, accounting controls or audit matters. These discussions and processes allow the members of our Audit Committee to analyze any significant risks that could materially impact the financial health of our business.
>
> In furtherance of its risk oversight responsibilities, our Board of Directors has evaluated our overall compensation policies and practices for our

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 84

> employees to determine whether such policies and practices create incentives that could reasonably be expected to affect the risks faced by us and our management has concluded that the risks arising from our policies and practices are not reasonably likely to have a material adverse effect on the Company.

In reality, the Board was utterly failing in its oversight duties by allowing the Company to operate with inadequate internal controls. The Board knew or recklessly disregarded that they were failing in their oversight duties.

171. In further support of their bid for reelection to the Board, defendants Zaderej, Freitag, Wendell, Rudelius, Gold, Neels, and Grooms misrepresented the Company's compensation policies and governance. In particular, the 2018 Proxy assured investors that Board employs "[p]ay-for-performance" elements while failing to disclose that the Company's share price was artificially inflated as a result of the misleading statements. Further, contrary to their claimed oversight over risks associated with compensation policies and practices, the Board promoted lucrative executive compensation packages that incentivized and resulted in the improper statements detailed herein concerning the Company's business and growth prospects.

172. As a result of these misleading statements, the Company's stockholders voted to reelect defendants Zaderej, Freitag, Wendell, Rudelius, Gold, Neels, and Grooms to the Board, something Axogen's stockholders would not have done had they known the truth about the Board's improper statements and oversight failures. The 2018 Proxy harmed Axogen by reelecting those directors who had breached and who would continue to breach their fiduciary duties to the Company, and by interfering with the proper

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 85

governance on its behalf that follows the free and informed exercise of stockholder's right to vote for directors.

The 2019 Proxy

173. On June 27, 2019, the Company issued the 2019 Proxy for the 2019 Annual Meeting of the Shareholders, which was held on August 14, 2019. In the 2019 Proxy, defendants Zaderej, Freitag, Grooms, Gold, Neels, Rudelius, and Wendell solicited stockholder votes to, among other things: (i) reelect defendants Zaderej, Freitag, Gold, Neels, Rudelius, and Wendell to the Board; and (ii) approve Axogen's 2019 Plan.

174. In the 2019 Proxy, the Director Defendants continued to highlight Axogen's growth prospects, emphasizing a $2.7 billion total addressable market. In particular, the 2019 Proxy stated, "[w]e are well-positioned to deliver continued growth in our core markets and develop expansion markets." Further, the 2019 Proxy stated that one of Axogen's "business highlights for the past year" included "[u]pdat[ing] the total addressable market for current applications to ***$2.7 billion***."

175. The 2019 Proxy thus assured stockholders that Axogen was growing, and that the $2.7 billion claimed market was estimated with enough certainty that it warranted inclusion as a "business highlight." The 2019 Proxy further represented that Axogen's management had improved the Company's business and growth prospects by expanding its total addressable market across current applications from $2.2 billion to $2.7 billion. In reality, the multibillion figure was grossly overestimated and unsupported by scientific literature.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 86

176. The Director Defendants either knew or recklessly disregarded that Axogen had overestimated its total addressable market, or that the Company's claimed $2.7 billion market was calculated with enough uncertainty that it was likely incorrect or misleading. The Seligman Report alerted the Board and provided overwhelming evidence demonstrating that Axogen had miscalculated its claimed multibillion market, erroneously relied upon the Noble Article to achieve that figure, and ignored other studies that would have been more instructive to calculating the Company's actual estimated market size. Nevertheless, the Director Defendants represented that the Company's market size was $2.7 billion in the 2019 Proxy.

177. While misrepresenting the Company's claimed market size, defendants recommended that Axogen's stockholders approve the Company's 2019 Plan. The 2019 Plan, if approved, would make three million shares of common stock available for issuance to eligible participants (including directors and officers) pursuant to incentive compensation awards, and would replace Axogen's 2010 Stock Incentive Plan (the "Prior Plan"). The Prior Plan was last amended in May 2017, when stockholders voted to add 2.2 million shares to the plan's share pool. According to the 2019 Proxy, there were only 439,504 shares remaining and available for issuance as of June 20, 2019. The 2019 Plan, if approved, would permit the grant of stock options, stock awards, performance units, and other stock-based or cash awards to eligible participants.

178. In support of the bid to approve the 2019 Plan, defendants Zaderej, Freitag, Grooms, Gold, Neels, Rudelius, and Wendell highlighted the plan's "Key Features Designed to Protect Shareholders' Interests." These defendants assured Axogen's investors

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 87

that "[t]he 2019 Plan's design includes a number of provisions that promote best practices by reinforcing the alignment between equity compensation arrangements for eligible individuals and shareholders' interests." Defendants represented that one of the 2019 Plan's provisions that reinforced the link between stockholders' interests included performance-based awards. Defendants assured that "the grant of performance-based stock and cash-incentive awards … are payable only upon the attainment of specified performance goals."

179. The 2019 Proxy, however, omitted to disclose that certain of these awards were not based on the Company's actual performance, but rather on metrics misstated or otherwise manipulated by the defendants, and that the recipients of these awards included those who had breached their fiduciary duties to the Company. The 2019 Proxy thus misrepresented performance-based awards as warranted when, in reality, they were undeserved. Further, rather than reinforcing the link between stockholders, these performance-based awards encouraged defendants to misrepresent the Company's actual performance.

180. In support of defendants Zaderej, Freitag, Grooms, Gold, Neels, Rudelius, and Wendell's bid to reelect defendants Zaderej, Freitag, Gold, Neels, Rudelius, and Wendell to the Board, these defendants highlighted their supposed oversight of the Company. In particular, the 2019 Proxy assured stockholders that the Board "takes an active role in risk oversight" and regularly discusses and analyzes the risks facing Axogen, including operational, competitive, and legal risks, as well as risks associated with compensation policies and practices. Specifically, the 2019 Proxy stated:

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 88

Risk Oversight by our Board of Directors

Our Board of Directors takes an ***active role*** in risk oversight related to Axogen and primarily administers its role during Board of Directors and committee meetings. During regular meetings of our Board of Directors, members of our Board of Directors discuss the operating results for each fiscal quarter. These meetings allow the members of our Board of Directors to analyze any significant financial, operational, competitive, economic, regulatory and legal risks of our business model, as well as how effectively we implement our goals. During regular Audit Committee meetings, Audit Committee members discuss the financial results for the most recent fiscal quarter with our independent auditors and our Chief Financial Officer ("CFO"). Our Audit Committee also meets with, and provides guidance to, our independent auditors outside the presence of management and oversees and reviews with management the liquidity, capital needs and allocation of our capital, our funding needs and other finance matters. In addition, our Audit Committee reviews our legal, healthcare compliance, quality and regulatory risks and our procedures regarding the receipt, retention and treatment of whistleblower complaints regarding internal accounting, accounting controls or audit matters. These discussions and processes allow the members of our Audit Committee to analyze any significant risks that could materially impact the financial health of our business.

In furtherance of its risk oversight responsibilities, our Compensation Committee has evaluated our overall compensation policies and practices for our employees to determine whether such policies and practices create incentives that could reasonably be expected to affect the risks faced by us and our management has concluded that the risks arising from our policies and practices are not reasonably likely to have a material adverse effect on the Company.

181. Although the 2019 Proxy assured stockholders that the Board actively monitored the Company's risks, in reality, the Board was utterly failing in its oversight duties by allowing Axogen to continue to misstate its total addressable market and by operating with inadequate internal controls. In addition, contrary to their claimed oversight over risks associated with compensation policies and practices, the Board promoted lucrative executive compensation packages that incentivized and resulted in the misleading statements concerning the Company's business and growth prospects detailed herein.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 89

INSIDER SALES BY DEFENDANTS NEELS, GROOMS, FREITAG, ZADEREJ, AND RUDELIUS

182. Rather than providing the market with correct information, the Insider Selling Defendants used their knowledge of Axogen's material, nonpublic information to sell their personal holdings while the Company's stock was artificially inflated. As officers and directors of Axogen, defendants were privy to material, nonpublic information about the Company's true business health.

183. While in possession of this material, nonpublic knowledge, defendant Neels sold 1,150,000 shares of Axogen stock as the general partner of EW Healthcare for proceeds of $22.7 million in connection with the November 2017 Offering. Defendant Neels' sales were timed to maximize profit from Axogen's then artificially inflated stock price. Defendant Neels' sales are suspicious given that his stock sales represented over 23% of EW Healthcare's holdings as demonstrated by the table below:

Total Shares Before Sales	4,861,111
Shares Sold During Sales Period ("SP")	1,150,000
Shares Disposed (Other) During SP	0
Total Shares Held During SP	4,861,111
Shares Remaining SP	3,711,111
Total Proceeds from Sales	**$22,701,000.00**
% of Total Ownership Sold During SP	**23.66%**

184. While in possession of material, nonpublic information, defendant Grooms sold 341,513 shares of his personally held Axogen stock for proceeds of over $8.81 million. Defendant Grooms' sales were timed to maximize profit from Axogen's then artificially inflated stock price. Suspiciously, defendant Grooms' sales occurred in December of 2017 and February of 2018, shortly after November 20, 2017, when Axogen increased its claimed total addressable market to $2.2 billion. Although defendant Grooms' sales were

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 90

made pursuant to two 10b5-1 plans, plans designed to inoculate insiders from allegations of insider sales, both of these plans were adopted months after the improper statements began. One of these plans was adopted on November 20, 2017, the same day that Axogen increased its claimed addressable market to $2.2 billion, and the other plan was adopted shortly thereafter, on December 13, 2017. Further, defendant Grooms' sales are suspicious given that his stock sales represented over 94% of his holdings as demonstrated by the table below:

Total Shares Before Sales	351,417
Shares Sold During SP	341,513
Shares Disposed (Other) During SP	189
Total Shares Held During SP	360,395
Shares Remaining SP	18,693
Total Proceeds from Sales	**$8,815,669.38**
% of Total Ownership Sold During SP	**94.76%**

Defendant Grooms' sales during the relevant period remain suspect given their marked contrast from his prior trading practices. From March 16, 2016 to August 1, 2017 (the "pre-sales period"), defendant Grooms' sales were nonexistent.

185. While in possession of material, nonpublic information, defendant Freitag sold 65,000 shares of his personally held Axogen stock for proceeds of $2.13 million. Defendant Freitag's sales were timed to maximize profit from Axogen's then artificially inflated stock price. Suspiciously, on November 30, 2018, when Axogen stock traded near all-time highs and shortly after November 19, 2018, when Axogen increased its claimed total addressable market to $2.7 billion, defendant Freitag sold 45,000 shares at $33 per share for proceeds of over $1.48 million. Although defendant Freitag conducted this sale pursuant to a 10b5-1 plan, he adopted the plan over a year after the improper statements

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 91

began, on September 7, 2018. Thereafter, on November 9, 2018, defendant Freitag suspiciously amended the plan in anticipation of and in order to capitalize on Axogen's November 19, 2018 announcement of an increase in its total addressable market, after which he sold the 45,000 shares discussed above. Defendant Freitag's sales are further suspect given their stark contrast to his nonexistent sales during the pre-sales period and given that they represented 37% of his holdings as demonstrated by the table below:

Total Shares Before Sales	71,901
Shares Sold During SP	65,000
Shares Disposed (Other) During SP	11,036
Total Shares Held During SP	171,901
Shares Remaining SP	95,865
Total Proceeds from Sales	**$2,130,000.00**
% of Total Ownership Sold During SP	**37.81%**

186. While in possession of material, nonpublic information, defendant Zaderej sold 25,000 shares of her personally held Axogen stock for proceeds of $829,620. Defendant Zaderej's sales were timed to maximize profit from Axogen's then artificially inflated stock price. Suspiciously, defendant Zaderej's sales occurred when Axogen stock traded at or near all-time highs, on November 13, 2018, and November 14, 2018, at a price per share of $33.42 and $32.93, respectively. Defendant Zaderej's sales remain suspect given their stark contrast to her nonexistent sales during the pre-sales period.

187. While in possession of material, nonpublic information, defendant Rudelius sold 16,143 shares of his personally held Axogen stock for proceeds of $290,574. Defendant Rudelius' sales were timed to maximize profit from Axogen's then artificially inflated stock price. Although defendant Rudelius' sales were conducted pursuant to a 10b5-1 plan, he adopted the plan on August 8, 2017, after the improper statements began

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 92

and just six days after Axogen increased its total addressable market to $2 billion. Defendant Rudelius' sales are suspicious given his nonexistent sales during the pre-sales period and given that his stock sales represented over 29% of his holdings as demonstrated by the table below:

Total Shares Before Sales	23,273
Shares Sold During SP	16,143
Shares Disposed (Other) During SP	4,539
Total Shares Held During SP	55,273
Shares Remaining SP	34,591
Total Proceeds from Sales	**$290,574.00**
% of Total Ownership Sold During SP	**29.21%**

188. The Insider Selling Defendants' sales were timed to maximize profit from the Individual Defendants' overall scheme to artificially inflate Axogen's stock price. The Company's stock price climbed from $15.15 per share on August 2, 2017, the day the misleading statements began, to a high of $55.90 per share on July 23, 2018, representing a ***268% increase***. The last insider sale occurred on November 11, 2018, when Axogen's stock traded at a high of $33.48 per share. Notably, in the period between August 2, 2018 and November 11, 2018, the Insider Selling Defendants sold at least $34.76 million worth of their personally held Axogen stock.

189. In sum, five out of the seven total Director Defendants, defendants Neels, Grooms, Freitag, Zaderej, and Rudelius sold over $34.76 million worth of stock at artificially inflated prices as detailed by the table below:

Insider Last Name	Transaction Date	Shares	Price	Proceeds
FREITAG Current General Counsel and a Director	11/15/2018	20,000	$32.25	$645,000.00
	11/30/2018	45,000	$33.00	$1,485,000.00
		65,000	**Total (Sales)**	**$2,130,000.00**

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 93

GROOMS **Former Director**	12/6/2017	21,290	$26.22	$838,697.85
	12/7/2017	33,500	$26.47	$574,957.00
	12/8/2017	31,805	$26.37	$436,848.90
	12/11/2017	21,820	$26.35	$574,957.00
	12/12/2017	16,585	$26.34	$436,848.90
	2/13/2018	7,100	$26.20	$186,020.00
	2/13/2018	3,200	$26.22	$83,904.00
	2/14/2018	32,936	$26.72	$880,049.92
	2/14/2018	9,073	$26.71	$242,339.83
	2/15/2018	43,403	$27.11	$1,176,655.33
	2/16/2018	26,655	$27.35	$729,014.25
	2/20/2018	36,740	$27.90	$1,025,046.00
	2/21/2018	57,406	$28.40	$1,630,330.40
		341,513	**Total (Sales)**	**$8,815,669.38**
NEELS **Current Director**	11/20/2017	1,150,000	$19.74	$22,701,000.00
		1,150,000	**Total (Sales)**	**$22,701,000.00**
RUDELIUS **Current Director**	9/11/2017	16,143	$18.00	$290,574.00
		16,143	**Total (Sales)**	**$290,574.00**
ZADEREJ **Current President, CEO, Chairman, and a Director**	11/13/2018	13,000	$33.42	$434,460.00
	11/14/2018	12,000	$32.93	$395,160.00
		25,000	**Total (Sales)**	**$829,620.00**
		1,597,656	**Total (Sales)**	**$34,766,863.38**

DAMAGES TO AXOGEN

190. As a result of the Individual Defendants' improprieties, Axogen disseminated improper, public statements concerning the Company's business, growth prospects, and disclosure controls and procedures. These improper statements have devastated Axogen's credibility as reflected by the Company's approximate $1.45 billion, or 74%, market capitalization loss from its July 2018 high to the present.

191. Axogen's performance issues also damaged its reputation within the business community and in the capital markets. In addition to price, Axogen's current and

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 94

potential investors consider a company's trustworthiness, stability, and ability to accurately value its business prospects and evaluate growth potential. Investors are less likely to invest in companies that disseminate improper statements, fail to comply with their own internal protocols and external regulations, and are uncertain about their own business practices and financial prospects. Accordingly, Axogen's ability to attract investors is now impaired. In addition, Axogen's ability to raise equity capital or debt on favorable terms in the future is now impaired. The Company stands to incur higher marginal costs of capital and debt because the improper statements and misleading projections disseminated by the Individual Defendants have materially increased the perceived risks of investing in and lending money to the Company.

192. Further, as a direct and proximate result of the Individual Defendants' actions, Axogen has expended, and will continue to expend, significant sums of money. Such expenditures include, but are not limited to:

(a) costs incurred from defending and paying any settlement in the Securities Class Action for violations of federal securities laws; and

(b) costs incurred from compensation and benefits paid to the defendants who have breached their duties to Axogen.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

193. Plaintiff brings this action derivatively in the right and for the benefit of Axogen to redress injuries suffered, and to be suffered, by Axogen as a direct result of breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. Axogen is named as a nominal

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 95

defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise have.

194. Plaintiff will adequately and fairly represent the interests of Axogen in enforcing and prosecuting its rights.

195. Plaintiff was a stockholder of Axogen at the time of the wrongdoing complained of, has continuously been a stockholder since that time, and is a current Axogen stockholder.

196. The current Board of Axogen consists of the following eight individuals: defendants Zaderej, Freitag, Rudelius, Gold, Neels, and Wendell, and nondefendants Quentin S. Blackford and Alan M. Levine. Plaintiff has not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful, and useless act, as set forth below.

Demand Is Excused Because Defendants Zaderej, Freitag, Rudelius, Gold, Neels, and Wendell Face a Substantial Likelihood of Liability for Their Misconduct

197. As alleged above, defendants Zaderej, Freitag, Rudelius, Gold, Neels, and Wendell breached their fiduciary duties of loyalty by making improper statements in the Company's press releases and SEC filings, as well as during earnings calls and Company presentations regarding Axogen's business and growth prospects, including: (i) the value of the total addressable market for Axogen's products; (ii) the value of the extremity trauma portion of that market; (iii) the number of extremity nerve repair procedures; (iv) the existence of studies providing support for the Company's market claims; (v) Axogen's growth opportunities within an "emerging" market; (vi) Axogen's key metrics, including its number of active accounts; and (vii) the effectiveness of Axogen's disclosure controls

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 96

and internal controls over financial reporting. These statements were improper because they knowingly or recklessly misstated or omitted material, adverse facts concerning Axogen's business and growth prospects, as well as the effectiveness of the Company's internal controls and disclosure controls and procedures.

198. As alleged above, Avance is the Company's flagship product responsible for approximately 50% of Axogen's revenues. Due to Avance's status as the Company's core product, the Board either knew or recklessly disregarded that Axogen's claimed market size relating to Avance was overestimated. Nevertheless they made or approved the improper statements detailed herein concerning the market size for the Company's core product.

199. Defendants Zaderej, Freitag, Rudelius, Gold, Neels, and Wendell face a substantial likelihood of liability for signing the following documents that contained the improper statements: (i) the 2016 Form 10-K; (ii) the October 2017 Registration Statement; (iii) the 2017 Form 10-K; and (iv) the May 2018 Registration Statement.

200. As alleged above, defendants Zaderej, Freitag, Rudelius, Gold, Wendell, and Neels breached their fiduciary duties by knowingly or recklessly issuing the 2018 Proxy and 2019 Proxy soliciting their reelection to the Board and the approval of the 2019 Plan to the Company's stockholders. Specifically, defendants Zaderej, Freitag, Rudelius, Gold, and Neels misrepresented or omitted: (i) the Company's total addressable market was overestimated or not calculated with certainty; (ii) the Board's risk oversight; (iii) that the performance-based awards have been and would be issued to those who breached and continue to breach their fiduciary duties to the Company; and (iv) that the performance-

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 97

based awards incentivized the wrongful conduct detailed herein. Accordingly defendants Zaderej, Freitag, Rudelius, Gold, and Neels face a substantial likelihood of liability for issuing the 2019 Proxy and any demand upon them is therefore futile.

201. Defendants Gold and Rudelius, as members of the Audit Committee, reviewed and approved the improper statements and earnings guidance. The Audit Committee's Charter provides that it is responsible for compliance with accounting, legal, and regulatory requirements. Thus, the Audit Committee Defendants were responsible for knowingly or recklessly allowing the improper statements related to the Company's earnings guidance and financial and disclosure controls. Moreover, the Audit Committee Defendants reviewed and approved the improper press releases made to the public. Despite their knowledge or reckless disregard, the Audit Committee Defendants caused these improper statements. Accordingly, the Audit Committee Defendants breached their fiduciary duty of loyalty and good faith because they participated in the wrongdoing described herein. Thus, the Audit Committee Defendants face a substantial likelihood of liability for their breach of fiduciary duties so any demand upon them is futile.

202. Further, any suit by the current directors of Axogen to remedy these wrongs would expose defendants in the Securities Class Action (including defendants Zaderej, Freitag, Rudelius, Gold, Neels, and Wendell), and Axogen to liability for violations of the federal securities laws in the pending Securities Class Action, and would result in civil actions being filed against one or more of the other Individual Defendants. The Securities Class Action alleges violations of sections 11 and 12(a)(2) of the Securities Act as well as sections 10(b) and 20(a) of the Exchange Act. If the Board elects for the Company to press

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 98

forward with its right of action against the Securities Class Action defendants in this action, then Axogen's efforts would compromise its defense of the Securities Class Action. Accordingly, demand on the Board is excused.

203. Additionally, as alleged above, defendants Zaderej, Freitag, Neels, and Rudelius, sold Axogen stock under highly suspicious circumstances. Defendants Zaderej, Freitag, Neels, and Rudelius, as directors, possessed material, nonpublic Company information and used that information to benefit themselves. Defendants Zaderej, Freitag, Neels, and Rudelius sold stock based on this knowledge of material, nonpublic Company information regarding the Company's true business and growth prospects and the impending decrease in the value of their holdings of Axogen. Accordingly, defendants Zaderej, Freitag, Neels, and Rudelius face a substantial likelihood of liability for breach of their fiduciary duty of loyalty. Any demand upon defendants Zaderej, Freitag, Neels, and Rudelius is therefore futile.

Demand on Defendants Zaderej and Freitag Is Futile for Additional Reasons

204. The Company admits in its 2019 Proxy that defendants Zaderej and Freitag are not independent because "they serve as executive officers of the Company."

205. The principal professional occupation of defendant Zaderej is her employment with Axogen, pursuant to which she has received and continues to receive substantial monetary compensation and other benefits as alleged above. Accordingly, defendant Zaderej lacks independence from defendants Freitag, Rudelius, Gold, Neels, and Wendell due to her interest in maintaining her executive position at Axogen. This lack of independence renders defendant Zaderej incapable of impartially considering a demand to

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 99

commence and vigorously prosecute this action. Axogen paid defendant Zaderej the following compensation:

Year	Salary	Bonus	Stock Awards	Option Awards	All Other Compensation	Total
2018	$575,000	$419,175	$2,065,568	$593,418	$12,027	$3,665,188
2017	$462,500	$330,688	$1,903,500	$1,003,476	$4,808	$3,704,972

Accordingly, defendant Zaderej is incapable of impartially considering a demand to commence and vigorously prosecute this action because she has an interest in maintaining her principal occupation and the substantial compensation she receives in connection with that occupation. Demand is futile as to defendant Zaderej.

206. The principal professional occupation of defendant Freitag is his employment with Axogen, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits as alleged above. Accordingly, defendant Freitag lacks independence from defendants Zaderej, Rudelius, Gold, Neels, and Wendell due to his interest in maintaining his executive position at Axogen. This lack of independence renders defendant Freitag incapable of impartially considering a demand to commence and vigorously prosecute this action. Axogen paid defendant Freitag the following compensation:

Year	Salary	Bonus	Stock Awards	Option Awards	All Other Compensation	Total
2018	$259,000	$113,549	$289,467	$183,890	$10,739	$856,645
2017	$189,000	$83,160	$299,700	$295,691	$7,879	$875,430

Accordingly, defendant Freitag is incapable of impartially considering a demand to commence and vigorously prosecute this action because he has an interest in maintaining

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 100

his principal occupation and the substantial compensation he receives in connection with that occupation. Demand is futile as to defendant Freitag.

FIRST CAUSE OF ACTION

Against the Individual Defendants for Breach of Fiduciary Duty

207. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

208. The Individual Defendants owed and owe Axogen fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe Axogen the highest obligation of good faith, fair dealing, loyalty, and due care.

209. The Individual Defendants and each of them, violated and breached their fiduciary duties of candor, good faith, and loyalty. More specifically, the Individual Defendants violated their duty of good faith by creating a culture of lawlessness within Axogen, and/or consciously failing to prevent the Company from engaging in the unlawful acts complained of herein.

210. The Officer Defendants either knew, were reckless, or were grossly negligent in disregarding the illegal activity of such substantial magnitude and duration. The Officer Defendants either knew, were reckless, or were grossly negligent in not knowing that: (i) Axogen overstated its total addressable market, the extremity trauma portion of its market, and the number of peripheral nerve injuries occurring annually in the U.S.; (ii) scientific literature, including the Noble Article, did not support the Company's claimed market size and runs afoul of Axogen's stated figures; (iii) Axogen's growth opportunities were limited as it had already reached market saturation, especially in the

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 101

extremity trauma area; (iv) the Company aggressively increased prices to mask lower sales, alienating customers and threatening the Company's future growth; (v) Axogen's inventory consignment model was reasonably likely to lead to channel stuffing; (vi) Axogen's sales representatives were encouraged to backdate revenue to artificially inflate the Company's metrics; (vii) Axogen's key operating metrics, including the number of active accounts, were overstated; and (viii) the Company was experiencing known but undisclosed deficiencies in its internal controls. Accordingly, the Officer Defendants breached their duty of care and loyalty to the Company.

211. The Director Defendants, as directors of the Company, owed Axogen the highest duty of loyalty. These defendants breached their duty of loyalty by recklessly permitting defendants and the Company to disseminate improper statements. The Director Defendants knew or were reckless in not knowing that: (i) Axogen overstated its total addressable market, the extremity trauma portion of its market, and the number of peripheral nerve injuries occurring annually in the U.S.; (ii) scientific literature, including the Noble Article, did not support the Company's claimed market size and runs afoul of Axogen's stated figures; (iii) Axogen's growth opportunities were limited as it had already reached market saturation, especially in the extremity trauma area; (iv) the Company aggressively increased prices to mask lower sales, alienating customers and threatening the Company's future growth; (v) Axogen's inventory consignment model was reasonably likely to lead to channel stuffing; (vi) Axogen's sales representatives were encouraged to backdate revenue to artificially inflate the Company's metrics; (vii) Axogen's key operating metrics, including the number of active accounts, were overstated; and (viii) the Company

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 102

was experiencing known but undisclosed deficiencies in its internal controls. Accordingly, these defendants breached their duty of loyalty to the Company.

212. The Audit Committee Defendants breached their fiduciary duty of loyalty by approving the statements described herein which were made during their tenure on the Audit Committee, which they knew or were reckless in not knowing contained improper statements and omissions. The Audit Committee Defendants completely and utterly failed in their duty of oversight, and failed in their duty to appropriately review financial results, as required by the Audit Committee Charter in effect at the time.

213. The Insider Selling Defendants breached their duty of loyalty by selling Axogen stock on the basis of the knowledge of the improper information described above before that information was revealed to the Company's stockholders. The information described above was material, nonpublic information concerning the Company's future business prospects. It was a proprietary asset belonging to the Company, which the Insider Selling Defendants used for their own benefit when they sold Axogen common stock.

214. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations, Axogen has sustained significant damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

215. Plaintiff, on behalf of Axogen, has no adequate remedy at law.

SECOND CAUSE OF ACTION

Against the Individual Defendants for Waste of Corporate Assets

216. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 103

217. As a result of the misconduct described above, the Individual Defendants have wasted corporate assets by forcing the Company to expend valuable resources in defending itself in the Securities Class Action that they brought on with their improper statements.

218. In addition, as a result of the decision to allow the Company to operate in an environment devoid of adequate internal and financial controls, the Individual Defendants have caused Axogen to waste its assets by paying improper compensation and bonuses to certain of its executive officers and directors that breached their fiduciary duty.

219. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

220. Plaintiff, on behalf of Axogen, has no adequate remedy at law.

THIRD CAUSE OF ACTION

Against the Individual Defendants for Unjust Enrichment

221. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

222. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Axogen. The Individual Defendants were unjustly enriched as a result of the compensation and director remuneration they received while breaching fiduciary duties owed to Axogen.

223. The Insider Selling Defendants sold Axogen stock while in possession of material, nonpublic information that artificially inflated the price of Axogen stock. As a

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 104

result, the Insider Selling Defendants profited from their misconduct and were unjustly enriched through their exploitation of material and adverse inside information.

224. Plaintiff, as a stockholder and representative of Axogen, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

225. Plaintiff, on behalf of Axogen, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of Axogen, demands judgment as follows:

A. Against all of the defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the defendants' breaches of fiduciary duties, waste of corporate assets, and unjust enrichment;

B. Directing Axogen to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect Axogen and its stockholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for stockholder vote, resolutions for amendments to the Company's Bylaws or Articles of Incorporation and taking such other action as may be necessary to place before stockholders for a vote of the following corporate governance policies:

1. directing Axogen to employ an independent, third-party expert to calculate the Company's market size (including the dollar values of Axogen's total addressable market and portion of the market relating to extremity trauma and OMF);

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 105

2. a provision to control insider selling;

3. a proposal to strengthen Axogen's oversight of its disclosure procedures;

4. a proposal to strengthen the Company's controls over financial reporting;

5. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater stockholder input into the policies and guidelines of the Board; and

6. a provision to permit the stockholders of Axogen to nominate at least three candidates for election to the Board.

C. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on, or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that plaintiff on behalf of Axogen has an effective remedy;

D. Awarding to Axogen restitution from defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the defendants, including all ill-gotten gains from insider selling by defendants;

E. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 106

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: November 15, 2019

By: /s/ *Gabriel A. Costa*

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11/15/2019 5:30 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 107

VERIFICATION

I, Joseph Novitzki, hereby declare as follows:

I am the plaintiff in this action. I have read the verified stockholder derivative complaint. Based upon discussions with and reliance upon my counsel, and as to those facts of which I have personal knowledge, the complaint is true and correct to the best of my knowledge, information, and belief.

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

Signed and Accepted:

Dated: 11/1/19

JOSEPH NOVITZKI