

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ODS CAPITAL LLC,

Plaintiff,

-v-

ABBVIE INC.,

Defendant.

Case No.:

Judge:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff ODS CAPITAL LLC ("Plaintiff"), alleges as follows:

SUMMARY OF ACTION

1. Defendant AbbVie Inc. ("AbbVie") is a pharmaceutical company incorporated in Delaware. Shire plc ("Shire") is an Irish pharmaceutical company. In October 2013 AbbVie began internally discussing a strategic transaction with Shire, and approached Shire in May 2014 concerning the possibility of AbbVie acquiring Shire. AbbVie released a detailed announcement of its non-binding offer to acquire Shire on June 25, 2014, and held a conference call detailing the advantages of combining AbbVie and Shire that same day.

2. On July 13, 2014, AbbVie made a non-binding acquisition proposal to Shire of £53.20 per Shire ordinary share, composed of cash and stock. On July 14, 2014, Shire announced that its Board would be willing to recommend the offer. On July 18, AbbVie and Shire executed a Co-operation Agreement and a Merger Agreement, and issued an announcement of the proposed merger.

3. In the announcement, AbbVie disclosed certain conditions which would allow AbbVie to terminate the acquisition, but the achievability of tax-inversion benefits was not one of them.

4. In a letter to its employees, AbbVie touted the benefits of acquiring Shire, which would give AbbVie a “larger and more diversified platform” and a “deeper pipeline.” AbbVie was dependent on a single drug, Humira, for over 50% of its revenue. AbbVie traded at a depressed valuation relative to its peer companies and it was hoped that the product diversification would cause the market to give AbbVie a higher valuation multiple.

5. When the terms of the acquisition agreement were announced on July 18, 2014, AbbVie would be reincorporating in Jersey (Shire’s country of incorporation) and causing a tax inversion whereby the new company would only pay taxes to the U.S. on profits earned in the U.S.

6. Tax inversions were the subject of debate in 2014 as then-President Obama issued a budget proposal which included restrictions on tax inversions. Then-Treasury Secretary Jacob Lew sent a letter to Congress urging it to end tax inversions.

7. Investment analysts specifically asked AbbVie whether tax inversions were critical to the Shire acquisition. AbbVie’s CEO Richard Gonzalez answered: “[T]his transaction has a significant, both strategic and financial, rationale. Tax is clearly a benefit, but it’s not the primary rationale for this.” During a follow-up question concerning whether a retroactive prohibition on tax inversions would trigger the end of the deal, Gonzalez responded: “We would not be doing it if it was just for the tax impact.”

8. Only seven days later, the day after President Obama again spoke out against inversion, AbbVie issued a press release reiterating the Shire acquisition was “strategically compelling” and said nothing concerning tax inversions. This pattern repeated itself two weeks later when on August 5, 2014, the Obama administration announced it was reviewing a variety of actions to reduce the benefits of tax inversions and two days later, AbbVie’s Form 10-Q for the quarterly

period ended June 30, 2014 stated that there were compelling reasons for the acquisition, without mentioning tax inversion.

9. In September 2014 the Treasury Department actually issued changes to tax inversion regulations that would reduce some of the benefits from the Shire acquisition. Once again, the AbbVie response was to reiterate that the acquisition would go forward.

10. AbbVie shocked the market on October 14, 2014, when it announced it was reconsidering the Shire acquisition due to the Treasury Department's changes to the tax inversion regulations. A day later, AbbVie issued a press release stating its Board had withdrawn its recommendation in favor of the acquisition. The stated reason was the reduction of tax inversion benefits. American Depositary Receipts¹ ("ADRs") of Shire sold on Nasdaq fell over 30% on October 14 and 15, 2014, to a level below the price on the day AbbVie initially announced the negotiations.

11. Plaintiff purchased Shire ADRs in reliance on the public statements by AbbVie concerning the Shire acquisition and was harmed as a result.

PARTIES

12. Plaintiff ODS CAPITAL LLC resides in Jupiter, Florida. ODS CAPITAL LLC bought Shire ADRs traded on Nasdaq.

13. Defendant AbbVie Inc. is a Delaware-incorporated pharmaceutical company with its principal place of business at 1 North Waukegan Road, North Chicago, Illinois 60064. AbbVie's principal business is the discovery, development, manufacture, and sale of pharmaceutical products. AbbVie is a 2013 spin-off of another Illinois-based corporation, Abbott Laboratories. AbbVie's

¹ An American depositary receipt (ADR) is a negotiable certificate issued by a U.S. bank representing a specified number of shares (or one share) in a foreign stock traded on a U.S. exchange. www.investopedia.com/terms/a/adr.asp.

common stock trades under the ticker symbol “ABBV” on the New York Stock Exchange and the Chicago Stock Exchange. AbbVie executives operating from AbbVie’s principal executive offices in suburban Chicago directed AbbVie’s conduct at issue in this Complaint.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over AbbVie because AbbVie is a corporation with its principal place of business in Illinois and therefore is a citizen of Illinois.

15. Venue is proper in this Court because AbbVie is authorized to transact business in Illinois and maintains its registered office in Cook County, Illinois c/o its registered agent CT Corporation System, 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604. Venue is also proper in this Court because AbbVie is authorized to transact business in Illinois and is doing business in Cook County, Illinois.

16. Non-party Shire is a Jersey-registered, Irish-headquartered global pharmaceutical company with over 3,000 employees in the United States. Shire’s shares trade on the London Stock Exchange and, in the form of American Depositary Receipts (“ADRs”), on NASDAQ.

THE SHIRE ACQUISITION

Preliminary Stages

17. In October 2013, AbbVie senior management began internal discussions concerning the possibility of engaging in a strategic transaction with Shire. Representatives from J.P. Morgan provided AbbVie with a review of Shire. AbbVie senior management continued to consider internally the possibility of an acquisition or merger with Shire.

18. The AbbVie Board of Directors convened a special meeting in April 2014 at which AbbVie senior management reviewed with the AbbVie Board the potential benefits of a transaction with Shire. The AbbVie Board authorized AbbVie senior management to contact Shire and make a

non-binding, preliminary proposal regarding a potential strategic transaction. Between May 2014 and mid-June 2014, AbbVie approached Shire several times about the possibility of AbbVie's acquisition of Shire.

The Initial Announcement

19. On June 19, 2014, the UK Takeover Panel required AbbVie to issue an announcement pursuant to Rule 2.4 of the UK Takeover Code. In the announcement, AbbVie noted the recent press speculation concerning Shire and confirmed it had made three indicative, non-binding proposals to Shire, all of which had been rejected by the Shire Board. The announcement was issued on June 20, 2014 (Exhibit 1). Shire ADRs sold on Nasdaq closed up nearly 17% on June 20, 2014.

20. On June 25, 2014, AbbVie held a conference call with investors and analysts detailing the advantages of a combination of AbbVie and Shire. In conjunction with the conference call, AbbVie released a detailed announcement regarding its nonbinding offer (Exhibit 2) and a presentation detailing the merits of AbbVie's proposed acquisition of Shire (Exhibit 3). On June 25, 2014, Shire ADRs sold on Nasdaq closed up 3.52% from the prior day, and up more than 20% since the day before AbbVie's initial June 20, 2014 announcement.

21. AbbVie then conducted a series of conversations with institutional AbbVie stockholders and institutional Shire shareholders regarding the merits of an acquisition of Shire.

22. In its June 25, 2014 press release announcing its proposal to acquire Shire, AbbVie stated:

The proposed combination is strategically compelling to AbbVie and Shire and would create a larger and more diversified biopharmaceutical company with multiple leading franchises and significant financial capacity for future acquisitions, investment and enhanced shareholder distributions and value creation.

AbbVie is offering Shire shareholders compelling immediate value with significant future upside potential from ownership in New AbbVie that AbbVie expects will create long-term value for all shareholders.

23. Also on June 25, 2014, AbbVie publicly released a letter to AbbVie employees from AbbVie's Chairman and CEO Mr. Gonzalez (Exhibit 4). In his letter, Mr. Gonzalez provided a lengthy list of strategic benefits from the "strong and compelling combination" of AbbVie with Shire:

AbbVie and Shire together represent a strong and compelling combination, creating a larger and more diversified platform with significant financial capacity for future acquisitions, investment, enhanced shareholder distributions and value creation. The new company would have multiple leadership positions in immunology, rare diseases, virology, neuroscience, metabolic disease and emerging oncology.

The combination would result in accelerated growth for both companies by leveraging AbbVie's broad geographic footprint. We would utilize our commercial, regulatory, medical affairs and market access infrastructure to more rapidly and more cost effectively expand Shire's rare disease and neuroscience franchises. Additionally, we would have a broader and deeper pipeline, with more than 15 programs in Phase Three development or under regulatory review.

24. The "larger and more diversified platform" and "broader and deeper pipeline" that would result from combining AbbVie with Shire would address AbbVie's heavy dependence on a single drug, Humira®, which accounted for more than 50% of AbbVie's 2013 revenues and whose main U.S. patent expired at the end of 2016. AbbVie's lack of diversification had caused its common stock to trade at a discount to its better-diversified peers. AbbVie explained in a separate press release that day that diversification of AbbVie's product mix, a key benefit to the Shire combination, presented the "potential for New AbbVie [the combined entity] share price appreciation and potential re-rating" with a higher valuation multiple.

25. On June 25, 2014, AbbVie issued a press release announcing that the Shire "[c]ombination has compelling strategic rationale for all shareholders." According to the press release, the rationale for the proposed Merger included:

Merger to accelerate growth of both companies through multiple catalysts – AbbVie believes a merger of AbbVie and Shire would potentially accelerate growth and profitability by leveraging AbbVie's capabilities and infrastructure to make Shire's pipeline and products more successful than its

standalone prospects. AbbVie believes that this merger would result in incremental sustainable leadership positions within high value market segments of significant unmet need, including: immunology, rare diseases, neuroscience, metabolic diseases and liver disease (HCV), as well as multiple emerging oncology programs.

Strong complementary fit across existing platforms is better than standalone capabilities – AbbVie believes that Shire's platform has a strong complementary fit with AbbVie's existing specialty focus, including physician access relationships, regulatory and market access capabilities, and patient-centric focus. AbbVie's existing expertise and development capabilities across areas such as GI, neuroscience, rare oncology indications, combined with AbbVie's resources and scale, could develop global franchises from Shire's platform and utilize M&A to supplement organic growth.

Leverage AbbVie's substantial and well-established global infrastructure – AbbVie believes that Shire could achieve immediate broader geographic penetration and scale by leveraging AbbVie's existing, well-established global infrastructure across more than 170 countries, including our existing commercial, regulatory and medical affairs, and market access in key emerging markets. A Merger would provide Shire with the desired scale and infrastructure along with:

- A diversified portfolio of leading marketed products;
- Stronger growth platforms with the potential for further development; and
- A complementary specialty focus combined with global pharma capabilities.

Broader and deeper pipeline of attractive development programs – By leveraging AbbVie's established R&D infrastructure and expertise, AbbVie believes the Merger would enhance innovation and end-to-end R&D capabilities, generating:

- A best-in-class product development platform, with near-term new product launches in liver disease (HCV), neuroscience, immunology, oncology, rare diseases, ophthalmology, and renal; and
- Expertise and infrastructure, including regulatory, health economics and outcomes research, and market access to expand product indications to meet patient needs. AbbVie's track record or product optimization is evidenced by its growth of the

Humira® franchise through increased penetration in existing indications, geographic expansion, and approvals for new indications.

Substantial combined financial capacity – The enhanced financial profile of New AbbVie would offer greater strategic and financial flexibility, enabling:

- The opportunity to maximize Shire's rare disease and neuroscience franchises including resources to fully globalize Shire's planned launches;

26. On July 13, 2014, AbbVie made a non-binding acquisition proposal to Shire that had an indicative value of £53.20 per Shire Ordinary Share, comprised of £24.44 in cash and 0.8960 shares of the proposed combined AbbVie-Shire entity (the "Final Proposal").

27. On July 14, 2014, Shire released an announcement stating that it had requested and received the Final Proposal, and that the Shire Board had indicated to AbbVie that it would be willing to recommend an offer at the price level of the Final Proposal to Shire shareholders subject to satisfactory resolution of the other terms of the offer.

28. From the morning of July 15, 2014 through the morning of July 18, 2014, representatives from AbbVie and J.P. Morgan met with representatives of Shire and its financial advisors to discuss due diligence and negotiate the terms of a transaction. The negotiations centered around the conditions to the transaction, the process and timing of obtaining antitrust and competition clearances, and whether a breakup fee or other compensation payment would apply if the transaction was not to be consummated, due to the AbbVie Board changing its recommendation, the AbbVie stockholders failing to approve the transaction, or otherwise.

29. On July 17, 2014, the AbbVie Board held a special meeting to consider the proposed transaction. At the meeting, AbbVie senior management, together with its legal and financial advisors, described to the AbbVie Board the proposed terms of the combination, the financing of the

combination, and the draft transaction agreements. Representatives of J.P. Morgan reviewed the financial terms and provided a financial analysis of the proposed transaction. J.P. Morgan rendered an opinion to the AbbVie Board that, as of that date and based upon and subject to the factors and assumptions set forth in its opinion, the exchange ratio of one share of the new combined AbbVie-Shire entity for each outstanding AbbVie share in the transaction was fair, from a financial point of view, to the AbbVie stockholders.

30. After considering the proposed terms of the transaction and the various presentations of its legal and financial advisors, the AbbVie Board resolved that the transaction to acquire Shire was in the best interest of AbbVie stockholders and approved the transaction. The Board recommended adoption of a merger agreement by AbbVie stockholders, authorized AbbVie to enter into the merger agreement and other documents related to the transaction, and authorized specified officers to negotiate, execute, and deliver documents on behalf of AbbVie in connection with the transaction. It also directed AbbVie's subsidiaries to do the same and to take actions necessary or advisable to consummate the acquisition of Shire.

31. On the morning of July 18, 2014, AbbVie and Shire executed a Co-operation Agreement and a Merger Agreement, and AbbVie and Shire jointly issued an announcement pursuant to Rule 2.7 of the UK Takeover Code that the AbbVie Board and the Shire Board had reached an agreement on the terms of a recommended combination of AbbVie and Shire.

32. On the morning of July 18, 2014, AbbVie and Shire executed the Cooperation Agreement and the Merger Agreement and AbbVie and Shire jointly issued an announcement that the AbbVie Board and the Shire Board had reached an agreement on the terms of a merger of Shire and AbbVie.

33. AbbVie further disclosed that, in connection with the Merger, (i) Shire and AbbVie entered into a Cooperation Agreement (the “Cooperation Agreement”); (ii) AbbVie, AbbVie Private Limited, and AbbVie Ventures LLC entered into an Agreement and Plan of Merger, dated as of July 18, 2014 (the “Merger Agreement”); and (iii) AbbVie Holdings Private Limited, JPMorgan Chase Bank, N.A., as administrator agent and lender, and certain other parties entered into a 654-Day Bridge Credit Agreement, dated as of July 17, 2014. The Cooperation Agreement provided for a payment of a termination fee by AbbVie to Shire if the Merger was not consummated. This termination fee (paid in U.S. dollars) equaled “three percent of the product of the indicative value of the cash and shares to be delivered per Shire Share multiplied by the number of issued Shire Shares . . . and converted pursuant to the exchange rate . . .” or \$1.64 billion.

34. Specifically, with respect to the Break Fee, Section 7.1 provides that “on the occurrence of a Break Fee Payment Event . . . AbbVie will pay to Shire an amount in cash in US Dollars equal to three per cent . . . of the indicative value of the cash and shares” that AbbVie was to deliver to Shire’s stockholders in the Arrangement, calculated to be approximately \$1.635 billion (the “Break Fee”).² Section 7.2 enumerates the circumstances constituting a “Break Fee Payment Event;” relevant here, Section 7.2.1 states such an Event will occur if (1) the AbbVie board withdraws or modifies in a manner adverse to the Proposed Inversion its recommendation of the Merger; and (2) either (a) the AbbVie stockholders vote and do not adopt the Merger Agreement at a stockholder meeting following the board’s change in recommendation, or (b) no stockholder meeting takes place within 60 days after the board’s change in recommendation.

35. Second, Section 10.3 of the Cooperation Agreement further provides that if AbbVie stockholders vote to not adopt the Merger Agreement in circumstances that do not trigger the Break

² The Break Fee is sometimes referred to herein as the “termination fee.”

Fee—for example, where AbbVie’s board has not withdrawn or modified its recommendation of the Merger—AbbVie must still pay Shire to reimburse and compensate it for costs incurred in connection with the Proposed Inversion (the “Cost Reimbursement Payment”). The Cost Reimbursement Payment is calculated based on actual costs incurred by Shire, but in any event can be no less than \$500 million or not more than “one per cent . . . of the indicative value of the cash and shares” that AbbVie was to deliver to Shire’s stockholders in the Arrangement—approximately \$545 million.

36. The Cooperation Agreement did not allow AbbVie to withdraw from the Merger without paying the Break Fee or Cost Reimbursement Payment, even if the U.S. government later acted to prohibit inversions or make them more difficult.

37. AbbVie announced that the merged company would remain known as AbbVie and its shares would be listed on the New York Stock Exchange after the deal closed. AbbVie would remain headquartered in North Chicago but be incorporated in Jersey, Shire’s place of incorporation.

38. When the deal was announced, AbbVie disclosed certain conditions which would allow AbbVie to terminate the acquisition. The achievability of tax inversion benefits was not one of those conditions. When Medtronic and Covidien, two other large healthcare companies, merged they expressly conditioned the closing of their merger on the availability of tax inversion benefits. However, AbbVie and Shire expressly carved out from the conditions to closing any legal and regulatory changes aimed at tax inversions that could eliminate AbbVie’s ability to move its tax domicile outside of the United States. To Shire investors, this signaled that closing the Shire transaction did not depend on the absence of government restrictions on tax inversions.

39. Shire’s shares sold on the London Stock Exchange rose to £49.96 on July 18, 2014, up more than 33% since the day before AbbVie’s initial announcement of the acquisition on June 20,

2014. Shire ADRs sold on Nasdaq rose to \$257.06 on July 18, 2014, up more than 34% since the day before AbbVie's initial announcement of the acquisition on June 20, 2014.

Tax Inversion Benefits and Risks

40. Under the terms of the Shire acquisition agreement announced on July 18, 2014, AbbVie would reincorporate in Jersey (where Shire is incorporated), thereby effecting a "tax inversion," a procedure by which a U.S. corporation reincorporates as a foreign corporation in order to reduce U.S. taxes. Generally, the U.S. government taxes corporate profits of U.S. companies wherever they are earned, and at a rate that is higher than in many other developed countries. However, for foreign companies the U.S. taxes only their U.S. profits. When a company transforms from a U.S. company to a foreign company through a merger, i.e. "inverts," it will no longer owe U.S. tax on its profits earned outside the U.S. (though it still will owe U.S. tax on its U.S. profits). The ability to avoid U.S. taxation of foreign profits creates an incentive for companies with large foreign markets to take on the tax status of an acquired foreign company and has become the subject of intense political controversy and risk of governmental action.

41. In the first quarter of 2014, President Obama issued an annual federal budget proposal that included significant restrictions on tax inversions, which he criticized for "facilitat[ing] the erosion of the U.S. tax base." Shortly thereafter, then-Senator Carl Levin and Representative Sander Levin proposed the Stop Corporate Inversions Act of 2014 to Congress. On July 15, 2014, the day after the Shire Board indicated it was willing to recommend accepting AbbVie's offer, U.S. Treasury Secretary Lew sent a letter to Congress urging lawmakers to enact legislation to end tax inversions and to make the law retroactive to May 2014. That same week, the U.S. Senate Appropriations Committee passed a spending bill barring federal defense contracting with companies that had implemented a tax inversion. A week later, the U.S. Senate Finance Committee held a widely

publicized hearing on tax inversions, during which the committee chairman Ron Wyden and Senator Charles Schumer called for legislation restricting tax inversions.

AbbVie's Denial of Tax Inversion As a Necessary Benefit

42. On July 18, 2014, when AbbVie announced the agreed terms of its acquisition of Shire, AbbVie disclosed various terms of its agreements with Shire that demonstrated AbbVie's strong commitment to close the transaction, including:

a. A breakup fee provision that would require AbbVie to pay Shire a substantial sum in cash if AbbVie terminated the deal in certain circumstances – such breakup fee ended up amounting to \$1.635 billion; and

b. Closing conditions that did not include the achievability of tax inversion benefits.

43. Also on July 18, 2014, after AbbVie announced its agreement with Shire on acquisition terms, AbbVie CEO Gonzalez and AbbVie Chief Financial Officer William J. Chase conducted an investor conference call to discuss the deal. Gonzalez and Chase conducted this conference call from AbbVie's North Chicago offices.

44. On the July 18, 2014 conference call, investment analysts specifically asked AbbVie to address whether—in light of the substantial negative publicity and controversy surrounding tax inversions at the time and the risk of government action to eliminate or restrict tax inversion benefits—tax inversion considerations were critical to AbbVie's rationale for acquiring Shire. J.P. Morgan investment analyst Chris Schott asked, “[T]here has been a lot of noise coming out of Washington recently on the topic of inversion. Can you just talk a little bit about how you thought about that risk as you considered the Shire deal and potentially re-domiciling the Company into the UK?” Gonzalez responded:

ELECTRONICALLY FILED
6/16/2017 12:30 PM
2017-CH-08448
PAGE 13 of 32

Okay, maybe let me chat a little bit about your comment on inversion. What I would tell you is that this transaction has a significant, both strategic and financial, rationale. Tax is clearly a benefit, but it's not the primary rationale for this.

We have studied this transaction very, very carefully. We believe it is highly executable.

When we look at this particular transaction we are excited about the pipeline. We are excited about the growth aspects of several of their franchises and being able to incorporate that into our business. **There are opportunities for different kinds of synergies beyond tax.**

(Emphasis added.) (Exhibit 5).

45. Shortly after Mr. Gonzalez said that tax inversion was not AbbVie's primary rationale and that AbbVie considered the transaction "highly executable" despite the controversy surrounding inversions, Credit Suisse analyst Vamil Divan asked a follow-up question about whether an outright prohibition on tax inversions could cause the deal to fail:

[A] follow-up to Chris [Schott]'s [question] around the discussions in Washington around inversions.

There is obviously the breakup fee you guys mentioned around this deal. I'm just trying to understand kind of how important the ex-US domiciling for tax purposes is to this deal and if something were to come up where retroactively you are not able to actually change your domicile outside the US, is that something where the breakup fee would not restrict you from then going ahead and breaking up this deal and not going forward?

Id. In response, Mr. Gonzalez explained that AbbVie considered the strategic and financial rationale for the acquisition "compelling" beyond tax considerations:

As I mentioned in my comments a moment ago, this is a transaction that we believe has excellent strategic fit and has compelling financial impact well beyond the tax impact. We would not be doing it if it was just for the tax impact.

That is an additional benefit that we have. We have looked carefully at that aspect of it and we believe it is executable at a high level.

Id. at 5-6.

A full transcript of the call was made available three days later on the SEC's EDGAR website. (Exhibit 5).

46. Gonzalez's statements were widely reported in the news media, for example over Reuters on July 18, 2014. (Exhibit 6). The headline of that story was "AbbVie CEO says tax is not primary reason for buying Shire."

47. In its preliminary S-4 filing on August 21, 2014, (Exhibit 7), AbbVie stated that "[t]he AbbVie Board considered many factors in evaluating the [c]ombination and in determining to recommend the adoption of the [Shire transaction]" and "did not attribute any particular weight to any factors considered by it and did not form an opinion as to whether any individual factor (positive or negative), considered in isolation, supported or failed to support its recommendation." *Id.* at 52-53. AbbVie stated that, among other benefits, the Shire transaction was "likely to result in significant strategic and financial benefits to AbbVie and AbbVie Stockholders." *Id.* at 53. The S-4 was publicly available to all investors.

AbbVie's Misrepresentations and Concealment

48. As its subsequent actions revealed, AbbVie's statements that the Shire transaction was strategically and financially compelling beyond the tax impact, and that it had studied the transaction "very, very carefully" and had concluded it was "highly executable" despite the risk of government action against inversions, were, on information and belief, false and misleading. AbbVie concealed a material fact concerning its Board's support for the Shire transaction in its announcement and discussions of the deal with the investor community, on information and belief: that prior to the announcement of the agreement to acquire Shire, the AbbVie Board had not conducted an evaluation as to whether it would close the Shire transaction in the event the government took action that eliminated or reduced the tax inversion benefits of the deal. On information and belief, AbbVie knew that Shire investors (such as Plaintiff) would be highly reluctant to support the transaction if they knew that AbbVie had not conducted an evaluation as to

whether it would close the transaction in the event the government took such action—especially in light of the controversy surrounding tax inversions and the wide expectation that the government might take such action.

49. It was critical for investors to know that AbbVie had not conducted an evaluation as to whether or not it would close the Shire acquisition if there were a change in tax regulations because, given the public statements by President Obama and other federal officials, there was wide expectation at the time the deal was announced that the government might take such action. On information and belief, instead of acknowledging that AbbVie had not conducted an evaluation as to whether a change in tax inversion regulations could lead it to withdraw from the Shire transaction, AbbVie, in response to direct questions about the risk of governmental restrictions on inversions, assured investors that tax benefits were “not the primary rationale” for the Shire deal, and represented that it had “studied this transaction very, very carefully” and had concluded that the deal was “highly executable” despite the potential for government action. On information and belief, AbbVie understood that its misrepresentations and concealment would induce investors to acquire interests and hold substantial positions in Shire shares or Shire ADRs in support of AbbVie’s acquisition plan.

50. AbbVie did not disclose that it had not conducted an evaluation as to whether it would close the Shire transaction in the event the government took action that eliminated or reduced the tax inversion benefits of the deal. Instead, AbbVie stated that it had carefully studied tax inversion risks, considered the relative importance of tax inversion benefits, and concluded that the Shire transaction was strategically and financially compelling beyond such tax benefits. For example, any mention of tax matters in AbbVie’s June 25, 2014 press release was limited to less than 200 words out of more than 3,000, none of which stated or implied that the Shire transaction

depended on the absence of government action to reduce tax inversion benefits. AbbVie's presentation slides describing the Shire acquisition, which it also disclosed to investors on the same day, did not mention tax benefits until the 20th slide of the 40-slide presentation, and then did so only briefly. All of AbbVie's communications that day concerning its announced proposal to acquire Shire instead stated that it was pursuing Shire based on other financial and strategic benefits. Mr. Gonzalez's statements on behalf of AbbVie on July 18, 2014, as set forth above, underscored the secondary role of tax benefits to the strategic and financial benefits and showed that AbbVie's commitment to closing the Shire transaction was not contingent on the absence of government restrictions on tax inversions. Likewise, AbbVie's agreement to pay what turned out to be a \$1.635 billion breakup fee, which did not include the availability of tax inversion benefits as a condition of the deal, further indicated that the AbbVie Board had committed to the deal only after weighing the impact of potential government action against tax inversions.

51. Six days after Mr. Gonzalez's statements, on July 24, 2014, President Obama again spoke out against inversions and called companies that had re-incorporated overseas "corporate deserters." (Exhibit 8). On the day after President Obama's statement, AbbVie issued a press release reiterating that the Shire acquisition was "strategically compelling for both companies and will create a larger and more diversified biopharmaceutical company with multiple leading franchises. The new company will also have significant financial capacity for future acquisitions, investment and enhanced shareholder distributions and value creation." (Exhibit 9). AbbVie's press release did not mention tax inversion considerations or suggest that government action on tax inversions could prevent the closing of the deal.

52. Two weeks later, on August 5, 2014, the Obama administration announced that in addition to pressing for legislation restricting tax inversions, the Treasury Department had begun

“reviewing a broad range of authorities for possible administrative actions that could limit the ability of companies to engage in inversions, as well as approaches that could meaningfully reduce the tax benefits after inversions take place.” Two days after that, AbbVie again reassured investors that it was committed to closing the Shire deal. On August 7, 2014, AbbVie CFO Mr. Chase, who had been on the July 18, 2014 investor conference call with Mr. Gonzalez, spoke with analysts about the Shire acquisition. Credit Suisse analyst Vamil Divan, who had asked Mr. Gonzalez about the significance of inversion considerations on the July 18 investor conference call, and two other Credit Suisse analysts authored a widely-circulated report of the discussion with Mr. Chase. (Exhibit 10). As set forth in that August 7 report, titled “AbbVie Inc. - Discussion with CFO Provides Reassurance,” Mr. Chase stated that AbbVie had a “compelling” rationale for acquiring Shire beyond tax inversion considerations, and that AbbVie remained committed to the Shire deal despite potential government action against inversions:

ABBV remains committed to the Shire deal. Despite potential changes to the US tax code that may make inversions less attractive, ABBV’s CFO reiterated their view that the Shire deal is compelling even beyond the benefits of an inversion.

Deal close still expected in 4Q. ABBV remains confident that this is a highly-executable transaction and they continue to expect the deal to close by year-end.

Id. at 1-2 (emphasis in original).

53. On August 21, 2014, AbbVie filed with the SEC its preliminary S-4 for the Shire acquisition. (Exhibit 7). AbbVie’s S-4 discussed the anticipated strategic and financial benefits of the deal that AbbVie had disclosed in its prior press releases and investor conference materials. In the “Risk Factors” section, AbbVie referred to various proposals that had been introduced to change U.S. or international tax laws and regulations, and explained that the proposals, if enacted, could negatively impact the tax benefits of the acquisition. *Id.* at 28-32. AbbVie also stated that in late July, after AbbVie and Shire had announced the proposed acquisition, anti-tax inversion legislation

had been proposed, and the U.S. Department of the Treasury had been urged to promulgate regulations or other guidance that could adversely impact the effective tax rate of a combined AbbVie-Shire company. *Id.* at 31-32. Importantly, while AbbVie stated in its preliminary S-4 that changes in the U.S. tax laws could adversely impact the tax benefits of the AbbVie-Shire combination (*id.* at 54), AbbVie did not disclose that it might not close the Shire transaction in the event the government took action that eliminated or reduced the tax inversion benefits of the deal.

54. On September 5, 2014, AbbVie published a message from Gonzalez to AbbVie employees, providing an update on the Shire acquisition. In this message, Gonzalez reported on the ongoing work of the AbbVie and Shire teams to prepare for the “smooth integration” of the two companies:

Today I want to let you know that the AbbVie Transition Office (ATO) has been hard at work with a dedicated Shire transition team so that we will be ready to integrate once our two great companies become one. They have participated in cross-company meetings and are making plans for a smooth integration.

(Exhibit 11).

55. AbbVie also disseminated a follow-up September 5th message, from AbbVie Vice President of Enterprise Strategies Chris Turek, the executive leading AbbVie’s global effort to integrate Shire’s business into AbbVie, to AbbVie employees. Mr. Turek reported that integration teams would “launch” later that month in order to close the merger before year end:

In follow up to Rick’s message earlier today, I would like to provide you with a few key updates from the AbbVie Transition Office (ATO) related to integration planning.

The ATO is working closely with a dedicated Shire transition team for a structured and coordinated approach. We have had several initial meetings to ensure alignment. Later this month we will meet to launch our joint integration planning teams as we aim for a fourth-quarter close.

(Exhibit 12).

Tax Inversion Benefits Are Reduced

56. Shortly after these AbbVie statements about the planned integration of Shire, the government took limited action against tax inversions. On September 22, 2014, the Treasury Department issued changes to inversion-related tax regulations that would partially reduce AbbVie's tax benefit from the Shire acquisition. (Exhibit 13). Compared to many of the earlier proposals for government action, the new regulations were relatively modest. Consistent with AbbVie's statements and assurances concerning the compelling strategic rationale for the AbbVie-Shire combination beyond tax benefits, Shire ADRs moved in line with the overall market, essentially unaffected by the announcement. Shire ADRs traded on Nasdaq closed the day at \$256.30, down slightly from a close of \$258.17 on September 19th, while the S&P 500 closed the day at \$1,994.29, down slightly from a close of \$2,010.40 on September 19th. This reflected the market's assessment that this government action would not cause AbbVie to back out of the Shire transaction.

57. In the wake of the new Treasury regulations, and consistent with AbbVie's prior statements and actions, AbbVie gave no indication that its Board was considering abandoning the Shire acquisition in light of the government action. Instead, a full week later, on September 29, 2014, Gonzalez issued a letter to Shire's employees, which AbbVie publicized to investors and filed with the SEC. (Exhibit 14). Gonzalez's letter did not suggest that the recent government action would prevent the closing of the Shire acquisition. To the contrary, Gonzalez reported further on the integration efforts he had discussed in his September 5th message to AbbVie employees. Gonzalez now said: "I'm more energized than ever about our two companies coming together, especially because I can already see many shared traits and values in the people at AbbVie and Shire I'm happy to say I'm more confident than ever about the potential of our combined organizations now that I've had a chance to meet with many of you." *Id.*

ELECTRONICALLY FILED
6/16/2017 12:30 PM
2017-CH-08448
PAGE 20 of 32

58. On that same day, September 29, AbbVie also published a letter to AbbVie employees from Mr. Turek, the AbbVie executive directing the Shire integration, reporting on merger integration planning meetings between Shire and AbbVie employees that had taken place *after* the Treasury Department's announcement of new tax inversion restrictions. Turek's letter addressed AbbVie's objectives in integrating Shire, and repeated his early September message that AbbVie "aim[ed] for a fourth-quarter close" of the Shire acquisition. (Exhibit 15).

59. On information and belief, Gonzalez had financial and other incentives to maintain investor support for the deal after the September 22 regulation announcement. Gonzalez had led, had been personally involved in, and staked his own credibility on the successful conclusion of AbbVie's effort to acquire Shire. The Board's decision to close the acquisition, which would substantially increase AbbVie's market value, product lines, and global reach, would provide a basis for an increase in Gonzalez's compensation, on information and belief. Gonzalez's and Turek's September 29th statements were widely reported to confirm that the recent government action to reduce tax inversion benefits would not prevent the closing of the Shire acquisition because the strategic and other financial benefits of the deal remained. For example, on September 30, 2014, *The Wall Street Journal* published an article, "AbbVie CEO Tells Employees That Shire Deal is Going Through," which reported:

Seeking to dissuade any doubters, AbbVie chief executive Richard Gonzalez started the week by sending a memo to Shire employees to say that plans are proceeding apace to acquire Shire. At the same time, Chris Turek, a vp of enterprise strategies at AbbVie, sent a memo to AbbVie employees in which he talked up "similar cultures" and predicted the \$54 billion deal would close in the fourth quarter.

Not surprisingly, both memos were also filed with the U.S. Securities and Exchange Commission as a way to reassure investors that the deal was still being pursued.

(Exhibit 16).

The AbbVie Board's Abandonment of the Shire Acquisition

60. On October 14, 2014, only 15 days after Gonzalez's declarations that he was "more energized than ever" and "more confident than ever" about the AbbVie-Shire combination, and a little over a month after AbbVie's simultaneous disclosure of its Shire merger-integration efforts and its reiterated intention to close the transaction in the fourth quarter, AbbVie announced that it had notified Shire of the AbbVie Board's intention to reconsider its July 18, 2014 recommendation that AbbVie stockholders adopt the AbbVie-Shire merger agreement. (Exhibit 17). AbbVie announced that its Board would consider the impact of the U.S. Department of the Treasury's changes to the tax regulations issued on September 22, 2014. *Id.* The announcement surprised the market in light of AbbVie's previous statements regarding the compelling strategic and financial benefits of the deal and AbbVie's statements that it already had carefully studied the tax implications of the deal in light of possible changes to tax regulations. Shire ADRs sold on Nasdaq closed down more than 30% after the surprise announcement.

61. After this announcement, the Credit Suisse investment analyst Divan, who had heard Gonzalez and Chase describe AbbVie's compelling strategic rationale for acquiring Shire on the July 18, 2014 investor conference call, sent a report to clients stating that "AbbVie's management's credibility may now be called into question given the non-inversion benefits they touted when initially selling the deal and the fact that their limited public comments since the Treasury Notice was released have stressed the merits of getting the deal done." Oliver Staley & Cynthia Koons, "AbbVie's Threat on Shire Deal Is Latest Tax Rule Fallout," *Bloomberg Business*, October 14, 2014 (quoting Vamil Divan, Credit Suisse analyst). (Exhibit 18).

62. On October 15, 2014, AbbVie issued a press release announcing that its Board had withdrawn its July recommendation to AbbVie stockholders in favor of the proposed transaction

with Shire. (Exhibit 19). AbbVie said that its Board made this determination following its consideration of the impact of the Treasury Department's changes to the tax regulations issued on September 22, 2014. *Id.* AbbVie attributed its decision to abandon the acquisition solely to reductions in the tax inversion benefit as a result of the Treasury Department's announced changes. AbbVie said that it was abandoning the deal despite the fact that "the strategic rationale of combining our two companies remains strong." *Id.*

63. Shire securities fell even further after the announcement. On October 15, 2014, Shire ADRs sold on Nasdaq, which closed at \$191.71 on June 19, 2014 (the day before the initial announcement), closed at \$170.49.

64. The AbbVie Board's withdrawal of support for the transaction, which ensured that AbbVie's stockholders would not support the deal, triggered AbbVie's obligation to pay the \$1.635 billion breakup fee to Shire. AbbVie had also incurred hundreds of millions of dollars in additional costs related to the merger. Shire CEO Flemming Ornskø, who was preparing for a Chicago-area meeting on Shire's integration with AbbVie when he learned on October 14th that AbbVie's Board was reconsidering support for the acquisition, said of the Board's decision: "We were as dumbfounded as anyone else was who observed it from the outside." (Exhibit 20).

65. One reporter concluded that AbbVie's earlier statements that the Merger was not premised on tax benefits were "outright deceit":

AbbVie kills its \$54 billion buyout of Shire, and comes clean about its original obligations.

There's an old saying in pro sports that when a player says "it isn't about the money," it's always about the money. The same thing seems to be true in some of these massive "tax inversion" deals, in which a U.S. company agrees to buy a smaller foreign business and relocate its headquarters overseas.

After all, what conclusion other than outright deceit can be drawn from yesterday's news that Chicago-based pharma giant AbbVie Inc. ABBV

4.60% has canceled its proposed \$54 billion acquisition of Ireland-based Shire PLC SHP.

See Dan Primack, "AbbVie Finally Admits It was Trying to Dodge U.S. Taxes," FORTUNE, Oct. 22, 2014. (Exhibit 21).

Plaintiff's Justifiable Reliance on, and the Materiality of, AbbVie's Misrepresentations and Concealment

66. Plaintiff is a hedge fund that invests funds allocated by its investors in an investment strategy known as merger arbitrage. In a typical merger, an acquirer like AbbVie offers to purchase a target company like Shire at a share price significantly above the current market price of the target's shares. The premium over the current share price provides an incentive to the target's shareholders to agree to the acquisition, and typically leads to a significant immediate increase in the target's share price after announcement of the proposed merger. But before the closing date, the target's shares typically trade at a discount to the acquirer's announced offer price.

67. On June 20, 2014, after AbbVie announced its first attempts to acquire Shire shares at a significant premium to their market price, Shire's share price on the London Stock Exchange increased from £37.38 to £43.71 per share, nearly 17%. On July 18, 2014, after AbbVie's announcement of an agreement to acquire Shire for £52.48 per share (in cash and AbbVie stock), Shire's share price further increased nearly 4%, from £48.06 to £49.96, and was by then up more than 33% since the day before AbbVie's initial June 20, 2014 announcement of its attempts to negotiate a Shire purchase. Nevertheless, Shire's July 18 closing price of £49.96 reflected a discount from the agreed offer price of £52.48 (measured at that day's prices).

68. The difference between the acquirer's offer price and the post-announcement (and pre-closing) trading price of the target is known as the arbitrage spread. If the acquisition closes, this difference is eliminated at closing when the acquirer pays the offer price. But if the acquisition fails to close—for example, because an antitrust regulator blocks the merger—the target's price typically

ELECTRONICALLY FILED
6/16/2017 12:30 PM
2017-CH-08448
PAGE 24 of 32

declines dramatically, reflecting the fact that the target will no longer be acquired at the announced premium to its pre-announcement trading price.

69. Merger arbitrage investors seek to earn the arbitrage spread by buying and holding a position in the target stock until acquisition closing, based on careful monitoring of the closing probability, including by examining the statements of the acquirer and the target related to the merger.

70. A critical consideration in merger arbitrage is the probability that the acquisition will close. If the acquisition closes, the merger arbitrage investor will capture the arbitrage—the spread between the target’s price after announcement and the final closing price. But if the acquisition fails to close, the merger arbitrage investor will incur a loss when the target’s price declines after the deal’s failure becomes known in the market. The price at which merger arbitrage investors are willing to buy, and the size of the position they are willing to take, depend significantly on the probability that a merger will close.

71. Merger arbitrage aids market functioning by providing liquidity to investors in potential targets who prefer to sell their holdings before closing so as to avoid any risk that the transaction will not close. Merger arbitrage is also an important mechanism for achieving stock market efficiency in the pricing of target shares.

72. In conducting merger arbitrage, investors like Plaintiff carefully evaluate and monitor the probability that a proposed acquisition will close. Here, AbbVie’s statements describing its rationale for acquiring Shire, the disclosed conditions to closing the transaction, and AbbVie’s disclosed commitment to closing the transaction, including the June 25, 2014, July 18, 2014, and September 29, 2014 statements detailed above, were material to Plaintiff. Likewise, whether, prior to announcing the deal, AbbVie’s Board had conducted an evaluation as to whether it would close

the Shire transaction in the event the government took action that eliminated or reduced the tax inversion benefits of the deal was also material to Plaintiff.

73. Plaintiff initiated its Shire position at issue on July 14, 2014, the day Shire announced that its Board would be willing to recommend AbbVie's offer to acquire Shire, and by October 14, 2014 had increased its Shire position to approximately 26,000 Shire ADRs, with a value of approximately \$6.3 million.

AbbVie's Intent to Induce a False Belief by Shire Investors

74. Prior to July 18, 2014, AbbVie had directed numerous communications to Shire shareholders designed to garner support for Shire's acquisition by AbbVie.

75. When AbbVie publicly disclosed its increased offer price for Shire on July 8, 2014, AbbVie said that it had met with or spoken to "a large number of Shire shareholders, who collectively represent a majority of Shire's outstanding shares." (Exhibit 22). Gonzalez stated: "AbbVie has made a compelling offer to Shire that creates immediate and long-term value to shareholders of both companies. We think its shareholders should strongly encourage the Shire board to engage in constructive dialogue with AbbVie." *Id.* at 2. The same day, AbbVie stated: "AbbVie strongly encourages [Shire] shareholders to consider the Fourth Proposal [*i.e.*, the revised proposal that AbbVie announced on July 8, 2014] and communicate their perspective to Shire's Board" *Id.* Gonzalez personally participated in several meetings with large Shire shareholders between June 20, 2014 and July 8, 2014.

76. On information and belief, Gonzalez and AbbVie knew the significant Shire holdings of large merger arbitrageurs before AbbVie's July 18, 2014 deal announcement, including, for example, that Chicago-based hedge fund Pentwater had disclosed aggregate holdings representing approximately 1.35% of Shire's shares on July 17, 2014. (Exhibit 23).

77. On information and belief, Gonzalez and AbbVie understood that because merger arbitrage investors like Plaintiff had a vested interest in the Shire deal closing in order to capture the arbitrage spread, such investors who held Shire shares would, consistent with their economic interest, almost certainly approve the acquisition of Shire by AbbVie or any higher bidder, something that was not necessarily true of other Shire shareholders. Merger arbitrage investing provided liquidity to selling Shire shareholders, and placed the Shire positions in the hands of investors who would be highly unlikely to derail the transaction, because doing so would be against their rational economic interest. On information and belief, AbbVie therefore knew that it would attract merger arbitrage investors like Plaintiff by making assurances that the deal was likely to close. AbbVie had an incentive to manage the expectations of merger arbitrageurs active in the Shire deal by making statements concerning the likelihood that the deal would close.

COUNT I

Fraudulent Misrepresentation

78. Plaintiffs incorporate the allegations in paragraphs 1-77 as if set forth fully herein.

79. AbbVie's statements that "[t]he proposed combination is strategically compelling to AbbVie and Shire" (June 25, 2014), that the transaction had a "compelling financial impact well beyond the tax impact" (July 18, 2014), and that it had "studied this transaction very, very carefully" and had concluded that the deal was "highly executable" despite the potential for government action against tax inversions (July 18, 2014), were statements of material fact that on information and belief, were known by AbbVie to be false and misleading.

80. By stating that the Shire transaction was strategically and financially compelling beyond the tax impact, and that AbbVie had studied the transaction "very, very carefully" and concluded it was "highly executable" despite the risk of government restrictions on tax inversions,

AbbVie induced Shire investors to believe that AbbVie's support for the Shire transaction was not contingent on the absence of government restrictions on tax inversions because it had concluded that the deal was strategically and financially compelling beyond the tax impact. Plaintiff justifiably relied on AbbVie's statements in deciding to hold its existing position and to increase its interest in Shire ADRs.

81. AbbVie's statements on June 25, 2014 and July 18, 2014 were material to Plaintiff because Plaintiff would not have continued to hold its existing position in Shire ADRs in support of the transaction, nor would Plaintiff have acquired additional interests in Shire ADRs in support of the transaction, if Plaintiff knew that AbbVie's Board had not conducted an evaluation as to whether it would close the Shire transaction in the event that government action reduced the tax inversion benefits of the deal.

82. If AbbVie had been truthful, then Plaintiff would have unwound its existing position and would not have acquired additional Shire ADRs.

83. As a result of Plaintiff's reliance on AbbVie's misrepresentations, Plaintiff was injured. By October 14, 2014, before AbbVie announced plans to reconsider its recommendation of the merger with Shire and the resultant termination of the deal, Plaintiff had acquired Shire ADRs worth more than \$6.3 million. AbbVie's decision not to close the Shire acquisition caused the price of Shire ADRs to fall over 30%.

COUNT II

Fraudulent Concealment

84. Plaintiff incorporates the allegations in paragraphs 1-83 as if set forth fully herein.

85. Based on AbbVie's statements at the time of the announcement of the deal about the Shire transaction, including its representation that it had "studied this transaction very, very

carefully” and had concluded that the deal was “highly executable” despite the potential for government action that would eliminate or reduce tax inversion benefits of the deal, AbbVie had a duty to disclose that, on information and belief, it had not conducted an evaluation as to whether it would close the Shire transaction in the event government action eliminated or reduced the tax inversion benefits of the deal. AbbVie concealed this fact and knew that investors (such as Plaintiff) would be highly reluctant to support the transaction if they knew that AbbVie had not studied whether it would close the transaction in the event the government took such action—especially in light of the controversy surrounding tax inversions and the wide expectation that the government might take such action.

86. AbbVie’s fraudulent concealment was a device to mislead Plaintiff and other investors by making it appear that AbbVie’s commitment to closing the Shire transaction was not contingent upon the absence of government restrictions on tax inversions.

87. The concealed facts were material to Plaintiff, and Plaintiff was misled by the concealment.

88. Plaintiff could not have discovered, through reasonable inquiry, inspection, or otherwise that, on information and belief, the AbbVie Board had not conducted an evaluation as to whether it would close the Shire transaction in the event that government action eliminated or reduced the tax inversion benefits of the deal.

89. If AbbVie had been truthful that, on information and belief, it had not evaluated whether it would close the Shire transaction in the event that government action reduced the tax inversion benefits of the deal, then Plaintiff would have unwound its existing position and would not have acquired additional Shire ADRs.

90. As a result of Plaintiff's reliance on AbbVie's concealment, Plaintiff was injured. By October 14, 2014, before AbbVie announced plans to reconsider its agreement to acquire Shire and the resultant termination of the deal, Plaintiff had acquired Shire ADRs worth more than \$6.3 million. AbbVie's decision not to close the Shire acquisition caused the price of Shire ADRs to fall over 30% in just two days.

COUNT III

Fraudulent Misrepresentation (September 29, 2014 Statements)

91. Plaintiff incorporates the allegations in paragraphs 1-90 as if set forth fully herein.

92. Gonzalez's publicly disclosed statements on behalf of AbbVie on September 29, 2014, one week after the government announced new tax inversion regulations – "I'm more energized than ever about our two companies coming together, especially because I can already see many shared traits and values in the people at AbbVie and Shire" and "I'm more confident than ever about the potential of our combined organizations now that I've had a chance to meet with many of you" – were fraudulent misrepresentations. On information and belief, Gonzalez knew when he made those statements that the AbbVie Board was then evaluating whether to abandon and cause the termination of the combination his statements were describing, in light of the government announcement one week earlier. As the CEO and leader of AbbVie's effort to acquire Shire, Gonzalez had special knowledge of the probability that the merger would not close in light of the September 22, 2014 tax regulation changes. AbbVie abandoned the Shire transaction just two weeks after Gonzalez's statements. On information and belief, Gonzalez's statements lacked factual basis, and Gonzalez knew facts about AbbVie's internal reaction to the tax regulation changes that were incompatible with his statements. On information and belief, Gonzalez made the statements with

reckless disregard for their truth or falsity, knowing that Shire investors such as Plaintiff had no reason to distrust his statements.

93. Gonzalez's statements on September 29, 2014 were material to Plaintiff because Plaintiff would not have continued to hold its existing position in Shire ADRs, nor would Plaintiff have acquired additional Shire ADRs if Plaintiff knew that AbbVie was then evaluating whether to abandon the Shire acquisition as a result of the recently announced restrictions on tax inversions. Plaintiff relied on Gonzalez's September 29, 2014 statements in deciding to hold its existing position and to increase its position in Shire ADRs because the probability that the Shire acquisition would close appeared to be even higher based on Mr. Gonzalez's statements.

94. On information and belief, Gonzalez made his September 29, 2014 statements with the intent to induce Plaintiff and other similarly-situated Shire investors to continue supporting the Shire acquisition by purchasing and holding positions in Shire shares or ADRs, despite the recent tax regulation changes.

95. AbbVie had superior knowledge of its Board's evaluation as to whether to abandon the Shire acquisition following the tax inversion regulation changes. Plaintiff had no ability to determine these facts.

96. As a result of Plaintiff's reliance on AbbVie's misrepresentations, Plaintiff was injured. If AbbVie had been truthful, then Plaintiff would have unwound its existing position and would not have acquired additional Shire ADRs.

CONCLUSION

WHEREFORE, Plaintiff requests that this Court grant the following relief:

- (1) Award Plaintiff compensatory damages in an amount to be determined at trial;
- (2) Award Plaintiff punitive damages in an amount to be determined at trial;
- (3) Award Plaintiff interest in an amount to be determined by the Court; and
- (4) Grant such other relief as this Court deems appropriate and just.

Dated: June 16, 2017

POMERANTZ LLP

By: /s/ Louis C. Ludwig
Patrick V. Dahlstrom
Louis C. Ludwig
10 South LaSalle Street, Suite 3505
Chicago, IL 60603
Tel: (312) 377-1181
Email: pdahlstrom@pomlaw.com
lcludwig@pomlaw.com

GLANCY PRONGAY & MURRAY LLP

Brian P. Murray
The Helmsley Building
230 Park Avenue
Suite 530
New York, NY 10169
Tel: (212) 682-5340
Fax: (212) 884-0988
Email: bmurray@glancylaw.com

Attorneys for Plaintiff

ELECTRONICALLY FILED
6/16/2017 12:30 PM
2017-CH-08448
PAGE 32 of 32