IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Abbott Laboratories Infant Formula Shareholder Derivative Litigation	)	Civil Action No.: 22 CV 5513
	)	Judge Manish S. Shah

LEAD PLAINTIFFS INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 710 PENSION FUND AND SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY'S RESPONSE TO STEELE'S AND LIPPMAN'S MOTIONS REQUESTING TO BE NAMED IN THE CONSOLIDATED AMENDED COMPLAINT OR FOR RELIEF FROM CONSOLIDATION

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I. INTRODUCTION

Since the inception of this litigation, Lead Plaintiffs International Brotherhood of Teamsters Local No. 710 Pension Fund ("Teamsters Pension Fund") and Southeastern Pennsylvania Transportation Authority ("SEPTA") and their counsel at Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") and Scott + Scott, Attorneys at Law LLP ("Scott + Scott") have endeavored to work efficiently and collaboratively with the various stockholders that filed similar suits in this matter before the Court. All stockholders have a common goal: addressing corporate governance failures in manufacturing and selling infant formula that allegedly sickened and killed infants. Initially, Lead Plaintiffs attempted to reach agreement with the other stockholders on a leadership structure to obviate the need for a leadership dispute; later they communicated regarding fact development with a stockholder; and going forward, they intend to coordinate with and request assistance from the other stockholders as necessary and appropriate.

Of course, collaboration with other stockholders depends on them acting in the best interests of the case and of Abbott, the real party in interest. Lead Plaintiffs welcomed plaintiff Steele to join the case as an additional plaintiff, if he secured permission to access the confidential information detailed in the consolidated pleading that was produced in response to Lead Plaintiffs' books and records demands and reviewed by them, and resolved his state court books and records action (which he brought after filing a derivative complaint in federal court). But Steele declined to take those steps. Because Steele could not view the full Complaint or the documents that support it and because he continued to engage in duplicative state-court litigation where he was taking contradictory positions to those asserted in this case, Lead Plaintiffs concluded it was not in the best interests of the case or of Abbott to include him as an additional plaintiff at this time.

Unhappy with Lead Counsel's decision, Steele filed his motion, demanding that he be included on the Complaint and that his counsel be consulted on all strategy decisions going

forward. Stockholder Ilene Lippman has since joined in Steele's request through a notice of support. Their motions should be denied. *First*, Steele and Lippman have no basis in precedent or practice for their demand that any stockholder who filed a separate complaint be named as a plaintiff in a consolidated amended complaint, or that failure to do so prejudices their rights. This is a shareholder derivative action asserting claims on behalf of Nominal Defendant Abbott, and Steele and Lippman have no independent rights that are prejudiced by the appointment of other plaintiffs and counsel to lead this action. The well-established practice for leadership structures in shareholder derivative cases is what happened here: many stockholders file suit, the court consolidates the actions and appoints a leadership structure, and only those lead plaintiffs need be named on the consolidated amended complaint unless lead counsel makes a strategic decision to include other stockholders, as well. *Second*, Steele's and Lippman's alternative request to be deconsolidated and allowed to pursue parallel litigation similarly has no legal basis and would result in tremendous inefficiency, the risk of inconsistent rulings, and cause an extraordinary waste of corporate assets on duplicative litigation.

For these reasons, Steele's and Lippman's motions should be rejected.

II. FACTUAL BACKGROUND

Between October 2022 and June 2023, various stockholders filed shareholder derivative lawsuits against Abbott's directors and officers relating to, among other things, the failure of oversight with respect to Abbott's infant formula production.[1] The complaints shared a core legal theory: Abbott shareholders asserting derivative claims on behalf of Nominal Defendant Abbott.

[1] *See Martin v. Ford, et al.*, No. 1:22-cv-05513 (N.D. Ill.); *Lippman v. Ford, et al.*, No.1:23-00266 (N.D. Ill.); *Steele v. Ford, et al.*, No. 1:23-cv-00850 (N.D. Ill.); *Hamilton v. Ford, et al.*, No. 1:23-cv-02648 (N.D. Ill.); *DiNapoli v. Ford, et al.*, No. 1:23-cv-04142 (N.D. Ill.); and *Int'l Brotherhood of Teamsters Local No. 710 Pension Fund, et al. v. Ford, et al.*, No. 1:23-cv-04143 (N.D. Ill.). Additionally, stockholder Larry Huetteman voluntarily dismissed his case on March

Teamsters Pension Fund, SEPTA, New York State Common Retirement Fund, and David Hamilton all obtained confidential documents from Abbott through books and records demands prior to filing suit and used that confidential information in their complaints.[2] In contrast, neither Steele nor Lippman requested or reviewed Abbott's books and records prior to filing suit. Compl., *Steele*, No. 1:23-cv-00850 (N.D. Ill. Feb. 10, 2023), ECF 1. *The same day* that Steele filed his complaint in federal court he also first sought books and records from Abbott. Compl., *Steele v. Abbott Laboratories*, No. 23-MR-161 at ¶13 (Ill. Cir. Ct. Lake County Apr. 14, 2023) (stating that on February 10, 2023 Steele made a books and records demand on Abbott). A few months after filing his federal court complaint, Steele filed a mandamus action in state court to compel Abbott to produce books and records. *Id*. Whether Steele has a proper purpose to enforce the demand in light of his actions in federal court is currently being litigated, with a trial scheduled nearly a year from now on September 23, 2024. ECF 98 (Ex. A to Bottini Decl.).

The Court considered the various stockholders' petitions to seek case leadership, ultimately selecting Teamsters Pension Fund and SEPTA as lead plaintiffs and Cohen Milstein and Scott + Scott as lead counsel. ECF 57; ECF 86. The Court noted, "I've considered appointing co-leads across the movants, but that would be unwieldy." ECF 86 at 3. The Court also consolidated the various actions, as all stockholders—including Steele and Lippman—agreed was proper. *Id.* at 1.

Shortly before the October 16, 2023, deadline for the consolidated amended complaint (the "Complaint"), attorney Francis A. Bottini ("Bottini"), on behalf of Steele contacted Lead Counsel

29, 2023. Notice of Voluntary Dismissal, *Huetteman v. Ford et al.*, No. 1:23-cv-00296 (N.D. Ill. Mar. 29, 2023), ECF No. 10.

[2] *See* Compl. at 1 n.1, *Int'l Brotherhood of Teamsters Local No. 710 Pension Fund*, No. 1:23-cv-04143 (N.D. Ill. June 27, 2023), ECF 1; Compl. at 1 n.1, *DiNapoli*, No. 1:23-cv-04142 (N.D. Ill. June 27, 2023), ECF 1; Compl. at 2, *Hamilton*, No. 1:23-cv-02648 (N.D. Ill. April 27, 2023).

and asked that Steele be added to the Complaint. Declaration of Carol V. Gilden and Geoffrey M. Johnson ("Gilden-Johnson Decl.") ¶8. As explained further below, for strategic litigation reasons and acting for the best interests of Abbott, the Nominal Defendant, and the successful and efficient prosecution of this litigation, Lead Counsel informed Steele's counsel that Steele could be added as an additional plaintiff to the Complaint if he: (1) reached agreement with Defendants to obtain access to Abbott's confidential books and records; and (2) resolved his state-court mandamus action, in which he is taking legal positions inconsistent with those in this case. *Id.* ¶¶14-17. These requirements were communicated to Bottini five times by phone and/or email including on October 12, 13, 14, 15 and 16. *Id.* ¶¶14, 17, 21, 23, 25. Defendants were advised of Steele's wish to be named in the Complaint and agreed to provide Steele with Abbott's books and records, if he dismissed his state-court mandamus action. *Id.* ¶12. Lead Counsel recommended he accept that offer, but Steele declined. *Id.* ¶¶17, 21, 23, 25.

On October 12, 13, 14, 15, and 16, Lead Counsel advised Bottini that because his client declined to resolve the potential conflict between his state court action and the federal action and still could not access the books and records Teamsters Pension Fund and SEPTA were using to inform the Complaint, Steele could not serve as a named plaintiff. *Id.* ¶¶14, 17, 21, 23, 25.

On October 16, 2023, Lead Plaintiffs filed the 174-page Complaint. ECF 91. The Complaint reflected Lead Plaintiffs' analysis and incorporation of relevant factual allegations, legal theories, and claims from the various complaints, as well as review of documentary evidence provided by one of the original plaintiffs. Gilden-Johnson Decl. ¶26.

On October 19, 2023, Steele filed a motion to be added to the Complaint or alternatively for his case to be deconsolidated. ECF 96 (the "Motion"). The next day, October 20, 2023,

Lippman filed a notice supporting Steele's motion and similarly requesting to be added to the Complaint or relieved from the consolidation order.[3] ECF 97.

III. ARGUMENT

A. Original Plaintiffs Need Not Be Named in the Complaint in a Shareholder Derivative Action

Through the Motion, Steele contends that his exclusion as a named party in the Complaint was an "abuse" of his rights and acts as a "*de facto* dismissal of Mr. Steele's and the other plaintiffs' claims." *See* Motion at 2. As set forth below, Steele's argument misstates the nature of shareholder derivative actions and ignores precedent and common practice concerning the filing of consolidated complaints in representative litigation.

"Because corporate decisions (such as suing on its behalf) are typically in the hands of the board of directors, derivative suits represent an anomaly of corporate governance." *Dorvit v. Winemaster*, 950 F.3d 984, 988 (7th Cir. 2020). "[I]n a shareholders' derivative action, the individual investor is not an injured party and is not entitled to litigate. A derivative suit is brought by an investor in the corporation's (not the investor's) right to recover for injury to the corporation." *Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998), *aff'd sub nom. California Pub. Emps.' Ret. Sys. v. Felzen*, 525 U.S. 315, 119 S. Ct. 720, 142 L. Ed. 2d 766 (1999); *see also Frank v. Hadesman & Frank, Inc.*, 83 F.3d 158, 160 (7th Cir. 1996) ("An action in which the holder [i.e., the investor] can prevail only by showing an injury or breach of duty to the corporation should be treated as a derivative action.... An action in which the holder can prevail without showing an injury or breach of duty to the corporation should be treated as a direct action that may be maintained by the holder in an individual capacity.") (citing The American Law Institute's

[3] Lippman's half-page notice effectively joining Steele's motion was the first Lead Plaintiffs heard of Lippman's purported interest in being included in the Complaint.

Principles of Corporate Governance: Analysis and Recommendations § 7.01 (1992)) (brackets in original). Thus, "the corporation holds the legal claim," even when a stockholder asserts that claim on the company's behalf. *Felzen*, 134 F.3d at 875 (citation omitted).

Here, the Court appointed Teamsters Pension Fund and SEPTA as Lead Plaintiffs to litigate the Company's claims arising from the corporate governance failures and related claims surrounding "Abbott's production and sale of infant formula products." *See* Order at 1. As these claims are for the benefit of the Company, Lead Plaintiffs did not "abuse" the rights of Steele or any other plaintiff or improperly "dismiss" any claims when those stockholders were not named as additional plaintiffs in the Complaint, as Steele contends. *See* Motion at 2. This action seeks to hold Defendants liable for their "***significant harm to the Company***," with the damages and relief flowing to Abbott and not any shareholders individually. *See*, Complaint, ¶15 & Prayer for Relief (emphasis added). While the Motion asserts that "Steele's rights would be prejudiced" unless the Court forces Lead Plaintiffs to include him as an additional representative plaintiff in the Complaint, he ignores that the Company's rights are being asserted through this action—not his.[4] *See* Motion 7.

Simply put, declining to name Steele as an additional party has not harmed any rights he might have as a stockholder or litigant. The Company is the real party-in-interest, and court-appointed Lead Plaintiffs, Teamsters Pension Fund and SEPTA—two sophisticated institutions who have chosen counsel to prosecute these derivative claims—will provide adequate oversight of Lead Counsel. All should be trusted to work for the benefit of the Company. Thus, by asking to be a named plaintiff, Steele (joined by Lippman) is truly asking the Court to reconsider its recent

[4] Additionally, the viable claims in Steele's original complaint overlap those in the Complaint. Accordingly, the claims that Steele would have pursued on Abbott's behalf are, in fact, being pursued, further undermining his claims of prejudice.

ruling on the leadership motion to give Steele (and his counsel) the ability to oversee this derivative litigation and Lead Counsel's work. The request, however, is not necessary to protect Steele's purported rights.

Moreover, in naming only Lead Plaintiffs, the Complaint is consistent with standard practice and precedent. For example, in an earlier shareholder derivative action filed on behalf of Abbott, the Court addressed contested leadership motions and appointed one plaintiff to litigate the Company's claims. *Chester County Employees' Retirement Fund v. White*, 2012 WL 1245724 at *5 (N.D. Ill. Apr. 13, 2012). As Abbott was the real party in interest, that lead plaintiff did not include the non-lead plaintiff as an additional party. *In re Abbott-Depakote Shareholder Derivative Litigation*, Case No. 1:11-cv-08144 (N.D. Ill. June 1, 2012), Consolidated Verified Amended Shareholder Derivative Complaint (ECF No. 179). Similarly, in a shareholder derivative action brought on behalf of Baxter Inc., the Court faced competing leadership motions and appointed a single shareholder as lead plaintiff; once again, the consolidated amended complaint included only that shareholder as the representative plaintiff. *See North Miami Beach Gen. Emps. Ret. Fund v. Parkinson*, No. 1:10-cv-06514, 2011 WL 12465137, at *2 (N.D. Ill. July 5, 2011) (appointing lead plaintiff and counsel); Consol. Verified S'holder Derivative Compl., *Westmoreland County Empl. Ret. Sys. v. Boomer*, No. 1:10-CV-06514 (EEC) (N.D. Ill. Aug. 17, 2011), ECF No. 81 (including only lead plaintiff and its counsel).

Additionally, in granting leadership in a sprawling multiparty litigation involving manipulation of Cboe products, this Court held: "There is sufficient overlap in the premise of each complaint that for present purposes and to move things along expeditiously, a leanly staffed [counsel] group is appropriate" to "work together to organize plaintiffs' claims into an appropriate amended complaint." Mem. Accompanying Order Appointing Pls.' Leadership Counsel, at 1, *In*

re Chicago Board Options Exchange Volatility Index Manipulation Antitrust Litig., Case No. 1:18-cv-04171 (N.D. Ill. Aug. 16, 2018), ECF No. 120.

While the Motion here contends that the non-lead plaintiffs have "a right to be included" as additional plaintiffs in the Consolidated Complaint, the actions of their own counsel in other representative cases demonstrate otherwise. For example, when Steele's counsel at Bottini & Bottini was appointed lead counsel for a group of three plaintiffs in the BofI derivative litigation, Bottini & Bottini excluded a fourth plaintiff from the consolidated amended complaint. *See* Gilden-Johnson Decl., Ex. A (BofI Complaint). The same is true for Lippman's counsel at Gardy & Notis, LLP and Grant & Eisenhofer, P.A. *See In re TuSimple Holdings, Inc. S'holder Litig.*, No. 2022-1095-PAF, 2023 WL 4947627 (Del. Ch. July 27, 2023).

Although Steele's counsel appears to have seized on the Court's explanation that "the lead plaintiff need not be the sole plaintiff" when granting Lead Plaintiffs' leadership motion, the Court did not mandate inclusion of the additional plaintiffs as representative parties in the Complaint. *See* Order at 2. In fact, the Court expressly declined to "appoint[] co-leads across the movants" because "that would be unwieldy." *Id*. at 3. Moreover, Steele cites no precedent supporting his position that all original plaintiffs have the right to be included as a representative plaintiff in a consolidated derivative complaint.[5]

[5] Instead, Steele relies on easily distinguishable cases that merely state standards for consolidation or the Court's authority to resolve competing leadership motions. *Hall v. Hall* concerned two cases that were consolidated but were diametrically opposed: one case was a trustee suing on behalf of the trust; the other case was from the defendant in the former action asserting counterclaims against the trustee in her individual capacity. 138 S. Ct. 1118, 1123 (2018). "Consolidation" in that case did not involve a lead plaintiff or counsel structure, and logically could not, because it was not a representative action, nor could one party "lead" the other case that it was opposed to. Similarly, Steele quotes dicta in *Halczenko* but the actual opinion does not deal with lead plaintiff issues at all; instead, it decided ***whether*** to consolidate two class actions with different plaintiffs and defendants, with the Court ultimately granting consolidation because, among other things, "[t]he focus of consolidation is whether there are similarities in legal claims,

B. Deconsolidation is Improper and Would Lead to Inefficient Litigation that Harms Abbott, the Real Party in Interest

Steele and Lippman's alternative requests for deconsolidation are also improper and should be rejected. As the Court noted in the Leadership Order, "[a]ll of the plaintiffs agree that the cases should be consolidated into a single shareholder derivative complaint." ECF 86 at 1 (Leadership Order). Nothing has changed since Steele and Lippman took that position, except that they lost the leadership contest.

Consolidation was appropriate; deconsolidation on these grounds has no basis in precedent[6] and would have deleterious consequences. Deconsolidation would result in two parallel lawsuits litigating virtually identical claims for the benefit of the same party in interest—Abbott—creating an enormous risk of inconsistent rulings and resulting in unnecessary motion practice and appeals, duplicative discovery, chaos at the point that one case resolved and the other had not, and a tremendous waste of Abbott's assets on litigating the same case on two tracks. This course of action is incredibly inefficient and ultimately harmful to Abbott. It is difficult to see how a plaintiff pursuing Abbott's interests would favor that result. Notably, in the *TuSimple* derivative case, Lippman's counsel successfully opposed an argument from another plaintiff group that they should

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not the number of Plaintiffs or Defendants in any one case." *Halczenko v. Ascension Health, Inc.*, No. 1:21-CV-02816-JPH-MG, 2023 WL 3586442, at *2 (S.D. Ind. May 19, 2023). Steele also cited dicta in *Chicago Park District*, which did not deal with separating claims, but rather was a decision to consolidate separate discrimination cases for trial because "the parties are essentially the same, the subject matter involved, that is the park system, is the same, and the claims of the plaintiffs are, in the main, the same." *Midwest Cmty. Council, Inc. v. Chicago Park Dist.*, 98 F.R.D. 491, 499 (N.D. Ill. 1983). Last, *Magnovox*, a patent infringement case, concerned a single plaintiff suing different defendants where claims involved different factual determinations; nevertheless, the court consolidated cases to more efficiently make pretrial determinations. *Magnavox Co. v. APF Elecs., Inc.*, 496 F. Supp. 29, 33 (N.D.Ill. 1980).

[6] Steele's cited cases are inapplicable. In all of them, the court granted a motion to consolidate cases with similar allegations because doing so would cause no prejudice—a holding exactly contrary to what Steele and Lippman urge here. *See Halczenko*, 2023 WL 3586442, at *11; *Midwest Cmty. Council, Inc.*, 98 F.R.D. at 499; *Magnavox Co.*, 496 F. Supp. 29.

be permitted to prosecute a wholly unique claim in parallel to the consolidated action, with the court concluding that a "Balkanized lead counsel structure is an invitation for dysfunction and inefficiency." *See* Gilden-Johnson Decl., Ex. B (TuSimple Leadership Order). The same dysfunctional result should be avoided here.

C. Lead Plaintiffs and Lead Counsel Have and Will Continue to Coordinate with Stockholders Acting in the Company's Best Interests

Finally, with respect to the Court's inquiry regarding Lead Plaintiffs' plan and efforts to coordinate among the plaintiffs who filed complaints, Lead Counsel have and will continue to work efficiently and cooperatively with those plaintiffs, to the extent they are willing to do so, in order to achieve the best possible result for Abbott. It is well-established that lead counsel and lead plaintiffs are empowered to make strategic litigation decisions that in their experience and reasoned judgment they believe are in the case's best interest. *See* Mem. Accompanying Order Appointing Pls' Leadership Counsel at 1, *In re Chicago Board Options Exchange Volatility Index Manipulation Antitrust Litig.*, Case No. 1:18-cv-04171 (holding that whether to name particular defendants in an amended complaint are "decisions are for co-lead counsel to make."); *In re the Boeing Co. Aircraft Secs. Litig.*, No. 19 CV 2394, 2019 WL 6052399 at *10 (N.D. Ill. Nov. 15, 2019) ("A lead plaintiff, to be sure, is 'empowered to control the management of the litigation as a whole, and it is within the lead plaintiff's authority to decide what claims to assert on behalf of the class.'").That includes determining how to utilize the skills and experience available in the plaintiffs' group.

Even before appointment as Lead Plaintiffs and Lead Counsel, the undersigned sought to coordinate with other stockholders. Lead Counsel discussed a sensible organizational structure for litigating the case with every other stockholder with the hope of obviating the need for the Court to decide competing leadership motions. These efforts were unsuccessful. After being appointed

to lead the litigation, Lead Counsel coordinated with another stockholder on a factual matter relevant to the Complaint. Lead Counsel also carefully reviewed all complaints and incorporated any allegations and claims that were appropriate and would serve the interests of the Company.

And when Steele's counsel, Bottini, reached out on October 4 regarding potentially joining the case as an additional plaintiff, Lead Plaintiffs and Lead Counsel carefully considered his request, and were open to including him, but identified two complications that Steele would have to resolve. *First*, Steele needed to obtain permission to access Abbott's confidential books and records. The core of a derivative lawsuit is what the Board did or did not do—information found in the documents Steele could not see because Steele had not signed a confidentiality agreement with the Defendants, or otherwise obtained permission to view the confidential information provided to Lead Plaintiffs. He was, therefore, disabled from making informed decisions as a plaintiff in a representative action. *Second*, Steele needed to resolve the conflicting positions he was taking in his state court action. There, he argued that Abbott needs to produce books and records beyond those produced to the federal plaintiffs (which he has not seen) in order to properly litigate the case—a contention defendants may seize upon when moving to dismiss the complaint. The state court litigation, however, appears unnecessary, give that Steele had already commenced a plenary action challenging the same misconduct he sought to investigate. "By commencing the Plenary Action, [Steele] represented that [he] had all facts necessary to support the plenary claims, and thus [Steele] lacks a proper purpose to inspect [defendants'] books and records." *CHC Invs, LLC v. FirstSun Cap. Bancorp.*, 2019 WL 328414, at *5 (Del. Ch. Jan. 24, 2019).[7] Thus, Steele's

[7] *See* Fed. R. Civ. P. 11(b) (filing a complaint represents to the court that "the factual contentions have evidentiary support"*)*. For cases holding that by filing a plenary action plaintiff has effectively conceded that corporate books and records are unnecessary, see *JJS, Ltd., et al. v. Steelpoint CP Holdings, LLC, et al.*, C.A. No. 2019-0072-KSJM, 2019 WL 5092896, at *8 (Del. Ch. Oct. 11, 2019); *Bizzari v. Suburban Waste Servs.*, C.A. No. 10709-JL, 2016 WL 4540292, at

arguments are "inherently contradictory" (*id.* at 2) and his refusal to comply with Lead Counsel's request was concerning. After all, Steele is arguing in state court that he needs confidential documents to file suit but is arguing here that he is ready to be named as a plaintiff in a plenary matter heading towards dispositive motions.

Similarly, in the state court, Steele has reserved the right to make a litigation demand on the Board (effectively conceding that demand is not futile), whereas in the federal court Steele (and Lead Plaintiffs) had argued that demand was futile and therefore excused. *See* Compl. at ¶173, *Steele*, No. 1:23-cv-00850 (N.D. Ill. Feb. 10, 2023), ECF 1 ("A pre-suit demand on the Board of Abbott is futile and, therefore, excused."); Gilden-Johnson Decl. ¶9. The Delaware Court of Chancery has held that a complaint cannot include both a plaintiff who alleges demand is futile while including another plaintiff who made a demand, because "stockholders must make a choice either to make demand or attempt to establish demand futility." *Boeing By Levit v. Shrontz*, C.A. No. 11273, 1992 WL 81228, at *5 (Del. Ch. Apr. 20, 1992). Similarly, the Delaware Supreme Court held that a stockholder who "filed a derivative action . . . alleging that a pre-suit demand on the Board was excused" but "then filed a demand with the Board to take legal action and 'redress the wrongs' set forth in his complaint" made "inconsistent arguments" because "[a] shareholder who makes a demand can no longer argue that demand is excused." *Spiegel v. Buntrock*, 571 A.2d 767, 774-775 ((Del. 1990). This is yet another argument Defendants might highlight in a dispositive motion against a plenary complaint with Steele as a plaintiff.

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*4, 6 (Del. Ch. Aug. 30, 2016); *Baca v. Insight Enters., Inc.*, C.A. No. 5105-VCL, 2010 WL 2219715, at *3 (Del. Ch. June 3, 2010); *Cent. Laborers Pension Fund v. News Corp.*, C.A. No. 6287-VCN, 2011 WL 6224538, at *2 (Del. Ch. Nov. 30, 2011). The primary case Steele has identified to support his position that concurrent plenary litigation and books and records requests are permissible did not actually address that issue; rather, it holds simply that an evidentiary hearing may be required to determine whether a shareholder possesses a proper purpose. *Corwin v. Abbott Laboratories*, 353 Ill. App. 3d 848 (Ill. App. Ct. 2004).

To be clear, there was a solution to this quandary, recognized by both Lead Counsel and counsel for the Company. If Steele wished to join this derivative litigation as a named plaintiff, he could have agreed to dismiss his state-court action to compel Abbott to produce books and records to Steele, and thus obtained access to the confidential books and records Abbott produced to Lead Plaintiffs (as well as to NYS and Hamilton). Defendants made this offer to Steele the week before the Complaint was due. Lead Counsel recommended he accept the offer, but he declined to do so. Accordingly, given his inability to view the most important evidence in the case and his conflicting state-court positions, Lead Counsel informed Bottini that Steele would not be included as a plaintiff.[8] This was an appropriate exercise of Lead Counsel's strategic judgment, which should receive some degree of deference given the Court's recent leadership ruling.

Going forward, Lead Plaintiffs and Lead Counsel fully intend to coordinate with the other stockholders and seek their assistance with the case, as appropriate, provided that they are willing to act in the best interests of the case and of Abbott, the party in interest. Lead Plaintiffs anticipate that appropriate opportunities will present themselves in connection with the anticipated motion to dismiss and later during discovery.

IV. CONCLUSION

For the foregoing reasons, the Motions should be denied.

[8] Contrary to Steele's suggestion that he did not learn the terms under which he could join the Complaint until just before it was due (Mot. at 1-2), Bottini was informed of these terms multiple times starting days earlier, on October 12, 13, 14, 15, and 16.

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Respectfully submitted,

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