UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Abbott Laboratories Infant Formula Shareholder Derivative Litigation	Case No. 1:22-cv-5513 Hon. Manish S. Shah

JOINT DECLARATION OF CAROL V. GILDEN AND GEOFFREY M. JOHNSON IN SUPPORT OF 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

We, Carol V. Gilden and Geoffrey M. Johnson, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I, Carol Gilden ("Gilden"), am a partner of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein").

2. I, Geoffrey M. Johnson ("Johnson"), am a partner of Scott + Scott, Attorneys at Law LLP ("Scott + Scott").

3. We are counsel for Lead Plaintiffs International Brotherhood of Teamsters Local No. 710 Pension Fund ("Teamsters Pension Fund") and Southeastern Pennsylvania Transportation Authority ("SEPTA") in Case No. 23-cv-04143 in the above-captioned derivative action. We submit this declaration in support of Lead Plaintiffs International Brotherhood of Teamsters Local No. 710 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.

4. This declaration details conversations with counsel for stockholders that sought leadership of the above-captioned action.

5. Prior to the lead plaintiffs' filings, we affirmatively contacted and discussed with each Plaintiffs' counsel what we believed was a sensible structure for litigating the case, which they all rejected, each choosing to seek leadership on their own. Gilden, together with Richard Speirs of Cohen Milstein, spoke with counsel for Martin, Lippman, and Hamilton. Gilden and Johnson together spoke with counsel for New York State Common Retirement Fund and counsel for Steele.

6. Following submission of extensive briefing, on September 18, 2023, the Court selected Teamsters Pension Fund and SEPTA as Lead Plaintiffs and Cohen Milstein and Scott + Scott as Lead Counsel.

7. Soon after, we communicated with counsel for the New York State Common Retirement Fund regarding the development of certain facts relevant to the forthcoming consolidated amended complaint (the "Complaint").

8. On October 4, 2023, Gilden spoke to Francis A. Bottini ("Bottini"), counsel for Steele. Among other things, Bottini requested that Steele be added as a plaintiff in the Complaint. Gilden stated that she would discuss his request with her co-counsel, Scott + Scott. Gilden also requested that Bottini send her the transcript from his recent hearing in his state-court mandamus action seeking books and records from Abbott.

9. Bottini never sent the transcript and it was not available on a public docket. We ultimately contacted the court reporter from the state hearing and purchased the transcript. Among other things, the transcript reflected Bottini stating to the state court that he reserved the right to make a litigation demand to Abbott's Board.

10. On October 10, 2023, Gilden and Johnson spoke with Bottini. He again made a pitch to include Steele in the Complaint. When we asked how Steele could be included without having access to the confidential information, he brought up being included in a redacted complaint. We discussed asking Defendants to consent to Steele being provided the unredacted confidential

complaint, and we agreed it made sense that the request come from us. To that end, that day we wrote Defendants indicating we intended to include Steele in the Complaint and asking for their consent to our sharing the unredacted Complaint and confidential documents cited therein with Steele and his counsel, provided Steele and his counsel agreed to treat the pleading and any related documents and pleadings as confidential under Lead Plaintiffs' confidentiality agreements with Abbott and that they restricted such information and allegations to use in the federal action only.

11. On October 12, 2023, Gilden emailed Bottini (copying Johnson), advising him of her and Johnson's email to Defendants on Tuesday (October 10) discussed in the prior paragraph, that they had not heard back yet, and that "[a]bsent [Defendants'] consent, we will send a redacted complaint for you to show to your client, as discussed."

12. Bottini responded that day with the following:

> Rabinovitz sent me an email yesterday offering to give me access if my client agreed to settle the mandamus action in exchange for receiving what they already produced. I am going to respond this morning and say that is unacceptable and that my client is not asking to receive the documents themselves, just an unredacted version of the complaint. That will put him in a harder position to refuse but presumably he will refuse and then we will have a record if we want to go to the court later.

13. We were concerned about Bottini's inclination to decline this reasonable offer and quickly responded: "Let's discuss before you get back to him."

14. We then spoke to Bottini and explained that to be included in the Complaint he needed to resolve the issues set forth by Defendants: resolve the mandamus action and obtain access to the confidential documents.

15. Bottini again indicated on the call and in a subsequent email that afternoon that he was not inclined to accept Defendants' offer and requested that we send him a redacted version of the Complaint.

16. The next day, October 13, Abbott's counsel at Latham & Watkins wrote us and indicated that they were "working with Mr. Steele's counsel to see if we can reach an agreement on sharing confidential information with him. Unless and until we reach such an agreement, Abbott is not in a position to consent to your request."

17. We wrote Bottini that afternoon, reiterating our views expressed during our call with him the prior day and also noting Abbott's counsel's subsequent email regarding their refusal to consent to our request until they reached an agreement with Bottini:

> As we said yesterday, we thought about this further after we spoke. We don't think it is in the best interests of the case for Steele to only see a redacted complaint and believe it will unnecessarily complicate briefing and litigation of the plenary case going forward and become a distraction. Further, you'll be litigating that Defendants' production is insufficient in state court, which you haven't seen, yet Defendants offered to produce those documents to resolve that matter, which you declined to accept, and at the same time you're still trying to pursue redacted derivative claims. Accordingly, as we said yesterday, we cannot include Mr. Steele as an additional plaintiff on a redacted complaint, accompanied by a verification stating that he has only seen the redacted complaint.
>
> Defendants advised us today that they will not consent to you reviewing the unredacted complaint, unredacted pleadings or related documents absent reaching an agreement on sharing confidential information with you. Defendants' offer to provide you these documents to resolve the mandamus action, per your emails, seems appropriate to us and would enable Mr. Steele to join the action as an additional plaintiff. Happy to further discuss our thinking and recommendation here.

18. Bottini did not respond to this email.

19. Because Bottini had still not provided the transcript from the hearing in state court, we independently obtained it. Upon review, we learned that the judge had concluded that whether Steele had a proper purpose for his books and records request was an evidentiary issue that would be resolved after a trial, which was set for nearly a year out—September 23, 2024. There was no indication in the transcript that Steele would be obtaining any books and records in the near term.

20. Then on October 14, 2023, still having not responded to our October 13, 2023 email, Bottini sent an email on a new thread writing simply: "Can you send redacted CAC so I can get a verification from my client?"

21. We responded that night, stating:

> We did not receive a response to my email below, but instead received the attached email at 4.39 pm CT email today, saying "*Can you send redacted CAC so I can get a verification from my client?"*
>
> To be clear, we can not add your client as an additional plaintiff to the consolidated amended complaint unless your client has access to the full complaint and underlying confidential documents that Teamsters 710 Pension Fund and SEPTA received in response to their books and records demands.
>
> You told us that the Defendants would not allow you to review the full consolidated amended complaint and confidential documents unless your client agreed to dismiss his books and records action and accept the same documents our clients received when they served the Company with their books and records demands.
>
> You've also said you are not willing to agree to dismiss your client's books and records action in exchange for access to the documents our clients received.
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> Accordingly, we can not add your client as an additional plaintiff on the consolidated amended complaint. Your client needs to be able to see the full complaint and the confidential documents to verify the complaint and participate in the lawsuit. We are in the process of finalizing the complaint, so unless you reach a firm agreement with Defendants between now and Monday morning by 9.00 am CT, Mr. Steele will not be included in the consolidated amended complaint.

22. Bottini responded the next day, on October 15. Among other things, he incorrectly claimed that we had reversed our position on whether Steele could be included in the complaint with no explanation. He offered no response to the concerns we had raised regarding his pursuit of the state court mandamus action and declination of Defendants' offer to allow him to see the confidential books and records.

23. We responded that day, explaining:

> As we have said multiple times (once by phone on Thursday, followed up by the emails below), we can not simply include your client as a plaintiff based on his review of a redacted version of the confidential consolidated amended complaint. We once again

> reviewed your state court mandamus action following our conversation on Tuesday and have since explained why it's untenable for your client to only see the redacted version, without access to the confidential information, as this will create unnecessary complications for litigation of the consolidated action. In this regard, we also understand that Defendants have offered to allow you and your client to see the confidential documents underlying the consolidated amended complaint in exchange for dismissing your state court books and records mandamus action. This would enable Mr. Steele to see the confidential information and be included in the consolidated amended complaint. However, you continue to reject that offer so you can continue pursuing parallel litigation in your mandamus action to compel Abbott to produce confidential documents in response to your books and records action. As a result, in our view, Mr. Steele can not at this time be included as a named plaintiff in the consolidated amended complaint.

24. The Complaint was due the next day, October 16. That morning, Bottini responded, demanding again that his client be permitted to see the redacted version of the complaint before it is filed and be named on it, and failing to contend with our concerns.

25. We responded once again, reiterating that:

> We have been very clear with you on our position. We have repeatedly indicated since last Thursday that we would add your client as an additional plaintiff to the consolidated amended complaint (even though we are under no obligation to do so) if your client gained access to the confidential documents so that he would be able to review the full, unredacted complaint before the filing deadline.
>
> Defendants presented you with a perfectly reasonable offer: dismiss your client's books and records mandamus action in exchange for access to the confidential documents that the Lead Plaintiffs received after serving their pre-suit books and records demands. (In this regard, we note that you chose to file Mr. Steel's derivative complaint in federal court without obtaining any books and records, notwithstanding that SEPTA had earlier moved to stay the then-filed actions for failing to obtain the confidential documents before filing suit, and proceeded to serve a books and records demand, followed two months later by your mandamus action.) Accepting Defendants' offer would have enabled your client to see the confidential information, review the unredacted consolidated amended complaint and other unredacted pleadings, and in turn, be added as a named plaintiff in the consolidated amended complaint.
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> Your client rejected that offer, and accordingly, he does not have the ability to review the full complaint, the confidential documents or any unredacted motion Defendants may file against the operative complaint or our unredacted response; therefore, he cannot be added as an additional plaintiff to the consolidated amended complaint. We are doing what is in the best interests of the case, and there is nothing further for us to discuss. We are going to file the complaint later today.

26. That evening, we filed the Complaint. 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. Steele initiated this motion practice soon after.

27. We further attach true and correct copies of the following:

a. Attached as Exhibit A is Compl., *In re: Bofi Holding, Inc. Derivative Litig.*, No. 15-cv-2722 GPC (KSC) (S.D. Cal. Aug. 26, 2016), ECF No. 36.

b. Attached as Exhibit B is Order Granting the Nasbaum Grp.'s Leadership Appl., *In re Tusimple Holdings, Inc. S'holder Litig.*, C.A. No. 2022-1095-PAF (Del. Ch. July 17, 2023).

Executed this 27th day of October 2023.

/s/ Carol V. Gilden
Carol V. Gilden

/s/ Geoffrey M. Johnson
Geoffrey M. Johnson