UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEON MARTIN, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, v. ROBERT B. FORD, et al., Defendants, and ABBOTT LABORATORIES, Nominal Defendant.	Case No. 1:22-cv-05513 District Judge Manish S. Shah Magistrate Judge Sheila M. Finnegan

RESPONSE IN SUPPORT OF NEW YORK STATE COMMON RETIREMENT FUND'S MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND TO APPOINT LEAD COUNSEL

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I. PRELIMINARY STATEMENT

Pursuant to this District's case law, courts appoint as lead plaintiff the shareholder who would "benefit the plaintiffs *most*." *Dollens v. Zionts*, Nos. 01 C 5931, 01 C 2826, 2001 WL 1543524, at *2 (N.D. Ill. Dec. 4, 2001) (emphasis in original). Here, that plaintiff is the New York State Common Retirement Fund ("NYSCRF"). Among the shareholders moving for lead plaintiff, NYSCRF is demonstrably the institutional investor not only with the stake, experience, and internal resources to best oversee this litigation, but also a long history of delivering corporate governance reforms at the companies in which it invests. Its Abbott Laboratories holdings, which totaled more than $300 million as of March 31, 2023, considerably exceed those of any other shareholder seeking appointment. In accordance with Illinois corporate law, NYSCRF used the tools at hand to secure internal Abbott documents before filing a plenary complaint. Its investigation also included consulting with a food safety expert, and obtaining materials through freedom of information act and other public records inquiries, which it then integrated to further strengthen its complaint. The resulting NYSCRF Complaint is a strong, cogent pleading, presenting the clearest and most comprehensive theory of liability: a breach of the fiduciary duty of oversight under *Caremark*.

NYSCRF's chosen counsel, Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser") (supported by the Law Office of Kenneth N. Flaxman P.C. ("Flaxman")), brings significant resources and substantial experience to prosecute this case. Lieff Cabraser recently secured two of the largest derivative settlements to compensate companies for corporate harm caused by their fiduciaries.

For the reasons set forth in its opening brief (Dkt. 68) and herein, NYSCRF respectfully requests that the Court appoint it sole Lead Plaintiff, appoint its chosen counsel Lieff Cabraser sole Lead Counsel, and appoint Flaxman Liaison Counsel.

II. ARGUMENT

A. NYSCRF Is The Only Institutional Investor With The Internal Resources And Experience To Oversee This Litigation.

NYSCRF is the most qualified applicant under the first *Dollens* factor—plaintiff's status as an institutional investor—because it brings a demonstrated set of internal resources and experience that no other leadership applicant, institutional or otherwise, can match. Specifically, NYSCRF's Bureau of Corporate Governance sets it apart from other institutional investors and would provide a benefit to Abbott shareholders that cannot be matched by other movants.

1. NYSCRF Is Demonstrably More Qualified To Lead This Litigation Than Any Other Plaintiff.

NYSCRF's opening brief demonstrates why the "policy considerations" that favor selecting an institutional investor as a lead plaintiff favor appointing NYSCRF to lead this case. *Dollens*, 2001 WL 1543524, at *5. Specifically, as a "large institutional investor," NYSCRF has a "greater incentive to litigate this case than any other plaintiff who seeks to lead." *Id.*

In his Declaration, Nelson Sheingold, Counsel to the Comptroller of the State of New York, Thomas P. DiNapoli, Administrative Head of the New York State and Local Retirement System, and NYSCRF Trustee, presented NYSCRF's status as an active and engaged shareholder while describing the resources and expertise NYSCRF will bring to bear on behalf of all Abbott shareholders in this litigation. Dkt. 68-3. (Sheingold Decl.). Those resources include NYSCRF's Division of Legal Services, with ten attorneys handling investment and fiduciary matters (including corporate governance and securities ligation) on a daily basis, "a specialized Bureau of Corporate Governance with nine full-time professionals…whose work includes reviewing corporate governance practices and initiating reform in companies in which the Fund is invested," and two attorneys "dedicated to handling securities litigation and corporate governance matters" who will oversee this litigation and direct those internal resources. *Id*. at ¶¶

3, 5, 8. "The Bureau's senior staff collectively have more than 50 years of experience representing institutional investors on corporate governance matters." *Id.* at ¶ 7.

Mr. Sheingold's Declaration also details NYSCRF's proven track record of outstanding results for shareholders in derivative litigation, including last year's $237.5 million recovery for The Boeing Company, which was paired with "wide-ranging, meaningful, and tailored" corporate governance. Dkt. 68-6 at 96:19-22 (Benson Decl. Ex. 4). The governance reforms achieved in the *Boeing* Action[1] settlement were made possible as a result of conscientious engagement from NYSCRF's internal legal department and its Bureau of Corporate Governance. Dkt. 68-3 at ¶ 11 (Sheingold Decl.).

Neither International Brotherhood of Teamsters Local No. 710 Pension Fund ("Teamsters") nor Southeastern Pennsylvania Transportation Authority ("SEPTA") proffered any evidence of their institutional expertise or background in their opening briefs that would allow the Court to evaluate their experience, resources, and incentives to litigate this case for all Abbott shareholders. Dkt. 72-1 at 12 (hereinafter "SEPTA/Teamsters Mot."). Teamsters and SEPTA also tellingly did not include the size of their holdings in their complaint or with their leadership papers (*see infra* n.6), nor the total length of time for which they have been continuous shareholders of Abbott stock. And the Court has no information about whether Teamsters and SEPTA have an interest in—or experience with—enacting corporate governance reforms at companies in which they invest.

NYSCRF's track record in shareholder derivative litigation is unmatched by the other lead plaintiff applicants. Plaintiff Steele, who owns 6,000 shares of Abbott stock, does not

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[1] All defined terms have the same meaning as in NYSCRF's Memorandum of Law in Support of its Motion for Appointment as Lead Plaintiff and to Appoint Lead Counsel, Dkt. 68-1, and its Verified Shareholder Complaint, *DiNapoli v. Ford et al.*, Case No. 1:23-cv-04142 (June 27, 2023, N.D. Ill.), Dkt. 1.

provide any experience as a derivative plaintiff or otherwise engaging with companies on governance matters. *See* Dkt. 66, Ex. C (Bottini Decl.). Plaintiff Hamilton, an individual investor who owns just 128 shares of Abbott stock, Dkt. 67-1 at ¶ 4, emphasizes his experience serving as a plaintiff in derivative litigation involving Altria Group, Inc., and cites a $117 million funding commitment and corporate governance improvements as part of a recent settlement. *See* Dkt. 67 at 13 (hereinafter "Hamilton Mot.") (discussing *In re: Altria Grp. Inc. Derivative Litig.*, Case No. 3:20-cv-00772 (E.D. Va.)). But Mr. Hamilton was not the lead plaintiff in that action, and that settlement was only approved after extensive court involvement and guidance to ensure it "amounted to something more than a paper tiger," because the original "toothless" agreement negotiated by plaintiffs' counsel (lead counsel Scott+Scott, and plaintiff's counsel the Shubert Firm, among others) "largely rang hollow." Benson Decl. Ex. 6 (Altria Order), at 7, 8 & n.5.

Teamsters and SEPTA fail to provide information of any experience leading shareholder derivative litigation,[2] and a search of federal and Delaware dockets revealed no derivative actions brought by Teamsters in the last twenty years. A SEPTA derivative complaint related to Facebook's alleged anticompetitive conduct was dismissed earlier this year by Vice Chancellor Travis Laster in Delaware Chancery Court. He remarked that "[t]he complaint in this case is not targeted. It covers a lot of ground. . . . What the complaint doesn't do a good job of doing is organizing those allegations and concepts into cognizable claims." *SEPTA v. Zuckerberg*, C.A.

[2] Teamsters and SEPTA also failed to verify their complaint. *See Int'l Bhd. of Teamsters Local 710 et al. v. Ford et al.*, Case No. 1:23-cv-04143, Dkt. 1 ("SEPTA/Teamsters Complaint"); Fed. R. Civ. P. 23.1(b) ("Pleading Requirements. The complaint must be verified . . ."). While this is not a fatal pleading defect, *Tuscano v. Tuscano*, 403 F. Supp. 2d 214, 222 (E.D.N.Y. 2005), it is a factor courts have considered in leadership contests in derivative actions. *See Millman ex rel. Friedman's, Inc. v. Brinkley*, No. 1:03-CV-0058-WSD, 2004 WL 2284505, at *3 (N.D. Ga. Oct. 1, 2004) (declining to appoint plaintiff and his counsel, because, among other reasons, the plaintiff "failed to file a verified complaint, a significant pleading shortcoming in a complex matter like the cases before the Court.").

No. 2021-0218-JTL (Mar. 1, 2023, Del. Ch. Ct.) (Tr. of Telephonic Ruling on Defendants' Mot. to Dismiss) (attached as Benson Decl. Ex. 7), at 4:8-17. In particular, the Delaware Chancery Court criticized SEPTA's attempt to frame a *Caremark* oversight claim around any potential violation of state or federal law, as opposed to a known corporate trauma. *Id*. at 11:20-23 ("I do not think that *Caremark* is a roving license for Delaware courts to adjudicate violations of other statutory sources of law from either the federal government or the other states."). As noted below, the same characteristics mar the SEPTA/Teamsters Complaint here.

2. <u>Plaintiff Steele's Repeated Assertion That NYSCRF Cannot Lead This Action Has Already Been Rejected By The Court.</u>

There is no merit to Plaintiff Steele's recycled attempt to convince this Court that beneficial owners (as opposed to shareholders of record) do not have standing to obtain corporate documents under Illinois law. Dkt. 66 at 6-9 ("Steele Mot."). This Court already held the authority on which Mr. Steele relies to be inapposite[3] and his argument contradicts Illinois appellate authority. *Cf. Hagen v. Distributed Solutions, Inc.*, 328 Ill.App.3d 132, 142 (Ill. App. Ct. 2002) (quoting *Crouse v. Rogers Park Apts., Inc.*, 343 Ill.App.3d 319, 326 (1951)) (under Illinois law "a shareholder's right to examine books of a corporation is a valuable one that 'is not to be circumscribed by such meticulous and technical construction as to make it only a snare and

[3] At the May 23, 2023 status conference, the Court specifically concluded that the two cases Mr. Steele cites in his leadership papers (Steele Mot. at 6-7)—*Houseman* and *Hill—do not support the proposition* that beneficial owners of stock may not properly assert derivative litigation. *See* Dkt. 44 at 3:25-4:6 (May 23, 2023 Status Hr'g Tr.) (concluding *Housman v. Albright*, 857 N.E.2d 724 (Ill. App. Ct. 2006) is not "authority on that proposition" that only shareholders of record may pursue litigation, and that *Hill v. Lynn*, Case No. 17 C 06318, 2018 WL 2933636, at *4 (N.D. Ill. June 12, 2019) "involved a plaintiff who didn't own any stock at all, so the technical definition of 'shareholder of record' wasn't at issue there"). "The law of the case doctrine 'posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.'" *Parker v. Four Seasons Hotels, Ltd.*, Case No. 12 CV 3207-MSS, 2018 WL 5024917, at *3 (N.D. Ill. Oct. 17, 2018) (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)).

a delusion.'"). In any event, Abbott waived any objection that it might have had by producing documents to institutional investors. *See* Dkt. 44 at 4:7-11 (May 23, 2023 Status Hr'g Tr.).

Mr. Steele's attempt to re-litigate this baseless argument should be rejected. To the extent that 805 ILCS § 5/7.80 requires NYSCRF to aver that it acquired shares before the public disclosure of Abbott's wrongdoing, its Complaint verifies that it has held shares "since at least March 31, 2018." *DiNapoli v. Ford*, Case No. 1:23-cv-04142 (N.D. Ill.), Dkt. 1 at 133; *see also* Dkt. 68-3 at ¶ 9 (Sheingold Decl.) (NYSCRF has continuously held Abbott stock since at least 1992).

Further, Mr. Steele is the only plaintiff moving for lead who has not already obtained or relied on Abbott's internal books and records. His argument that he could, *some day*, obtain books and records via his pending *mandamus* action in Illinois state court, *see* Benson Decl. Ex. 8, diminishes his claim to be a more suitable lead plaintiff than NYSCRF, which obtained documents and actually used them in its Complaint. *See Union Asset Mgmt. Holding AG v. Kraft Heinz Co.*, Case Nos. 19-cv-1339, 20-cv-2259, 2021 WL 4902454, at *3 (N.D. Ill. Oct. 21, 2021) (books and records requests are "a 'plus-factor' for those leadership applicants who avail themselves of it"). Mr. Steele may, in fact, be unable to obtain documents as he served a books and records request the same day as he filed his derivative complaint. *See, e.g.*, *CHC Invs., LLC v. FirstSun Cap. Bancorp*, No. CV 2018-0610-KSJM, 2019 WL 328414, at *2 (Del. Ch. Jan. 24, 2019) ("[O]nce a stockholder commences plenary litigation, discovery rules dictate what information relevant to its claims the stockholder may receive and when the stockholder may receive that information.").

Finally, Mr. Steele erroneously claims that his counsel was appointed in a derivative case in California Superior Court over counsel *representing NYSCRF*. Steele Mot. at 11; Dkt. 66, Ex.

B at 4-5 (Bottini Decl.). That is wrong: the New York shareholder in that case was a group of the New York ***City*** pension funds, not the New York ***State*** Common Retirement Fund.[4] Shareholders will not benefit from Mr. Steele's involvement in the case, and his request to partner with an institutional investor should be rejected.

B. NYSCRF's $300 Million In Abbott Holdings Weighs In Favor Of Appointing It Lead.

The size of NYSCRF's Abbott holdings, more than three million shares exceeding $300 million, supports its appointment under the second *Dollens* factor. *See N. Miami Beach Gen. Emps. Ret. Fund v. Parkinson*, Case No. 10 C 6514, 2011 WL 12465137, at *2 (N.D. Ill. July 5, 2011) (factor favored plaintiff that held just 4,300 shares more than the other applicant group combined); *Chester Cnty. Emps.' Ret. Fund v. White*, Case No. 11 C 8114, 2012 WL 1245724, at *3 (N.D. Ill. Apr. 13, 2012) (there is "inherent value in considering the financial stake of a plaintiff because it protects against potential abuse of derivative actions").

Teamsters and SEPTA claim that the size of the holdings factor is a "wash" because Abbott has 1.74 billion shares outstanding. *See* SEPTA/Teamsters Mot. at 3, 12 (citing *Wiehl v. EON Labs, et al.*, Case No. Civ. A. 1116-N, 2005 WL 696764, at *3 (Del. Ch. Mar. 22, 2005) (comparing shareholders with holdings of 57,000, 38,000, and 1,000 shares)). Yet no court in this District has adopted that approach.[5] Further, NYSCRF's relative stake in Abbott as compared to other shareholders is anything but "minuscule" (as was the case in *Wiehl*); rather, it

[4] *Compare* New York City Retirement Funds, available at https://www.nyc.gov/site/opa/my-pay/pension-plans.page *with* Office of the New York State Comptroller Website, available at https://www.osc.state.ny.us/common-retirement-fund.
[5] *See* Hamilton Mot. at 8-9 ("While Hamilton acknowledges that the *size and financial stake factors are applied in this District*, *other authority* discounts the significance of competing shareholdings . . . ." (citing *Wiehl*)) (emphasis added).

is ***more than 100 times*** the holdings of any other shareholder seeking lead,[6] and provides a strong "economic incentive to monitor counsel and play a meaningful role in conducting the case." *In re Revlon, Inc. S'holders Litig*., 990 A.2d 940, 955 (Del. Ch. 2010) (citing *Wiehl*, 2005 WL 696764, at *3); *see also Dollens*, 2001 WL 1543524, at *5.

C. NYSCRF Is Represented By Very Capable Counsel In Lieff Cabraser.

In its opening brief, NYSCRF's counsel Lieff Cabraser detailed its credentials to pursue this litigation on behalf of NYSCRF and all Abbott shareholders. *See Dollens*, 2001, WL 1543524, at *6 ("absent extraordinary circumstances, [co-lead plaintiffs] should be able to select their own counsel."); *N. Miami Beach*, 2011 WL 12465137, at *2-3 (appointing lead plaintiff's "chosen" counsel). Of particular note, in *Caremark* proceedings analogous to those here, as court-appointed Co-Lead Counsel representing court-appointed Co-Lead Plaintiffs, Lieff Cabraser resolved the *Boeing* and *Wells Fargo* Actions for significant cash payments—$237.5 million and $240 million respectively—to compensate the companies (and their shareholders) for fiduciary wrongdoing. Dkt. 68-2 at ¶¶ 6, 9 (Benson Decl.). The *Boeing* settlement that Lieff Cabraser worked on with NYSCRF also delivered extensive governance reform, including the creation and implementation of robust oversight mechanisms (though the settlement terms did not seek to monetize the value of those reforms). Dkt. 68-3 at ¶ 16 (Sheingold Decl.) ("NYSCRF supports the appointment of Lieff Cabraser as lead counsel based on, among other things, the firm's expertise in shareholders derivative litigation and demonstrated success in achieving significant results for corporation and their shareholders."). Finally, NYSCRF is the only leadership applicant that affirmed it negotiated a reasonable fee arrangement at arm's length with its counsel. Dkt. 68-3 at ¶ 16; *see N. Miami Beach*, 2011 WL 12465137, at *1.

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[6] Teamsters and SEPTA's books and records requests submitted to the court with their motion to intervene include their holdings information, *see* Dkts. 29-1 & 29-2 while their complaint and leadership motion did not.

Here, selecting a single Lead Counsel (supported by Liaison Counsel) will ensure that the case is litigated efficiently, and rules out disagreements among plaintiffs and law firms. *See N. Miami Beach*, 2011 WL 12465137, at *2 ("two lead plaintiffs and two law firms as lead counsel would have created the potential for disagreement and inefficiencies").

D. <u>NYSCRF's Vigorous Prosecution of This Action Supports Its Appointment.</u>

NYSCRF's vigor in prosecuting this action to date further supports its appointment. Substantively, NYSCRF sought and obtained materials from freedom of information act and other public records requests, including an October 2021 complaint to the FDA from the Sturgis Whistleblower, which it then used to make unique allegations concerning the Company's knowledge of safety and cleanliness problems at Sturgis. *See* NYSCRF Compl. at ¶¶ 172-78; *Chester Cnty*., 2012 WL 1245724, at *4 (plaintiff demonstrated "additional vigor" by obtaining FDA production through FOIA requests). Further, unlike NYSCRF, no other applicant appears to have consulted with experts in the field of food safety or product quality. As a result, the NYSCRF Complaint contains a robust discussion of proper manufacturing processes and the risks attendant from cronobacter. *See id.* at ¶¶ 83-105.

NYSCRF's books and records request was submitted on August 10, 2022—months before others requested documents: Hamilton (Sept. 27, 2022), Teamsters (Oct. 11, 2022), and SEPTA (Dec. 14, 2022). *See* Dkts. 29-1, 29-2, 67-1. NYSCRF, together with all plaintiffs, appropriately collaborated in filing a status report and setting a schedule after NYSCRF intervened. *See* Dkt. 68-1, at 7. And, in compliance with the Court's order, NYSCRF (as well as SEPTA and Teamsters) filed its complaint on June 27, 2023.

Teamsters and SEPTA overstate the weight placed on this factor, claiming "[c]ourts have held that vigorousness with which a plaintiff has prosecuted their case ***is the most important factor*** in determining who to appoint lead plaintiff." SEPTA/Teamsters Mot. at 8-9 (citing

Dollens) (emphasis added). In fact, that holding is nowhere in *Dollens* nor any other authority Teamsters and SEPTA cite. *E.g.*, *Dollens*, 2001 WL 1543524, at *4-5; *N. Miami Beach*, 2011 WL 12465137, at *2 (appointing plaintiff who had greater financial interest and superior pleading). Teamsters and SEPTA also exaggerate the procedural importance of SEPTA's February 6, 2023 appearance in the litigation, as the Court had already struck the deadline for defendants to move to dismiss to address other procedural matters including consolidation and leadership meaning that there was no impending motion to dismiss that would have preclusive effect on other shareholder derivative complaints. Dkt. 14.

Finally, Mr. Hamilton's argument that he filed the *first* books-and-records complaint is unavailing. Courts in this District applying *Dollens* have "decline[d] to consider first-to-file as an indication of vigor or quality of pleadings." *Chester Cnty*., 2012 WL 1245724, at *4.

NYSCRF's vigorous prosecution of this action supports appointing it lead.

E. NYSCRF's Comprehensive And Strong Pleading Further Supports Its Appointment As Lead Plaintiff.

NYSCRF's superior complaint favors appointing it to lead this litigation. "In choosing among competing plaintiffs and their respective counsel, the court can look to the quality of the pleadings—not because a complaint's substance is final and cannot be amended, but rather because the pleadings serve as an accurate and appropriate barometer through which the court can assess which firm would best represent the interests of the shareholders and the rights of the corporation." *In re Comverse Tech., Inc. Derivative Litig*., No. 06-CV-1849 NGG RER, 2006 WL 3511375, at *5 (E.D.N.Y. Dec. 5, 2006) (citing *Dollens*).

NYSCRF's Complaint best serves Abbott shareholders because it makes the most effective use of Abbott's internal books and records and the public record to present a cogent theory of liability for the harm to Abbott arising out of the Sturgis Shutdown and Abbott

Formula Recall. It describes Directors that breached their fiduciary duties by failing to establish a system of controls that ensured the Board had sufficient information with which to adequately oversee the Company. *See* NYSCRF Compl. at Section V. As a result, the Board was not made aware of mounting safety and cleanliness issues at Sturgis. *See id.* While the Board remained ignorant, Abbott's Officers consciously disregarded red flags of deteriorating conditions at Sturgis. *See id*. at Sections V.D, VI. Even after the Board became aware of the severe conditions at Sturgis and risk to the Company's infant formula product as a result of the Sturgis Shutdown and Abbott Formula Recall, Directors continued deferring to management because they lacked timely information to evaluate management's handling of the crisis, which left them wholly unable to respond. *See id*. at Sections V.E-G, VI.C. In addition to thousands of pages of Abbott's internal documents, the NYSCRF Complaint draws on the vast public record, including government documents, public reporting, news articles, and litigation sources. *See* Dkt. 68-7 (Benson Decl.) Ex. 5 (appendix of sources relied on). NYSCRF's clearly pled, well-supported *Caremark* claim most comprehensively establishes Defendants' liability which gave rise to the corporate trauma. *See In re Invs. Bancorp, Inc. S'holder Litig.*, No. CV 12327-VCS, 2016 WL 4257503, at *4 (Del. Ch. Aug. 12, 2016) (holding that the superior of two complaints pursuing the same legal theories contained more extensive factual detailed supporting the claims); *Wiehl*, 2005 WL 696764, at *3 (holding superior the "more detailed and organized" pleading that was "more targeted, better researched").

SEPTA and Teamsters highlight that their complaint references other infant formula issues at Abbott: the Company's allegedly "deceptive and unethical marketing" of its bovine milk formula (*see, e.g.*, SEPTA/Teamsters Compl. at ¶¶ 105-15), and a recently-announced FTC investigation concerning Abbott's WIC contracts (*see, e.g., id*. at ¶¶ 93-104), which they claim make for a more "thorough" pleading with additional avenues for pleading demand futility.[7] SEPTA/Teamsters Mot. at 11-12. Critically, that complaint does not tie either of these issues to any corporate harm suffered by the Company and therefore is not helpful to pleading demand futility. The "billions in damages" SEPTA and Teamsters allege relates to "the fallout from Abbott's infant formula recall and Sturgis plant shutdown" (*id.* at ¶ 376), with reference to unnamed "***other issues*** related to the failure to warn about the increased risk of preterm infants developing NEC from consuming its cow-milk based formula." SEPTA/Teamsters Compl. at ¶ 378 (emphasis added). As Vice Chancellor Laster explained in dismissing a complaint by SEPTA earlier this year, a *Caremark* oversight derivative claim must "*follow* the corporate trauma because it is a means of shifting the loss." Benson Decl. Ex. 7 at 12:7-11; *see also id*. at 15:15-17:2 (criticizing claim based on "a *potential* Sherman Act violation."); *cf.* SEPTA/Teamsters Compl. at ¶ 100 ("Aside from *potentially* violating anti-trust regulations related to the Company's WIC contracts . . . ."); ¶ 448 (alleging defendants "further breached their oversight duties, allowing Abbott to use predatory advertising tactics along with *anti-competitive actions* to secure a dominant position in the U.S. infant formula market.") (emphases added). Including extraneous allegations of marketing litigation and WIC contract bidding does not make the SEPTA/Teamsters Complaint "more comprehensive and expansive." SEPTA/Teamsters Mot. at 11 (citing *In re Facebook Derivative Litig.*, C.A. No. 2018-0307,

[7] The bovine milk formula and FTC investigation concern entirely different subject matter from the Abbott Infant Formula Recall and Sturgis Shutdown. They relate to marketing and antitrust claims, not product safety. There are wholly separate pending consumer MDLs and securities cases concerning the Abbott Infant Formula Recall and Sturgis Shutdown on the one hand (*see Pembroke Pines Firefighters & Police Officers Pension Fund v. Abbott Labs. et al.*, Case No. 1:22-cv-4661 (N.D. Ill.) & *In re Recalled Abbott Laboratories et al. Infant Formula Products Liab. Litig*., Case No. 22-cv-4148, MDL No. 3037 (N.D. Ill.)), and the bovine milk formula on the other (*see In re Abbott Labs. et al., Preterm Infant Nutrition Prods. Liab. Litig.*, Case No. 1:22-cv-71, MDL 3026 (N.D. Ill.) (Lieff Cabraser serves as one of five co-lead counsel firms in this action)).

2021 WL 4552158, at *3-4 (Del. Ch. Oct. 5, 2021) (appointing lead the plaintiff that pled valuable *Caremark* and *Brophy* claims over a plaintiff that pled *only* on an entire fairness claim)). Rather, the references muddy the corporate harm and fiduciary breach of oversight at issues in this case.

Nor are the complaint's Section 10(b) claims, arising from a share repurchase program and alleged insider stock sales, additive as currently presented. For example, the insider sales allegations simply list stock sales and assert that the sales "were inconsistent with past trading patterns and suspicious in their timing and amount," because they were made "at a time that the Company had failed to disclose material, nonpublic information concerning the unsafe, illegal and unethical production and sale of infant products in the U.S." *See* SEPTA/Teamsters Compl. at ¶¶ 292, 294, 296, 297, 299, 301, 303, 305. But many of the sales listed ***post-date*** the alleged February 2022 disclosure date appearing in the subsequent section of the Complaint. *Id.* at ¶¶ 306-10.

III. CONCLUSION

For the foregoing reasons, NYSCRF respectfully requests appointment as Lead Plaintiff, and requests that the Court appoint Lieff Cabraser as Lead Counsel and Flaxman as Liaison Counsel.

Dated: July 28, 2023

Respectfully submitted,

/s/ Katherine Lubin Benson

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