

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

LEON MARTIN, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, vs. ROBERT B. FORD, <i>et al.</i> , Defendants, - and - ABBOTT LABORATORIES, Nominal Defendant.	Case No. 1:22-cv-5513 District Judge Manish S. Shah Magistrate Judge Sheila M. Finnegan
ILENE LIPPMAN, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, vs. ROBERT B. FORD, <i>et al.</i> , Defendants, - and - ABBOTT LABORATORIES, Nominal Defendant.	Case No. 1:23-cv-0266 District Judge Manish S. Shah Magistrate Judge Beth W. Jantz

[Additional captions follow on the next page.]

**Plaintiffs Matthew Steele's and Ilene Lippman's Motion for Appointment of Lead Plaintiff,
Lead Counsel, and Liaison Counsel and Memorandum of Law in Support Thereof**

<p>LARRY HUETTEMAN, derivatively on behalf of ABBOTT LABORATORIES,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>ROBERT B. FORD, <i>et al.</i>,</p> <p style="text-align: right;">Defendants,</p> <p style="text-align: center;">- and -</p> <p>ABBOTT LABORATORIES,</p> <p style="text-align: right;">Nominal Defendant.</p>	<p>Case No. 1:23-cv-0296</p> <p>District Judge Manish S. Shah</p> <p>Magistrate Judge Sunil R. Harjani</p>
<p>MATTHEW STEELE, derivatively on behalf of ABBOTT LABORATORIES,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>LORI J. RANDALL, <i>et al.</i>,</p> <p style="text-align: right;">Defendants,</p> <p style="text-align: center;">- and -</p> <p>ABBOTT LABORATORIES,</p> <p style="text-align: right;">Nominal Defendant.</p>	<p>Case No. 1:23-cv-0850</p> <p>District Judge Manish S. Shah</p> <p>Magistrate Judge Sheila M. Finnegan</p>
<p>DAVID HAMILTON, derivatively on behalf of ABBOTT LABORATORIES,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>ROBERT B. FORD, <i>et al.</i>,</p> <p style="text-align: right;">Defendants,</p> <p style="text-align: center;">- and -</p> <p>ABBOTT LABORATORIES,</p> <p style="text-align: right;">Nominal Defendant.</p>	<p>Case No. 1:23-cv-02648</p> <p>District Judge Manish S. Shah</p> <p>Magistrate Judge Sheila M. Finnegan</p>

[Additional captions follow on the next page.]

THOMAS P. DINAPOLI, COMPTROLLER
OF THE STATE OF NEW YORK, AS
ADMINISTRATIVE HEAD OF THE NEW
YORK STATE AND LOCAL RETIREMENT
SYSTEM, AND AS TRUSTEE OF THE NEW
YORK STATE COMMON RETIREMENT
FUND, derivatively on behalf of ABBOTT
LABORATORIES,

Plaintiff,

v.

ROBERT B. FORD, *et al.*,

Defendants,

- and -

ABBOTT LABORATORIES,

Nominal Defendant.

Case No. 1:23-cv-04142

District Judge Manish S. Shah

Magistrate Judge Sheila M. Finnegan

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL NO. 710 PENSION
FUND and SOUTHEASTERN
PENNSYLVANIA TRANSPORTATION
AUTHORITY, Derivatively on Behalf of
Nominal Defendant ABBOTT
LABORATORIES,

Plaintiff,

v.

ROBERT B. FORD, *et al.*,

Defendants,

- and -

ABBOTT LABORATORIES,

Nominal Defendant.

Case No. 1:23-cv-04143

District Judge Manish S. Shah

Magistrate Judge Sheila M. Finnegan

Table of Contents

PRELIMINARY STATEMENT	1
BACKGROUND	3
I. The Underlying Derivative Claims.....	3
II. Plaintiff Steele’s Prosecution of This Derivative Litigation.....	4
LEGAL STANNDARD.....	5
ARGUMENT.....	6
I. The Court Should Appoint Mr. Steele as Lead Plaintiff.....	6
A. Mr. Steele Is the Only Shareholder of Record Who Has Joined This Litigation as a Plaintiff.	6
B. Mr. Steele’s Continuous Ownership of and Substantial Investment in Abbott Stock Support His Appointment as Lead Plaintiff.	10
C. Mr. Steele Has Demonstrated His Ability to Adequately Represent Abbott and Its Shareholders.....	12
II. The Court Should Appoint Mr. Steele’s Counsel as Lead Counsel Because Bottini & Bottini Has Demonstrated Its Ability to Protect the Interests of Abbott and Its Shareholders.	12
A. Bottini & Bottini Has Prepared Pleadings of Superior Quality and Has Vigorously Prosecuted This Litigation on Behalf of Mr. Steele and Abbott.....	13
B. Bottini & Bottini Has Been Repeatedly Appointed Lead Counsel in Shareholder Derivative Actions in This District and Beyond, and Has a Substantial Track Record of Success.	14
III. The Court Should Appoint The Law Offices of Edward T. Joyce & Associates PC as Liaison Counsel Because of Its Substantial Experience.....	16
CONCLUSION.....	16

Table of Authorities

Cases

<i>Berg v. Guthart</i> , 2014 U.S. Dist. LEXIS 105357 (N.D. Cal. July 30, 2014).....	2, 10
<i>Brown v. Tenney</i> , 155 Ill. App. 3d 605 (Ill. App. Ct. 1987)	10
<i>Cohen v. Beneficial Indus. Loan Corp.</i> , 337 U.S. 541 (1949).....	6, 11
<i>Cook v. McCullough</i> , 2012 U.S. Dist. LEXIS 114621 (N.D. Ill. August 13, 2012).....	15
<i>Dollens v. Zions</i> , 2001 U.S. Dist. LEXIS 19966 (N.D. Ill. Dec. 4, 2001).....	2, 5, 10, 11
<i>Hill v. Lynn</i> , 2018 U.S. Dist. LEXIS 98197 (N.D. Ill. June 12, 2018).....	7
<i>Hirt v. U.S. Timberlands Serv. Co.</i> , 2002 Del. Ch. LEXIS 89 (Del. Ch. July 3, 2001).....	5
<i>Horn v. Raines</i> , 227 F.R.D. 1 (D.D.C. 2005).....	5
<i>Housman v. Albright</i> , 857 N.E.2d 724 (Ill. App. Ct. 2006)	6
<i>Kococinski v. Collins</i> , 935 F. Supp. 2d 909 (D. Minn. 2013).....	8
<i>Lower v. Lanark Mut. Fire Ins. Co.</i> , 151 Ill. App. 3d 471 (Ill. App. Ct. 1986)	10
<i>LR Trust v. Page</i> , No. 19CV341522, slip op. (Cal. Super. Ct. Cnty. of Santa Clara May 16, 2019).....	11
<i>Millman ex rel. Friedman's, Inc. v. Brinkley</i> , 2004 U.S. Dist. LEXIS 20113 (N.D. Ga. Oct. 1, 2004)	5
<i>Neiman v. Templeton, Kenly & Co.</i> , 13 N.E.2d 290 (1938)	8
<i>Nicolow v. Hewlett Packard Co.</i> , 2013 U.S. Dist. LEXIS 29876 (N.D. Cal. Mar. 4, 2013).....	11

Resnik v. Woertz,
774 F. Supp. 2d 614 (D. Del. 2011)..... 5

Statutes

805 ILL. COMP. STAT. § 5/1.80..... 7

805 ILL. COMP. STAT. § 5/5.75..... 4

805 ILL. COMP. STAT. § 5/7.80..... 1, 6, 7

Rules

FED. R. CIV. P. 23.1 5

Plaintiff Matthew Steele, a shareholder of record of Abbott Laboratories (“Abbott”), respectfully submits this memorandum in support of his motion, joined by plaintiff Ilene Lippman, to (1) appoint Mr. Steele as lead plaintiff and his counsel, Bottini & Bottini, Inc., as lead counsel and The Law Offices of Edward T. Joyce & Associates, P.C. as liaison counsel for plaintiffs; or, in the alternative, (2) appoint Mr. Steele and Bottini & Bottini as co-lead plaintiff and co-lead counsel together with one of the Institutional Movants¹ and one of their chosen counsel.

PRELIMINARY STATEMENT

The Court should appoint Mr. Steele, *a record owner of 6,000 shares of Abbott stock since 1992*, as lead plaintiff in this derivative litigation because he is the only shareholder plaintiff who has demonstrated his qualification to satisfy Illinois’s statutory “shareholder of record” requirement to bring a derivative action and to inspect Abbott’s books and records, and because, through his vigorous prosecution of this litigation, Mr. Steele has demonstrated his ability to represent Abbott and its shareholders. The Court should also appoint Mr. Steele’s counsel as lead counsel because, as demonstrated in the firm’s successful track record in prosecuting shareholder derivative litigation in this District and beyond, Bottini & Bottini is able to prosecute this litigation and protect Abbott’s interests.

In contrast to Mr. Steele, the Institutional Movants — as “beneficial owners” of Abbott stock — lack statutory standing to bring derivative actions. Despite their lack of standing, the Institutional Movants have failed to seek leave of court, as required under § 5/7.80(a) of the Illinois Business Corporation Act, to pursue their derivative claims *before commencing action*.

Also due to their lack of statutory standing to conduct a books-and-records inspection, the

¹ The anticipated Institutional Movants are (1) International Brotherhood of Teamsters Local No. 710 Pension Fund (“Teamsters 710”); (2) Southeastern Pennsylvania Transportation Authority (“SEPTA”); and (3) New York State Common Retirement Fund (“NYSCRF”).

Institutional Movants apparently accepted an inadequate and limited production of documents from Abbott without insisting for compliance with their books-and-records demands. In contrast, Mr. Steele has commenced a *mandamus* action in the Circuit Court of Lake County seeking to compel Abbott to comply with his books-and-records demand. Not only does Mr. Steele's pursuit of judicial relief in his books-and-records inspection demonstrate his ability to vigorously prosecute this derivative litigation, the documents he is expected to obtain through his state-court proceedings will help advance the derivative claims in this Court.

Teamster 710's, SEPTA's, and NYSCRF's status as institutional investors warrant no preferential treatment in a shareholder derivative litigation.² See *Dollens v. Zionts*, 2001 U.S. Dist. LEXIS 19966, at *19 (N.D. Ill. Dec. 4, 2001) (selecting an individual investor as lead plaintiff in a derivative action over an institutional investor). Indeed, Mr. Steele's investment in Abbott is valued over \$600,000. Steele Decl. ¶ 3. Regardless of the value of Abbott stock held by Teamster 710, SEPTA, and NYSCRF, Mr. Steele's "relative economic stake weighs in favor of" appointing him over the Institutional Movants as lead plaintiff. *Berg*, 2014 U.S. Dist. LEXIS 105357, at *19.

Mr. Steele's counsel, Bottini & Bottini, has repeatedly been appointed to serve as lead counsel in derivative actions and other representative litigation in this District and beyond. See Bottini Decl. ¶ 18. In light of Bottini & Bottini's demonstrated ability to protect the interests of Abbott and its shareholders, the Court should appoint Bottini & Bottini as lead counsel. And based on the substantial experience of The Law Offices of Edward T. Joyce & Associates, P.C., the Court should appoint that firm as liaison counsel for plaintiffs.

Accordingly, the Court should grant Mr. Steele's and Ms. Lippman's motion in its entirety.

² The preference for appointing institutional investors as lead plaintiffs is derived from the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which governs only securities class actions. *Berg v. Guthart*, 2014 U.S. Dist. LEXIS 105357, at *18 (N.D. Cal. July 30, 2014) (collecting cases rejecting the PSLRA's approach in derivative actions and "focusing on the relative economic impact on each plaintiff").

BACKGROUND

I. The Underlying Derivative Claims

This shareholder derivative litigation arises from the misconduct on the part of the Individual Defendants³ — Abbott’s officers and directors — relating to the February 2022 recall of baby formula produced at Abbott’s contaminated facility in Sturgis, Michigan. ¶¶ 1–36.⁴ Headquartered in Abbott Park and incorporated under Illinois law, Abbott is a medical-devices and healthcare company generating over \$40 billion in annual revenues. ¶¶ 41, 81. Abbott manufactures about 40% of the infant formula in the United States, nearly half of which was manufactured by its Sturgis facility. ¶ 3.

Because Abbott’s products, if adulterated, can pose a threat of sickness or death to consumers, Abbott’s operations are highly regulated and subject to oversight by the Food & Drug Administration (“FDA”). ¶¶ 82–83. The Individual Defendants were well aware of the bacterial risk in infant formula. *Id.* Under the Individual Defendants’ watch, however, Abbott’s Sturgis facility operated in such an unsanitary environment that its infant formula posed health risks to consumers in as early as 2019. ¶¶ 99–104. Yet the Individual Defendants caused Abbott to ignore such risks until February 2022, when the FDA forced Abbott to recall its contaminated products and to shut down its Sturgis facility. ¶ 104. In May 2022, the Individual Defendants’ misconduct caused Abbott to enter into a consent decree with the U.S. Department of Justice. *Id.*

In all, following the recall, Abbott became the target of multiple congressional, regulatory, and criminal investigations into its wrongdoing — caused by the Individual Defendants.

³ The Individual Defendants include Robert B. Ford, Robert J. Alpern, Roxanne S. Austin, Sally E. Blount, Paola Gonzalez, Michelle A. Kumbier, Darren W. McDew, Nancy McKinstry, William A. Osborn, Michael F. Roman, Daniel J. Starks, John G. Stratton, Glenn F. Tilton, Lori J. Randall, Keenan S. Gale, TJ Hathaway, Robert E. Funck, Jr., Joseph Manning, and Christopher J. Calamari.

⁴ The allegations in Mr. Steele’s February 10, 2023 verified complaint are cited as “¶ ____.” Unless otherwise noted, all emphases in quoted texts are added.

Moreover, while allowing Abbott to operate without regard to public health and safety, the Individual Defendants caused Abbott to issue false and misleading statements touting the adequacy and effectiveness of its internal controls. ¶¶ 124–143. These false and misleading statements caused Abbott stock to trade at artificially inflated prices between February 2021 and the fall of 2022, when Abbott’s stock price fell below \$94 per share — after the truth of its defective internal controls was revealed. ¶ 161. But the Individual Defendants caused Abbott to repurchase nearly 34 million shares of Abbott stock at inflated prices — sometimes north of \$127 per share. ¶ 164. These stock repurchases caused Abbott to incur over \$950 million in losses. *Id.*

Based on these facts, which are set forth in detail in his 60-page, 200-plus-paragraph verified complaint, Mr. Steele alleges that the Individual Defendants breached their fiduciary duties by, among other things, (1) permitting the Sturgis facility to operate under unsanitary conditions; (2) causing Abbott to incur potentially millions of dollars of legal liability and defense costs in consumer lawsuits, securities-fraud class actions, and government investigations; (3) causing Abbott to repurchase millions of dollars of its stock at inflated prices; and (4) collecting from Abbott excessive compensation and bonuses. ¶¶ 192–212.

II. Plaintiff Steele’s Prosecution of This Derivative Litigation

Beginning in September 2022, on behalf of Mr. Steele, Bottini & Bottini began investigating the Individual Defendants’ misconduct. Bottini Decl. ¶ 2. Bottini & Bottini’s investigation included extensive review of documents available from the U.S. Securities and Exchange Commission, the media, and related litigations. *Id.* Bottini & Bottini also conducted extensive legal research, including research into Illinois law. *Id.* ¶ 3.

Mr. Steele actively participated in counsel’s investigation of the Individual Defendants’

misconduct. *See* Steele Decl. ¶ 5.⁵ In addition to authorizing the filing of his verified complaint, Mr. Steele also authorized a books-and-records inspection under 805 ILL. COMP. STAT. § 5/5.75, seeking to inspect Abbott’s documents relating to the events and transactions alleged in the complaint. *Id.*

On February 10, 2023, before filing his complaint, Mr. Steele’s counsel, Bottini & Bottini, propounded a books-and-records inspection demand on Abbott.

Between February and April 2023, Bottini & Bottini engaged in multiple conferences and exchanged letters with Abbott’s counsel regarding Mr. Steele’s books-and-records inspection demand. Bottini Decl. ¶ 9.

On April 14, 2023, due to Abbott’s repeated refusals to produce adequate documents in response to his inspection demand, Mr. Steele commenced a *mandamus* action in the Circuit Court of Lake County, Illinois, seeking to compel Abbott to comply with his inspection demand. Mr. Steele’s *mandamus* action remains pending. *Id.* at ¶¶ 11-12.

LEGAL STANDARD

District courts have broad discretion to establish a leadership structure. *Resnik v. Woertz*, 774 F. Supp. 2d 614, 625 (D. Del. 2011) (citing *Horn v. Raines*, 227 F.R.D. 1, 3 (D.D.C. 2005)). In exercising their broad discretion, courts weigh a variety of factors, including (1) the financial interest of the proposed lead plaintiff; (2) quality of the pleadings; (2) vigorousness of prosecution of the lawsuit; and (3) counsel’s competence and access to the resources necessary to prosecute the claims at issue. *See, e.g., Horn*, 227 F.R.D. at 3; *Dollens*, 2001 U.S. Dist. LEXIS 19966, at **18–19; *Hirt v. U.S. Timberlands Serv. Co.*, 2002 Del. Ch. LEXIS 89, at **5–6 (Del. Ch. July 3, 2001). Ultimately, courts look to which proposed lead plaintiff and counsel would “best serve the

⁵ Mr. Steele’s Declaration is attached to the Bottini Declaration as Exhibit C.

interest[s]” of the derivative plaintiffs and the nominal defendant, by ensuring that lead plaintiff and lead counsel can “fairly and adequately represent the interests of the shareholders ... in enforcing the right of the corporation[.]” See *Millman ex rel. Friedman’s, Inc. v. Brinkley*, 2004 U.S. Dist. LEXIS 20113, at **8–9 (N.D. Ga. Oct. 1, 2004) (quoting FED. R. CIV. P. 23.1).

ARGUMENT

I. The Court Should Appoint Mr. Steele as Lead Plaintiff.

The Court has discretion to select a lead plaintiff who is most capable of diligently and responsibly discharging a leadership role that is fiduciary in nature. See *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 549 (1949) (“a stockholder who brings suit on a cause of action derived from the corporation assumes a position ... of a fiduciary character ... [because he] sues, not for himself alone, but as representative of a class comprising all who are similarly situated.”).

Here, the Court should appoint Mr. Steele as lead plaintiff because:

- he is the only shareholder plaintiff who has demonstrated, based on his verified statement, that he is *shareholder of record* of Abbott, as required by 805 ILL. COMP. STAT. § 5/7.80(a), and thus qualified to bring a shareholder derivative action;
- his investment in Abbott — valued at over \$600,000 and held since 1992 — provides a significant relative economic stake to justify his appointment as lead plaintiff; and
- he has dedicated substantial resources to the investigation and prosecution of these actions and has thus demonstrated his ability to represent Abbott and its shareholders.

A. Mr. Steele Is the Only Shareholder of Record Who Has Joined This Litigation as a Plaintiff.

Under the Illinois Business Corporation Act, a shareholder plaintiff in a derivative action on behalf of an Illinois corporation must be “a shareholder of record” of the nominal defendant corporation. 805 ILL. COMP. STAT. § 5/7.80(a). This aspect of the law of Illinois — Abbott’s state of incorporation — differs from the laws of many other states, including Delaware, which confer

standing to beneficial owners. *See Housman v. Albright*, 857 N.E.2d 724, 730 (Ill. App. Ct. 2006) (discussing this distinction between Illinois law and Delaware law). Based on this statutory requirement of derivative standing, courts in this District have dismissed derivative actions brought by beneficial (not record) shareholders of Illinois corporations. *See Hill v. Lynn*, 2018 U.S. Dist. LEXIS 98197, at *13 (N.D. Ill. June 12, 2018) (dismissing a derivative claim “because [plaintiff] has not alleged that he is a shareholder [of record within the meaning of 805 ILL. COMP. STAT. §§ 5/1.80(g) and 5/7.80(a)]”).

In his verified complaint, Mr. Steele attested to his status as a shareholder of record of Abbott since 1992. ¶ 40; *see also* Steele Decl. ¶ 3. He is the only shareholder plaintiff who has submitted evidence to establish his “record shareholder” status.

In contrast, none of the other plaintiffs or Institutional Movants claim to be a shareholder of record of Abbott. In fact, it is the opposite. As demonstrated in the inspection demands submitted by Teamsters 710, SEPTA, and NYSCRF, they are all “*beneficial owners*” — rather than “record owners” — of Abbott stock. *See Martin* Dkt. No. 29-1 at 2 (stating “Teamsters 710’s *beneficial ownership* of Abbott common stock”); *Martin* Dkt. No. 29-2 at 8 (“SEPTA is currently the *beneficial owner* of shares of Abbott common stock”); *Martin* Dkt. No. 45-2 at 17 (“NYSCRF has been a *beneficial owner* of Abbott stock since at least March 31, 2018”).

As “beneficial owners” of Abbott stock, none of these plaintiffs and Institutional Movants can satisfy Illinois’s statutory standing requirement for shareholder derivative actions. Accordingly, Teamsters 710, SEPTA, and NYSCRF should not be appointed lead plaintiffs.

While it is true that Section 5/7.80(a) provides that beneficial shareholders may move for a court order permitting them to bring derivative claims, that provision specifically requires the filing of a motion and contemplates “evidence by affidavit or testimony ... that plaintiff acquired

the shares before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains.” *See* 805 ILL. COMP. STAT. § 5/7.80(a).

Notably, none of the Institutional Movants or plaintiffs have moved for leave to maintain their derivative actions. Nor have they submitted any evidence, as contemplated by § 5/7.80, demonstrating that they acquired Abbott shares before there was disclosure to the public of Abbott’s underlying wrongdoing. Instead, the Institutional Movants merely filed motions to intervene,⁶ and then, like the other “beneficial owner” plaintiffs, filed derivative complaints without *first* obtaining leave of court to maintain their derivative actions as beneficial owners. Their failure to adhere to the statute undermines their adequacy as lead plaintiffs.

The fact that Teamsters 710, SEPTA, NYSCRF, and Plaintiff Hamilton have inspected some books and records of Abbott does not change the analysis. Mr. Steele has also made a demand under Section 5/7.75 to inspect Abbott’s books and records. And, as a shareholder of record, Mr. Steele — unlike Teamsters 710, SEPTA, NYSCRF, and Plaintiff Hamilton — is entitled to a books-and-records inspection. *See* 805 ILL. COMP. STAT. § 5/7.75(b). Thus, Mr. Steele will be able to use the materials obtained from his Section 7.75 inspection demand to benefit all shareholders and the Company in this litigation. *See, e.g., Kococinski v. Collins*, 935 F. Supp. 2d 909, 911, n.1 (D. Minn. 2013) (urging plaintiff to “exercise[e] his statutory right to examine [the Minnesota corporation’s] books and records in order to potentially bolster his allegations”).

In contrast to Mr. Steele’s undisputed statutory standing to perform his inspection demand, the Institutional Movants lack standing to initiate or compel any inspection demand. Section 5/7.75 of the Illinois Business Corporation Act confers the right to inspect corporate books and

⁶ Nowhere in the motions to intervene did the institutional investors seek leave of court to maintain a derivative action as beneficial owners. Instead, the motions merely sought a limited stay of the existing derivative cases until they completed their inspection demands.

records only to “shareholder[s] of record.” *See* 805 ILL. COMP. STAT. § 5/7.75(b); *see also Neiman v. Templeton, Kenly & Co.*, 13 N.E.2d 290, 292 (1938) (upholding as “reasonable” the statutory limitations on shareholders’ right to inspect corporate books and records). Teamsters 710, SEPTA, and NYSCRF’s apparent inability to satisfy this statutory requirement hampers their ability to properly complete their books-and-records investigation.

Notably, Illinois’s shareholder inspection statute does not contain any provision allowing beneficial owners to perform an inspection demand upon the filing of a motion with the court. Thus, while Abbott apparently agreed to voluntarily produce a limited number of documents to the institutional investors, there was and is no judicially enforceable mechanism for the institutional investors to compel a more fulsome production. Mr. Steele also negotiated with Abbott’s counsel about documents to be produced in response to his inspection demand and, in order to ensure a complete and fulsome production of documents by Abbott, filed a *mandamus* action in the Circuit Court of Lake County to compel Abbott’s production of all the key books and records of the Company germane to this action. Bottini Decl. ¶ 11. Additional documents that may be obtained through that proceeding may be used in this case, thus substantially benefiting the derivative claims. The Institutional Movants, due to their lack of any entitlement to enforce their non-existent inspection rights under Illinois statute, simply accepted an inadequate and limited production to claim that they had obtained some documents from Abbott. Neither their efforts nor the meager results obtained merit their appointment as lead plaintiffs, certainly not to the exclusion of Mr. Steels, whose efforts on the inspection demand front have been more vigorous and stand to provide a greater benefit to the derivative claims.

Accordingly, the Court should appoint Mr. Steele as lead plaintiff.

B. Mr. Steele’s Continuous Ownership of and Substantial Investment in Abbott Stock Support His Appointment as Lead Plaintiff.

Mr. Steele is also the most adequate lead plaintiff because he has continuously been a shareholder of record of Abbott since well before the alleged wrongdoing occurred. To maintain a derivative action on behalf of the nominal defendant, “a plaintiff . . . must have been a shareholder at the time of the transaction of which he complains and must maintain his status as a shareholder throughout the entire pendency of the action.” *Lower v. Lanark Mut. Fire Ins. Co.*, 151 Ill. App. 3d 471, 473 (Ill. App. Ct. 1986); *see also Brown v. Tenney*, 155 Ill. App. 3d 605, 608 (Ill. App. Ct. 1987) (same). Here, the Relevant Period is from 2019 through the present. Mr. Steele first acquired Abbott common stock decades before — in 1992. Steele Decl. ¶ 3. Mr. Steele has continuously held such shares. *Id.* Mr. Steele has also stated his willingness to “maintain [his Abbott] stockholdings for the entire duration of this litigation.” *Id.* ¶ 7. As such, Mr. Steele has standing to assert the derivative claims on Abbott’s behalf.

In shareholder derivative actions, any recovery goes to the nominal defendant company, not to the plaintiffs. Thus, the size of a plaintiff’s holdings cannot alone justify appointment of any one plaintiff as “lead plaintiff” as is the case in securities-fraud class actions asserting *direct claims against the company* under the PSLRA. Thus, most courts — including courts in this District — have rejected a pure “numbers” approach to appointment of a lead plaintiff in derivative actions. *See, e.g., Dollens*, 2001 U.S. Dist. LEXIS 19966, at *19 (requiring an institutional investor to proffer “facts . . . that would suggest that [it] has any greater incentive to litigate this case than any other plaintiff who seeks to lead”); *Berg*, 2014 U.S. Dist. LEXIS 105357, at *20 (rejecting the PSLRA analysis based on the distinction between direct and derivative actions).

Instead, the relevant analysis is whether, among other factors, a plaintiff has enough of a significant interest in the company to provide an incentive to vigorously litigate the case. Mr.

Steele holds 6,000 shares of Abbott stock, valued in excess of \$600,000, which is a material percentage of his investment portfolio. *Id.* ¶ 3. In determining “which party has the most financial incentive to vigorously pursue a meritorious outcome,” the Court should look to the lead-plaintiff movant’s “relative economic stake,” rather than the absolute number of shares or the absolute value of the holdings. *See Berg*, 2014 U.S. Dist. LEXIS 105357, at *19. Just like the individual investor movant in *Berg*, “[b]ecause his [Abbott] stock represents such a large percentage of his portfolio,” Mr. Steele “will certainly be motivated to pursue this case vigorously” and thus should be appointed lead plaintiff even if the Institution Movants’ holdings in Abbott stock may be larger than his. *Id.* Indeed, courts in this District and beyond have repeatedly chosen individual investors over institutional investors to lead derivative actions for the same reason. *See, e.g., Dollens*, 2001 U.S. Dist. LEXIS 19966, at *19; *Nicolow v. Hewlett Packard Co.*, 2013 U.S. Dist. LEXIS 29876, at *30 (N.D. Cal. Mar. 4, 2013) (refusing to apply the PSLRA’s preference for institutional investors in selecting a lead plaintiff in a shareholder derivative action). Accordingly, the Court should appoint Mr. Steele as lead plaintiff here.

Indeed, in the *Google* shareholder derivative action, where Bottini & Bottini was appointed Co-Lead Counsel (along with Cohen Milstein, counsel for Teamsters/SEPTA in the present action), the court appointed Bottini & Bottini co-lead counsel over a firm which represented the same New York institutional investors who have moved to intervene, rejecting New York’s arguments that it had a vastly superior economic interests in the case and citing such factors as Bottini & Bottini’s quality of work, stockholder inspection demand, and experience in shareholder derivative actions. *See LR Trust v. Page*, No. 19CV341522, slip op., at 11 (Cal. Super. Ct. Cnty. of Santa Clara May 16, 2019) (Bottini Decl. Ex. B).

C. Mr. Steele Has Demonstrated His Ability to Adequately Represent Abbott and Its Shareholders.

Mr. Steele is also most capable of diligently and responsibly fulfilling the duties of lead plaintiff. He has been actively involved in this litigation. Steele Decl. ¶¶ 5–7. He reviewed the derivative complaint before it was filed and authorized his counsel, Bottini & Bottini, to file it on his behalf as a derivative plaintiff pursuing claims for Abbott’s benefit. *Id.* ¶ 5. He has discussed the responsibilities of being a lead plaintiff with the attorneys at Bottini & Bottini and is willing and able to serve as lead plaintiff in this action. *See id.* ¶¶ 6–7. He has verified his willingness and ability to undertake the “fiduciary duty to [Abbott] and its shareholders to represent their interests fairly and adequately and to vigorously prosecute the litigation.” *Id.* Thus, the Court should appoint Mr. Steele as Lead Plaintiff.

* * *

Alternatively, should the Court desire to appoint more than one lead plaintiff, then Mr. Steele respectfully submits that the Court should appoint one of the three institutional investors as a lead plaintiff to serve along with Mr. Steele. If it is desirous to have an institutional investor in the leadership structure, then one of such investors is enough. Appointing more than one such investor as a co-lead plaintiff would not provide any incremental benefit and would lead to duplication of effort and expense. A co-lead structure with two lead plaintiffs and two firms as co-lead counsel would be manageable and such a structure has been approved by many courts.

II. The Court Should Appoint Mr. Steele’s Counsel as Lead Counsel Because Bottini & Bottini Has Demonstrated Its Ability to Protect the Interests of Abbott and Its Shareholders.

An analysis of the previously-mentioned factors further supports the conclusion that Mr. Steele is the most adequate lead plaintiff. Those factors also support appointing Mr. Steele’s chosen counsel as lead counsel.

A. Bottini & Bottini Has Prepared Pleadings of Superior Quality and Has Vigorously Prosecuted This Litigation on Behalf of Mr. Steele and Abbott.

Bottini & Bottini prepared and filed a comprehensive and detailed 60-page, 200-plus-paragraph derivative complaint in this Court on February 10, 2023. Mr. Steele's complaint was well-researched, comprehensive and was filed only after a thorough months-long investigation of the underlying facts, which included, *inter alia*, the review of Abbott's filings with the U.S. Securities and Exchange Commission, Abbott's press releases, and analyst reports concerning Abbott. Bottini Decl. ¶ 2. Mr. Steele's counsel undertook a substantial effort to investigate the role and involvement of each of Abbott's officers and directors in the alleged wrongdoing. As a result, his complaint details the nature of the many breaches of fiduciary duties committed by Abbott's officers and directors. To establish demand futility, Mr. Steele included fact-specific allegations showing that Abbott's directors lack independence and face a substantial likelihood of liability. Mr. Steele also asserted claims based on Abbott's stock repurchase program. *Id.* ¶ 6.

Following the filing of Mr. Steele's complaint, Bottini & Bottini cooperated with respective counsel for other plaintiffs, proposed intervenors, and defendants in the proceedings before this Court. *Id.* ¶ 8. Specifically, Bottini & Bottini organized a conference call with other plaintiffs' counsel to discuss issues of consolidation and leadership. *Id.* In addition, after the Institutional Movants sought intervention, Bottini & Bottini engaged in cooperative discussions with their counsel and agreed on a joint status report to be submitted to the Court and a schedule for further proceedings. *Id.*

Between February and April 2023, Bottini & Bottini engaged in multiple conferences and exchanged letters with Abbott's counsel regarding Mr. Steele's books-and-records inspection demand. *Id.* ¶ 9. During these negotiations with Abbott's counsel, Bottini & Bottini found Abbott's offers of production to be inadequate and curtailed. *Id.*

On April 14, 2023, due to Abbott's refusals to properly comply with his inspection demand, Mr. Steele commenced a *mandamus* action in the Circuit Court of Lake County, seeking to compel Abbott's compliance. *Id.* ¶ 10. Mr. Steele expects his *mandamus* action to be resolved promptly.

B. Bottini & Bottini Has Been Repeatedly Appointed Lead Counsel in Shareholder Derivative Actions in This District and Beyond and Has a Substantial Track Record of Success.

Mr. Steele has retained well-qualified and experienced counsel to litigate this action on behalf of Abbott. Bottini & Bottini has extensive experience litigating shareholder derivative actions. For example, Bottini & Bottini was appointed co-lead counsel in a derivative action on behalf of Google by the Superior Court of California, County of San Mateo, after a heavily-contested lead counsel process. Bottini Decl. ¶ 18. A groundbreaking settlement was reached in 2020, which resulted in Google's commitment to eliminate the use of mandatory arbitration in cases alleging sexual harassment and discrimination, the establishment of a Diversity, Equity, & Inclusion Council including two members selected by plaintiffs' counsel, and an agreement by Google to spend \$310 million over ten years on workplace initiatives designed to eliminate sexual harassment and discrimination and initiatives that support diversity, equity, and inclusion. *Id.*

Bottini & Bottini led the prosecution of numerous high-profile shareholder derivative actions. For example, in *Justice John Trotter (Ret.), Trustee of the PG&E Fire Victim Trust v. Williams*, Lead Case No. CGC-17-562591 (Cal. Super. Ct. Cnty. of San Francisco), Bottini & Bottini was retained by Justice John Trotter on behalf of the PG&E Fire Victim Trust to assert claims against various former officers and directors of PG&E Corporation. *Id.* ¶ 18. After years of hard-fought litigation, a settlement of \$117 million was reached just a few months before trial was set to commence. *Id.* Bottini & Bottini was Co-Lead Counsel in *In re Yahoo! Inc. Shareholder Litigation*, Lead Case No. 17-CV-307054 (Cal. Super. Ct. Cnty. of Santa Clara), which involved the largest corporate data breach in U.S. history. *Id.* Bottini & Bottini

recovered a \$29 million cash settlement for the company — the largest recovery ever in a shareholder derivative action involving a data breach. *Id.*

Mr. Bottini is also one of only a handful of plaintiffs’ lawyers to ever be retained by a corporation’s Special Litigation Committee (“SLC”) in a derivative action. In *In re Brocade Communications Systems, Inc.*, No. 05-cv-2233 (N.D. Cal.), Mr. Bottini was retained as co-counsel to Brocade by the SLC of the Board of Directors of Brocade to help litigate the company’s claims against ten former officers and directors of the company who had engaged in wrongdoing related to backdating of the company’s stock options. *See* Bottini Decl. ¶ 19. After litigating the case for more than five years, over \$24 million was recovered for Brocade. *Id.*

Bottini & Bottini has attorneys who are admitted to practice in Illinois and clerked in this District.⁷ In 2020, Bottini & Bottini was appointed to plaintiffs’ steering committee in a high-profile class action in this District, *In re Tik Tok, Inc. Consumer Privacy Litigation*, MDL No. 2948 (N.D. Ill.), which ultimately resulted in a \$92 million cash settlement. Bottini Decl. ¶ 24. Bottini & Bottini also served as lead counsel in a derivative action filed in the Northern District of Illinois against the officers and directors of Career Education where the firm successfully defeated defendants’ motion to dismiss, which challenged the sufficiency of the complaint’s demand-futility allegations. *See Cook v. McCullough*, 2012 U.S. Dist. LEXIS 114621 (N.D. Ill. August 13, 2012). After years of hard-fought litigation, Bottini & Bottini secured a \$20 million cash recovery for Career Education, in addition to valuable corporate governance reforms. *Id.* ¶ 23.

Bottini & Bottini is currently lead or co-lead counsel in numerous other federal and state derivative actions. The Court should appoint Bottini & Bottini as lead counsel here.

⁷ Anne Bottini Beste, a 1992 graduate of Northwestern University School of Law, is admitted to practice in Illinois. Albert Y. Chang served as a judicial law clerk to United States District Judge Suzanne B. Conlon in this District; he has appeared as counsel in numerous cases in this District and in the Seventh Circuit. *See* Bottini Decl. ¶ 21.

III. The Court Should Appoint The Law Offices of Edward T. Joyce & Associates PC as Liaison Counsel Because of Its Substantial Experience.

The Chicago-based Law Offices of Edward T. Joyce & Associates PC has substantial experience litigating in this District and a long history of working with Bottini & Bottini in shareholder derivative actions. Bottini Decl. ¶ 26 & Ex. D. The Court should appoint The Law Offices of Edward T. Joyce & Associates P.C. as liaison counsel for plaintiffs.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Steele and Ms. Lippman's motion.

Dated: July 14, 2023

Respectfully submitted,
MATTHEW STEELE,

s/ Francis A. Bottini, Jr.

Francis A. Bottini, Jr.
Albert Y. Chang
BOTTINI & BOTTINI, INC.
7817 Ivanhoe Avenue, Suite 102
La Jolla, CA 92037
Telephone: (858) 914-2001
Facsimile: (858) 914-2002
fbottini@bottinilaw.com
achang@bottinilaw.com

Edward T. Joyce
Rowena T. Parma
THE LAW OFFICES OF EDWARD T. JOYCE &
ASSOCIATES P.C.
135 South La Salle Street, Suite 2200
Chicago, IL 60603
Telephone: (312) 641-2600
Facsimile: (312) 641-0360
ejoyce@joycelaw.com
rparma@joycelaw.com

Counsel for Plaintiff Matthew Steele

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

LEON MARTIN, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, vs. ROBERT B. FORD, <i>et al.</i> , Defendants, - and - ABBOTT LABORATORIES, Nominal Defendant.	Case No. 1:22-cv-5513 District Judge Manish S. Shah Magistrate Judge Sheila M. Finnegan
--	---

ILENE LIPPMAN, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, vs. ROBERT B. FORD, <i>et al.</i> , Defendants, - and - ABBOTT LABORATORIES, Nominal Defendant.	Case No. 1:23-cv-0266 District Judge Manish S. Shah Magistrate Judge Beth W. Jantz
--	--

[Additional captions follow on the next page.]

Declaration of Francis A. Bottini, Jr. in Support of Plaintiffs Matthew Steele's and Ilene Lippman's Motion for Appointment of Lead Plaintiff, Lead Counsel, and Liaison Counsel

<div>LARRY HUETTEMAN, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, vs. ROBERT B. FORD, <i>et al.</i>, Defendants, - and - ABBOTT LABORATORIES, Nominal Defendant.</div>	<div>Case No. 1:23-cv-0296 District Judge Manish S. Shah Magistrate Judge Sunil R. Harjani</div>
<div>MATTHEW STEELE, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, vs. LORI J. RANDALL, <i>et al.</i>, Defendants, - and - ABBOTT LABORATORIES, Nominal Defendant.</div>	<div>Case No. 1:23-cv-0850 District Judge Manish S. Shah Magistrate Judge Sheila M. Finnegan</div>
<div>DAVID HAMILTON, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, vs. ROBERT B. FORD, <i>et al.</i>, Defendants, - and - ABBOTT LABORATORIES, Nominal Defendant.</div>	<div>Case No. 1:23-cv-02648 District Judge Manish S. Shah Magistrate Judge Sheila M. Finnegan</div>

[Additional captions follow on the next page.]

THOMAS P. DINAPOLI, COMPTROLLER
OF THE STATE OF NEW YORK, AS
ADMINISTRATIVE HEAD OF THE NEW
YORK STATE AND LOCAL RETIREMENT
SYSTEM, AND AS TRUSTEE OF THE NEW
YORK STATE COMMON RETIREMENT
FUND, derivatively on behalf of ABBOTT
LABORATORIES,

Plaintiff,

v.

ROBERT B. FORD, *et al.*,

Defendants,

- and -

ABBOTT LABORATORIES,

Nominal Defendant.

Case No. 1:23-cv-04142

District Judge Manish S. Shah

Magistrate Judge Sheila M. Finnegan

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL NO. 710 PENSION
FUND and SOUTHEASTERN
PENNSYLVANIA TRANSPORTATION
AUTHORITY, Derivatively on Behalf of
Nominal Defendant ABBOTT
LABORATORIES,

Plaintiff,

v.

ROBERT B. FORD, *et al.*,

Defendants,

- and -

ABBOTT LABORATORIES,

Nominal Defendant.

Case No. 1:23-cv-04143

District Judge Manish S. Shah

Magistrate Judge Sheila M. Finnegan

Under 28 U.S.C. § 1746, I, Francis A. Bottini, Jr., declare as follows:

1. I am an attorney with the law firm of Bottini & Bottini, Inc., counsel for Matthew Steele, a shareholder of record of Abbott Laboratories (“Abbott”) and the plaintiff in *Steele v. Randall*, No. 1:23-cv-0850 (N.D. Ill.), a shareholder derivative action brought on behalf of Abbott. I submit this declaration in support of the motion by Mr. Steele and Plaintiff Ilene Lippman to (a) appoint Mr. Steele as lead plaintiff and Bottini & Bottini as lead counsel and The Law Offices of Edward T. Joyce & Associates, P.C. (“Joyce & Associates”) as liaison counsel for plaintiffs; or, in the alternative, (b) appoint Mr. Steele and Bottini & Bottini as co-lead plaintiff and co-lead counsel together with one of the Institutional Movants¹ and one of their chosen counsel. I have personal knowledge of the facts stated in this declaration. I could and would competently testify to these facts, if called upon to do so.

I. Mr. Steele and Bottini & Bottini’s Vigorous Prosecution of This Derivative Litigation in Federal and State Courts

2. Beginning in September 2022, on behalf of its client Mr. Steele, Bottini & Bottini began investigating the misconduct on the part of Abbott’s officers and directors relating to the February 2022 recall of baby formula produced at Abbott’s contaminated facility in Sturgis, Michigan. Bottini & Bottini’s investigation included an extensive review of Abbott’s filings with the U.S. Securities and Exchange Commission, its press releases and other public disclosures, and analyst reports and media coverage regarding Abbott, as well as court filings in related litigations, including the related securities-fraud class action in this Court, *Pembroke Pines Firefighters & Police Officers Pension Fund v. Abbott Laboratories*, No. 22-cv-4661 (N.D. Ill.).

¹ The anticipated Institutional Movants are (1) International Brotherhood of Teamsters Local No. 710 Pension Fund (“Teamsters 710”); (2) Southeastern Pennsylvania Transportation Authority (“SEPTA”); and (3) New York State Common Retirement Fund.

3. As part of its investigation, Bottini & Bottini also conducted extensive legal research into Illinois law governing shareholder derivative actions since Abbott is an Illinois corporation. This investigation confirmed that, unlike Delaware, Illinois limits its standing in derivative actions to shareholders of record, absent approval of the court pursuant to good cause shown. Due to Illinois's statutory requirements, Bottini & Bottini determined that a derivative action should be brought by an Abbott shareholder of record in order to ensure proper standing and avoid ancillary litigation regarding standing issues. Since Mr. Steele was a shareholder of record, had continuously owned Abbott stock for decades, and expressed a strong desire to pursue available claims against Abbott's officers and directors who had caused harm to the Company related to the infant formula recall and related issues, he was determined to be a very suitable and adequate shareholder plaintiff.

4. As part of its investigation, and cognizant of the fact that some courts have encouraged shareholders to avail themselves of the "tools at hand" to investigate corporate wrongdoing, Bottini & Bottini also prepared a detailed books-and-records inspection demand under 805 ILL. COMP. STAT. § 5/5.75, seeking to inspect Abbott's documents relating to the events and transactions alleged in the complaint and served that demand on Abbott. Before doing so, Bottini & Bottini researched Illinois's inspection statute to ensure compliance with the statute. Since the statute only permits shareholders of record to inspect a company's books and records (and does not allow beneficial owners to do so, even pursuant to a motion), Bottini & Bottini determined that Mr. Steele was entitled to inspection. Notably, Bottini & Bottini had been contacted by numerous other Abbott shareholders seeking legal advice and potential representation but we declined to represent them since they were only beneficial, not record, owners. We

nonetheless spent substantial time discussing the potential claims with such investors and advising them on their rights as Abbott shareholders.

5. After researching and drafting the detailed shareholder inspection demand, Bottini & Bottini served the demand on Abbott on behalf of Mr. Steele prior to filing suit.

6. Meanwhile, the attorneys at Bottini & Bottini began drafting a detailed complaint based on our research. This research and investigation resulted in a 60-page, 200-plus-paragraph shareholder derivative complaint filed by Mr. Steele on Abbott's behalf, alleging that certain Abbott directors and officers (collectively, the "Individual Defendants")² breached their fiduciary duties by, among other things, (a) permitting the Sturgis facility to operate under unsanitary conditions; (b) causing Abbott to incur potentially millions of dollars of legal liability and defense costs in consumer lawsuits, securities-fraud class actions, and government investigations; (c) causing Abbott to repurchase millions of dollars of its stock at inflated prices; and (d) collecting from Abbott excessive compensation and bonuses.

7. On February 10, 2023, following Mr. Steele's approval and instruction, Bottini & Bottini filed the verified shareholder derivative complaint in this Court.

8. Following the commencement of the *Steele* action, Bottini & Bottini reached out to and worked cooperatively with counsel for the other shareholder plaintiffs who had already filed cases. Among other things, Bottini & Bottini organized a conference call with all such plaintiffs' counsel, during which issues of consolidation and leadership were discussed. In addition, after the Institutional Movants moved to intervene, we engaged in cooperative discussions with their

² The Individual Defendants include Robert B. Ford, Robert J. Alpern, Roxanne S. Austin, Sally E. Blount, Paola Gonzalez, Michelle A. Kumbier, Darren W. McDew, Nancy McKinstry, William A. Osborn, Michael F. Roman, Daniel J. Starks, John G. Stratton, Glenn F. Tilton, Lori J. Randall, Keenan S. Gale, TJ Hathaway, Robert E. Funck, Jr., Joseph Manning, and Christopher J. Calamari.

counsel and agreed on a joint status report to be submitted to the Court and a schedule for further proceedings. All counsel have worked cooperatively and collegially.

9. In addition, between February and April 2023, Bottini & Bottini engaged in multiple conferences and exchanged letters with Abbott's counsel, Kirkland & Ellis LLP, regarding Mr. Steele's books-and-records inspection demand.

10. During these negotiations with Abbott's counsel, I found Abbott's response to the inspection demand to be inadequate and curtailed. Abbott's lawyers were attempting to incorporate Delaware law wholesale into Illinois's unique statutory framework for shareholder inspection demands and did not, based on my experience litigating shareholder derivative and class actions lawsuits for the last 29 years, make a reasonable response to the inspection demand. I understood from conversations with various counsel including Kirkland that it had offered to produce a limited scope of documents to other shareholders who had made inspection demands (including the Institutional Movants), but Mr. Steele viewed that scope as entirely unacceptable and thus chose to eventually file a *mandamus* action to obtain an appropriate production of documents.

11. On April 14, 2023, due to Abbott's repeated refusals to properly comply with his inspection demand, Mr. Steele commenced a *mandamus* action in the Circuit Court of Lake County, Illinois, seeking to compel Abbott's compliance.

12. Mr. Steele's *mandamus* action has proceeded into the motion-to-dismiss stage and is expected to be resolved promptly. Notably, the main objection that Abbott has lodged to a fulsome production of documents in response to Mr. Steele's inspection demand is that Mr. Steele chose to file suit rather than suffer a long delay while Abbott dragged out the process. But the only authority that Abbott has cited for the proposition that a shareholder is not entitled to any

further production of documents after he files suit are lower court decisions from Delaware interpreting Delaware's significantly different inspection statute. Those authorities are inapposite in Illinois, which has its own inspection statute. Neither the Illinois statute nor any case in Illinois states or implies in any way that a shareholder of record's rights of inspection are affected in any way by filing (or not filing) a derivative case. Once this simple legal issue is resolved on the pending motion to dismiss, the *mandamus* action is expected to be quickly resolved since there are no other legal issues to be resolved and *mandamus* actions are entitled to prompt resolution. Because he is a shareholder of record, and there are no other such record holders in these related actions, Mr. Steele is the only plaintiff who can obtain a more fulsome production of documents from Abbott. Any such documents obtained would be a benefit to all plaintiffs, and thus it is my belief that Mr. Steele should be selected as the lead plaintiff or co-lead plaintiff. A consolidated complaint will not be filed for some time and there is adequate time for Mr. Steele to obtain his additional documents and utilize them in the consolidated complaint.

13. In sum, Mr. Steele and Bottini & Bottini have diligently prosecuted this litigation in both federal and state courts since its inception and have worked cooperatively with all counsel.

II. Bottini & Bottini's Cooperation with Other Plaintiffs During the Meet-and-Confer Process Regarding the Leadership Structure and Plaintiff Ilene Lippman's Support of This Motion

14. Bottini & Bottini attorneys engaged in cooperative discussions on multiple occasions with plaintiffs Leon Martin, Ilene Lippman, Larry Huetteman, David Hamilton, Teamsters 710, and SEPTA regarding plaintiffs' leadership structure in this litigation.

15. Plaintiff Ilene Lippman supports Mr. Steele's motion for his appointment as lead plaintiff and Bottini & Bottini's appointment as lead counsel for plaintiffs in this litigation.

III. Bottini & Bottini's Substantial Experience and Successful Track Record in Shareholder Derivative Litigation

16. A true and correct copy of Bottini & Bottini's resume is attached as Exhibit A.

17. As reflected in my firm's resume, our lawyers have served as lead or co-lead counsel in numerous shareholder derivative actions in state and federal courts across the country.

18. The following are a few examples of the substantial results obtained by Bottini & Bottini in shareholder derivative actions:

- Bottini & Bottini was appointed co-lead counsel by the Superior Court of California, County of San Mateo, after a heavily-contested lead counsel process. *See LR Trust v. Page*, No. 19CV341522, slip op. (Cal. Super. Ct. Cnty. of Santa Clara May 16, 2019).³ A groundbreaking settlement was reached in 2020 which resulted in Google's commitment to eliminate the use of mandatory arbitration in cases alleging sexual harassment and discrimination, the establishment of a Diversity, Equity, & Inclusion Council including two members selected by Plaintiffs' counsel, and an agreement by Google to spend \$310 million over ten years on workplace initiatives designed to eliminate sexual harassment and discrimination and initiatives that support diversity, equity, and inclusion. *See Daisuke Wakabayashi, Alphabet Settles Shareholder Suits Over Sexual Harassment Claims*, THE NEW YORK TIMES, Sept. 25, 2020. The membership of the DEI Council will consist of both external experts and internal members, including, in its first year, Alphabet's CEO (Sundar Pichai). The workplace initiatives and programs will focus on (1) expanding the pool of historically underrepresented technologists; (2) hiring, progression, and retention of historically underrepresented talent at Alphabet and, in particular, Google; (3) fostering respectful, equitable, and inclusive workplace cultures; and (4) helping historically underrepresented groups and individuals succeed with their businesses and in the digital economy and tech industry.
- In *Justice John Trotter (Ret.), Trustee of the PG&E Fire Victim Trust v. Williams et al.*, Lead Case No. CGC-17-562591 (Cal. Super. Ct. Cnty. of San Francisco), Bottini & Bottini was retained by Justice John Trotter on behalf of the PG&E Fire Victim Trust to assert claims against various former officers and directors of PG&E Corporation. The suit sought damages for breaches of fiduciary duty committed by such officers and directors in connection with wildfires caused by PG&E Corp. in Northern California — the 2017 North Bay Wildfires and the 2018 Camp Fire. Bottini & Bottini had previously filed a shareholder derivative action against PG&E's officers and directors on December 24, 2018. After PG&E filed for bankruptcy due to massive liabilities

³ A true and correct copy of this order is attached as Exhibit B.

related to the wildfires, Justice Trotter was appointed as Trustee of the PG&E Fire Victim Trust in order to pursue claims seeking compensation for the fire victims. The shareholder derivative claims originally asserted by Bottini & Bottini were among the claims assigned to the Fire Victim Trust. After Bottini & Bottini was retained by Justice Trotter, an amended complaint was filed on March 24, 2021 in San Francisco Superior Court asserting direct claims for breach of fiduciary duty against PG&E's officers and directors. Bottini & Bottini successfully defeated defendants' motions to dismiss, as set forth in the court's April 1, 2022 Order overruling Defendants' demurrers in their entirety. Trial was set for August 1, 2022. Plaintiff diligently prepared the case for trial, reviewing millions of pages of documents and taking dozens of depositions. A settlement of \$117 million was reached just a few months before trial was set to commence.

- In 2017, Bottini & Bottini, as plaintiff's lead counsel, successfully defeated defendants' "demand futility" motion to dismiss a shareholder derivative action pending in the United States District Court for the Southern District of California involving BofI Holding, Inc. *In re BofI Holding, Inc.*, 2017 U.S. Dist. LEXIS 125431, *1 (S.D. Cal. Aug. 8, 2017) (denying defendants' motion to dismiss). Bottini & Bottini subsequently prevailed on a 9th Circuit appeal and the case remains pending.
- In *In re Yahoo! Inc. Shareholder Litig.*, Lead Case No. 17-CV-307054 (Cal. Super. Ct. Cnty. of Santa Clara), Bottini & Bottini was Co-Lead Counsel in this shareholder derivative litigation, which involved the largest corporate data breach in U.S. history. After engaging in expedited discovery, the Court granted in part Plaintiff's motion for a preliminary injunction and ordered *Yahoo!* to provide additional information to the Company's shareholders in a proxy statement filed with the SEC. Thereafter, after further substantial litigation, the derivative claims settled for a cash payment by Defendants of \$29 million, representing the largest recovery ever in a shareholder derivative action involving a data breach. By order dated January 4, 2019, Judge Brian C. Walsh of the Complex Litigation Department granted final approval to the settlement stating: "But I have to say that on both sides, the intelligence, the persistence, the professionalism was a joy to behold. You're a credit to your clients and I hope they appreciate the fine work you did for them, and a credit to your profession. It was a pleasure to work with you." The *Yahoo* shareholder derivative litigation has been described as a "milestone" by commentators for the significant cash recovery obtained for *Yahoo*, especially since past shareholder derivative cases involving data breaches had all been dismissed or not resulted in any cash recovery for the company. In describing the significant \$29 million cash recovery in *Yahoo*, one commentator stated that "the track record in prior data breach related derivative litigation makes the significant recovery in the *Yahoo* data breach-related derivative settlement all the more noteworthy." See Kevin LaCroix, The D&O Diary, Jan. 21, 2019.

- In *In re PG&E Corp. Shareholder Derivative Litigation*, No. 16-cv-0973-SI (N.D. Cal.), Bottini & Bottini was one of the counsel for plaintiffs in a shareholder derivative action involving Pacific Gas & Electric Corp. (“PG&E”). The case sought to recover damages on PG&E’s behalf and against its current and former officers and directors. The complaint alleged that PG&E suffered millions of dollars of damages due to the defendants’ breaches of fiduciary duty related to pipeline safety at PG&E, including a deadly 2010 explosion in San Bruno, California. In 2017, the case (including several related lawsuits) was settled on highly favorable terms, including the payment of \$90 million in cash by defendants to PG&E, plus the enactment of significant corporate governance reforms designed to avoid future harm to PG&E and its shareholders.

19. The attorneys at Bottini & Bottini also stand apart from other plaintiffs’ securities firms in that they have been retained by publicly-traded corporations or their trustees and/or SLCs to pursue claims for breach of fiduciary duty against management. For example, I previously served as co-lead counsel in *In re Brocade Communications Systems, Inc. Derivative Litigation*, No. 1:05cv041683 (Cal. Super. Ct., Cnty. of Santa Clara). As a result of my firm’s vigorous prosecution of the derivative action, nominal defendant Brocade Communications Systems, Inc. formed a Special Litigation Committee (“SLC”), which thoroughly investigated the claims. Based on my firm’s work on the case over a two-year period, Brocade’s SLC hired my firm as co-counsel, along with Dewey & LeBoeuf LLP. Ultimately, over \$24 million was recovered for the company as a result of the litigation.

20. In addition, as noted *supra*, Bottini & Bottini was retained by Justice Trotter, Trustee of the PG&E Fire Victims Trust, to pursue claims for breach of fiduciary duty, ultimately recovering \$117 million.

IV. Bottini & Bottini’s Substantial Experience in This District and Knowledge of Illinois State Law

21. Because shareholder derivative claims are typically premised on state law (such as Mr. Steele’s claims for breach of fiduciary duty), knowledge of the relevant state substantive law is important. Bottini & Bottini has attorneys who are admitted to practice in Illinois and clerked

in this District. Anne Bottini Beste is admitted to practice in Illinois and is a 1992 graduate of Northwestern University School of Law. She received her undergraduate degree in 1989 from Boston College, where she was Phi Beta Kappa and graduated *magna cum laude* with a B.A. in Economics. Ms. Beste practiced law in Chicago for years before joining Bottini & Bottini. Albert Y. Chang served as a judicial law clerk to United States District Judge Suzanne B. Conlon for the Northern District of Illinois and to United States District Judge Roger T. Benitez for the Southern District of California. Mr. Chang has been appointed to leadership positions in complex class actions in this District, as noted below.

22. Bottini & Bottini has handled several high-profile and successful cases in this District.

23. For example, Bottini & Bottini served as lead counsel in a shareholder derivative litigation in this District involving Career Education Corporation, where the firm successfully defeated defendants' motion to dismiss the complaint, which challenged the sufficiency of the complaint's demand-futility allegations. *See Cook v. McCullough*, 2012 U.S. Dist. LEXIS 114621 (N.D. Ill. Aug. 13, 2012). After three years of hard-fought litigation, Bottini & Bottini secured a \$20 million recovery, in addition to valuable corporate governance reforms, for Career Education.

24. In 2020, Mr. Chang of Bottini & Bottini was appointed to plaintiffs' steering committee in a high-profile class action in this District, *In re Tik Tok, Inc. Consumer Privacy Litigation*, MDL No. 2948 (N.D. Ill.), which ultimately resulted in a \$92 million cash settlement.

V. Plaintiff Steele's Ability and Adequacy to Serve as Lead Plaintiff

25. A true and correct copy of Mr. Steele's declaration, which sets forth facts demonstrating his ability and adequacy to serve as lead plaintiff and to represent the best interests of Abbott, is attached as Exhibit C.

VI. The Law Offices of Edward T. Joyce & Associates, PC's Qualifications to Serve as Liaison Counsel

26. Mr. Steele's motion requests the appointment of The Law Offices of Edward T. Joyce & Associates, PC ("Joyce & Associates") as Liaison Counsel. Joyce & Associates has considerable knowledge of Illinois law as well as experience litigating complex civil litigation, including shareholder derivative actions. For example, Joyce & Associates also served as liaison counsel in the aforementioned derivative action on behalf of Career Education in this District.

27. A true and correct copy of Joyce & Associates' resume is attached as Exhibit D.

* * *

I declare under penalty of perjury that the foregoing statements are true and correct.
Executed on July 14, 2023, at La Jolla, California.

s/ Francis A. Bottini, Jr.
Francis A. Bottini, Jr.

EXHIBIT A

EXHIBIT A

BOTTINI & BOTTINI, INC.

FIRM RESUME

Bottini & Bottini, Inc. specializes in representing shareholders, consumers, businesses, and whistleblowers in high-stakes cases across the United States. The firm concentrates its practice in complex civil litigation, including the areas of securities class actions, shareholder derivative litigation, consumer privacy class action lawsuits, antitrust class action litigation, shareholder mergers and acquisitions litigation, *qui tam* litigation on behalf of whistleblowers under the False Claims Act, and class actions under the Employee Retirement Income Security Act of 1974 (“ERISA”).

The attorneys at Bottini & Bottini, Inc. have been appointed lead counsel, co-lead counsel, or played a significant role in hundreds of high-profile cases in state and federal courts across the country. The firm’s representative matters and the biographies of the firm’s professionals are set forth below.

Representative Matters

- **In re Alphabet Inc. Shareholder Derivative Litig.**, Lead Case No. 19CV341522 (Santa Clara Superior Court). Bottini & Bottini was appointed Co-Lead Counsel by the Hon. Brian C. Walsh after a heavily-contested lead counsel process. A groundbreaking settlement was reached in 2020 which resulted in Google’s commitment to eliminate the use of mandatory arbitration in cases alleging sexual harassment and discrimination, the establishment of a Diversity, Equity, & Inclusion Council including two members selected by Plaintiffs’ counsel, and an agreement by Google to spend **\$310 million** over ten years on workplace initiatives designed to eliminate sexual harassment and discrimination and initiatives that support diversity, equity, and inclusion. See “Alphabet Settles Shareholder Suits Over Sexual Harassment Claims,” THE NEW YORK TIMES, Sept. 25, 2020. The membership of the DEI Council will consist of both external experts and internal members, including, in its first year, Alphabet’s CEO (Sundar Pichai). The workplace initiatives and programs will focus on (1) expanding the pool of historically underrepresented technologists; (2) hiring, progression, and retention of historically underrepresented talent at Alphabet and, in particular, Google; (3) fostering respectful, equitable, and inclusive workplace cultures; and (4) helping historically underrepresented groups and individuals succeed with their businesses and in the digital economy and tech industry.

- **Justice John Trotter (Ret.), Trustee of the PG&E Fire Victim Trust v. Williams et al.**, Lead Case No. CGC-17-562591 (Superior Court for the State of California, County of San Francisco). Bottini & Bottini was retained by Justice John Trotter on behalf of the PG&E Fire Victim Trust to assert claims against various former officers and directors of PG&E Corporation. The suit seeks damages for breaches of fiduciary duty committed by such officers and directors in connection with wildfires caused by PG&E Corp. in Northern California -- the 2017 North Bay Wildfires and the 2018 Camp Fire. Bottini & Bottini had previously filed a shareholder derivative action against PG&E's officers and directors on December 24, 2018. After PG&E filed for bankruptcy due to massive liabilities related to the wildfires, Justice Trotter was appointed as Trustee of the PG&E Fire Victim Trust in order to pursue claims seeking compensation for the fire victims. The shareholder derivative claims originally asserted by Bottini & Bottini were among the claims assigned to the Fire Victim Trust. After Bottini & Bottini was retained by Justice Trotter, an amended complaint was filed on March 24, 2021 in San Francisco Superior Court asserting direct claims for breach of fiduciary duty against PG&E's officers and directors.

On November 8, 2021, Judge Andrew Y.S. Cheng denied in substantial part Defendants' demurrer to the Amended Complaint. Defendants moved for reconsideration of the Court's order overruling their demurrer, and the Court denied that motion by Order dated December 16, 2021. Meanwhile, Plaintiffs had filed a Second Amended Complaint on November 18, 2021 to add additional factual details about Defendants' wrongdoing.

Defendants filed a demurrer/motion to dismiss the Second Amended Complaint, which was heard by the Court on February 24, 2022. On April 1, 2022, the Court issued an Order overruling Defendants' demurrers in their entirety.

Trial was set for August 1, 2022. Plaintiff diligently prepared the case for trial, reviewing millions of pages of documents and taking dozens of depositions.

A settlement of **\$117 million** was reached just a few months before trial was set to commence.

Cathy Yanni, a spokesperson for the Fire Victim Trust, stated in announcing the settlement that "It is our hope that in holding PG&E's past officers and directors accountable in connection with the damage inflicted on thousands of fire victims in California, the current board and new leadership of PG&E charts a different course where safety and the protection of customers is the central operating principle of the company. We are pleased to see early signs of a new focus on safety with PG&E's recent announcements about plans to harden infrastructure and lay power lines underground, both measures that would significantly reduce fire hazards."

- **In re Yahoo! Inc. Shareholder Litig.**, Lead Case No. 17-CV-307054 (Superior Court for the State of California, County of Santa Clara). Bottini & Bottini was Co-Lead Counsel in this shareholder derivative litigation, which involved the largest corporate data breach in U.S. history. After engaging in expedited discovery, the Court granted in part Plaintiff's motion for a preliminary injunction and ordered Yahoo! to provide additional information to the Company's shareholders in a proxy statement filed with the SEC.

Bottini & Bottini, Inc. Firm Resume

Page 3

Thereafter, after further substantial litigation, the derivative claims settled for a cash payment by Defendants of \$29 million, representing the largest recovery ever in a shareholder derivative action involving a data breach.

By order dated January 4, 2019, Judge Brian C. Walsh of the Complex Litigation Department granted final approval to the settlement stating: “But I have to say that on both sides, the intelligence, the persistence, the professionalism was a joy to behold. You’re a credit to your clients and I hope they appreciate the fine work you did for them, and a credit to your profession. It was a pleasure to work with you.”

The Yahoo shareholder derivative litigation has been described as a “milestone” by commentators for the significant cash recovery obtained for Yahoo, especially since past shareholder derivative cases involving data breaches had all been dismissed or not resulted in any cash recovery for the company. In describing the significant **\$29 million cash recovery** in Yahoo, one commentator stated that “the track record in prior data breach related derivative litigation makes the significant recovery in the Yahoo data breach-related derivative settlement all the more noteworthy.” See Kevin LaCroix, The D&O Diary, Jan. 21, 2019.

- **In re Tik Tok, Inc. Consumer Privacy Litigation**, MDL No. 2948 (N.D. Ill.) – In 2020, Bottini & Bottini was appointed to Plaintiffs’ Steering Committee by the Hon. John Z. Lee in this consumer privacy class action. Plaintiffs filed a Consolidated Amended Complaint on December 18, 2020. The complaint alleges that Defendants, through the TikTok app, collected, captured, obtained, stored and disclosed Illinois resident TikTok users’ biometric information in violation of the Illinois’ Biometric Information Privacy Act (“BIPA”), 740 ILCS §14/1, et seq. In 2022, a settlement of **\$92 million** was approved by the Court.
- **In re Zoom Video Commc’ns, Inc. Privacy Litig.**, Master File No. 20-CV-02155 (N.D. Cal.) (Koh, J.) -- Bottini & Bottini was appointed as a member of Plaintiffs’ Steering Committee by Order dated June 30, 2020. The case is currently in the discovery phase. By Order dated March 11, 2021, Judge Koh denied in substantial part Defendants’ motion to dismiss. By Order dated April 5, 2021, Judge Koh denied Zoom’s motion to stay discovery. The case was settled in 2021 for **\$85 million**. By Order dated April 21, 2022, Judge Koh granted final approval to the settlement.
- **Gehrich v. Frederick Howe et al. (In re MedImpact Shareholder Litig.)**, Case No. 37-2018-00041295-CU-SL-CTL (San Diego Superior Court). Bottini & Bottini served as sole court-appointed Lead Counsel in this shareholder class action against the officers and directors of MedImpact Holdings, Inc., the largest privately-owned pharmacy benefit manager in the United States. After prevailing on a demurrer in which the Court upheld all the claims alleged by the Plaintiffs, and after extensive litigation and motion practice in the case, including discovery and the filing of three motions seeking declaratory and injunctive relief, the case was settled. As a result of Plaintiffs’ efforts, the price offered to the Company’s minority shareholders for their stock was increased by 75.12% (from \$21.70 to \$38.00), representing a recovery of **over \$41 million**. During the case, the Company also agreed to hold annual meetings of shareholders and disseminate annual reports to shareholders. By order dated December 20, 2019, the Hon. Kenneth J. Medel granted final approval to the settlement and entered final judgment.

- **Wolther v. Maheshwari et al. (In re Veeco Instruments Shareholder Litig.)**, Lead Case No. 18CV329690 (Superior Court for the State of California, County of Santa Clara). Bottini & Bottini, Inc. served as Lead Counsel in this shareholder class action brought under the Securities Act of 1933. By Order dated May 3, 2019, the Hon. Brian Walsh denied defendants' demurrers in their entirety. The case subsequently settled for **\$15 million** -- approximately 17% of the estimated damages.
- **In re Eventbrite, Inc. Securities Litigation**, Lead Case No. 19CIV02798 (Superior Court for the State of California, County of San Mateo). By Order dated June 25, 2019, Judge Weiner appointed Bottini & Bottini and Cotchett Pitre & McCarthy Lead Counsel in this securities class action brought under the Securities Act of 1933, which seeks damages relating to Eventbrite's IPO. Bottini & Bottini successfully opposed Defendants' motion to stay the case, which the Court denied by Order dated August 20, 2019. The case recently settled for **\$19.25 million** -- approximately 27% of the estimated damages. On June 10, 2022, the Court granted final approval to the settlement.
- **Chicago Laborers Pension Fund v. Alibaba Group Holding Ltd.**, Case No. CIV535692 (Superior Court for the State of California, County of San Mateo). Bottini & Bottini was one of three firms (together with Robbins Geller Rudman & Dowd LLP and Cotchett, Pitre, & McCarthy LLP) that prosecuted a class action under the Securities Act of 1933 against Alibaba Group Holding Limited ("Alibaba") in the Superior Court of California, County of San Mateo, arising from Alibaba's September 2014 initial public offering ("IPO"). After three and a half years of hard-fought litigation that involved substantial discovery in both the United States and China, a cash settlement was reached in December 2018 of **\$75,000,000** — approximately 23.4% of the estimated maximum damages. The settlement was granted final approval by the Hon. Richard H. DuBois on May 17, 2019.
- **In re Snap, Inc. Securities Cases**, JCCP No. 4960 (Superior Court for the State of California, County of Los Angeles). Bottini & Bottini served as co-lead counsel in this shareholder class action relating to Snap's IPO. In January 2020, the case and a related action in federal court settled for a combined **\$187.5 million, with \$32,812,500 representing the state court settlement**. The Hon. Elihu M. Berle granted final approval of the settlement by Order dated March 9, 2021. The settlement represented the 97th largest securities class action settlement ever. See Sarah Jarvis, "Two Investor Settlements From 2021 Crack Top 100 List," Law360, Jan. 25, 2022 ("Robbins Geller, Kessler Topaz, Bottini & Bottini and Block & Leviton led the two investor class action settlements from 2021 that broke into the top 100 largest such settlements of all time, according to a report released Tuesday . . . the \$187.5 million settlement involving social media giant Snap Inc. — led by Kessler Topaz Meltzer & Check LLP in the federal case and co-lead by Robbins Geller, Bottini & Bottini and Block & Leviton in a related state action — ranks 97th.").

Bottini & Bottini, Inc. Firm Resume

Page 5

- **Overbrook Capital LLC v. Aerogrow International, Inc.**, Lead Case No. A-21-827665-B (Clark County, Nevada District Court). By order dated Feb. 18, 2021, the Court consolidated multiple pending class actions and appointed Bottini & Bottini, Inc. sole Lead Counsel for the Class. The Consolidated Complaint alleges that Defendants breached their fiduciary duties by fraudulently divesting the Company's minority shareholders of fair value for their stock in a self-interested transaction orchestrated by Defendant Scotts Miracle-Gro, the 80% majority owner of the Company. By order dated October 21, 2021, the Court upheld all Plaintiffs' claims against all Defendants. The Defendants petitioned the Nevada Supreme Court for review, which review was granted. By Order dated June 30, 2022, the Nevada Supreme Court ruled in Plaintiff's favor, and in the process confirmed the applicable standard for bringing "invalid merger" claims under Nevada law. See *Aerogrow International, Inc. v. Eighth Judicial District of Nev.*, 511 P.3d 1035 (Nev. 2022). The case was certified as a class action by Order dated June 10, 2022 and notice was provided to the Class. The case is currently in the discovery phase and trial is scheduled for October 2023.
- **In re DRAM Antitrust Litigation**, MDL No. 1486 (N.D. Cal.). Mr. Bottini's prior firm, Wolf Haldenstein Adler Freeman & Herz LLP, served as Co-Lead Counsel for the Class, and Mr. Bottini was one of two lead partners for his firm on the case. After five years of litigation, **\$325,997,000** in settlements was obtained for the Class from nine defendants in one of the largest and most complex civil antitrust class actions in the country. Mr. Bottini was involved in all aspects of the case from the filing of the first complaint in 2002 to the final approval of the settlements which occurred in August 2007. Mr. Bottini was part of the trial team that was set to try the case against the two remaining defendants – Mosel Vitelic, Inc. and Nanya – when separate settlements with these last two defendants were reached on March 21, 2007, the day before oral argument was to be conducted on the motions in limine for trial. On August 15, 2007, the Honorable Phyllis J. Hamilton granted final approval to the settlements, stating:

I think I can conclude on the basis with my five years with you all, watching this litigation progress and seeing it wind to a conclusion, that the results are exceptional. The percentages, as you have outlined them, do put this [case] in one of the upper categories of results of this kind of [antitrust] class action. I am aware of the complexity . . . I thought that you all did an exceptionally good job of bringing to me only those matters that really required the Court's attention. You did an exceptionally good job at organizing and managing the case, assisting me in management of the case. There was excellent coordination between all the various different plaintiffs' counsel with your group and the other groups that are part of this litigation. . . . So my conclusion is the case was well litigated by both sides, well managed as well by both sides.

- **In re Brocade Communications Systems, Inc. Derivative Litigation**, No. 1:05cv41683 (Cal. Super. Ct., County of Santa Clara). Mr. Bottini was Co-Lead Counsel in one of the highest-profile cases in the country challenging the award of backdated stock options by executive officers of Brocade. The case was filed in May 2005 and, on August 8, 2008, Mr. Bottini was retained as co-counsel to Brocade by the Special Litigation Committee of the Board of Directors of Brocade to help litigate the company's claims against ten former officers and directors of the company. An amended complaint was filed in federal court in San Francisco, and the case, *In re Brocade Communications Systems, Inc.*, No. 05-cv-2233 (N.D. Cal.), proceeded before the Honorable Charles R. Breyer in the United States District Court for the Northern District of California. After litigation of the case for over five years, **over \$24 million** was recovered for Brocade through the litigation.
- **Hack v. Wright et al.**, Civil Action No. 4:14-CV-3442 (KPE) (United States District Court for the Southern District of Texas) ("In re Conns Inc. Shareholder Derivative Litig."). Bottini & Bottini serves as Lead Counsel in this shareholder derivative litigation that was filed in 2014. By order dated July 22, 2020, Judge Palermo denied defendants' motion to dismiss with respect to Plaintiffs' breach of fiduciary duty claims. See *Hack v. Wright*, 2020 U.S. Dist. LEXIS 179979 (July 22, 2020). The case was fully litigated through discovery, and trial was set for Nov. 29, 2022. Plaintiffs settled the case prior to trial for **\$11 million**. By Order dated March 15, 2022, Judge Ellison granted final approval of the settlement.
- **In re Tintri, Inc. Securities Litigation**, Lead Case No. 17-CIV-04321 (Superior Court for the State of California, County of San Mateo). Bottini & Bottini is Lead Counsel, along with Robbins Geller Rudman & Dowd, in this shareholder class action seeking damages relating to Tintri's IPO.
- **Searles v. DeMartini et al. ("Capital Bank")**, C.A. No. 2020-0136-KSJM (Del. Ch. Court). Bottini & Bottini served as Plaintiffs' counsel, along with Bernstein Litowitz Berger & Grossmann LLP, in this stockholder class action alleging aiding and abetting breach of fiduciary duties related to the acquisition of Capital Bank Financial Corp. by First Horizon. Plaintiff alleged that Capital Bank's largest outside investor, Crestview Advisors, LLC, and its Board designee, Defendant Richard M. DeMartini ("DeMartini"), had not only initiated the sales process without Board approval, but had conflicts of interests in quickly closing a deal. By Order dated Jan. 20, 2021, Vice Chancellor McCormick denied in part the defendants' motion to dismiss. After engaging in discovery, the case settled in 2021 for **\$23 million**.
- **Houser v. CenturyLink, Inc.**, Case No. 2018CV30556 (District Court, Boulder County, Colorado). Bottini & Bottini is Lead Counsel in this shareholder class action brought under the Securities Act of 1933 regarding securities issued to stockholders in connection with the 2017 merger of Centurylink and Level 3 Communications. The trial court dismissed the complaint on a motion to dismiss and plaintiff appealed. On March 31, 2022, the Colorado Court of Appeal reversed the trial court's decision, holding that Plaintiff had adequately alleged facts to support a claim based on allegations about the company's practice of "cramming." See *Houser v. Centurylink*, 513 P.3d 395 (2022). The case was remanded to the trial court, where it is currently being litigated.

- **In re King Digital Entertainment plc Shareholder Litig.**, Case No. CGC15544770 (Superior Court for the State of California, County of San Francisco, Judge Curtis E.A. Karnow). Bottini & Bottini was a member of the Plaintiffs' Executive Committee in the case, which was litigated in the Superior Court for the State of California, County of San Francisco. The case was brought under Sections 11 and 12 of the Securities Act of 1933 and alleged that the Registration Statement and Prospectus for the Company's IPO were false and misleading. In 2016, the case settled for \$18.5 million. The court granted final approval of the settlement by order dated June 9, 2017.
- **In re Castlight Health Inc. Shareholder Litig.**, Case No. CIV533203 (Superior Court for the State of California, County of Santa Clara). Bottini & Bottini was a member of the Executive Committee in this shareholder class action asserting claims under Sections 11 and 12 of the Securities Act of 1933. The complaint alleged that the Registration Statement and Prospectus for the Company's March 14, 2014 IPO were false and misleading. The case settled for \$9.50 million. Judge Marie Seth Weiner, Chair of the Complex Litigation Department, approved the Settlement and entered Final Judgment on October 28, 2016.
- **In re McKesson Corp. Stockholder Derivative Litig.**, C.A. No. 2017- 0736-SG (Del. Ch.). Bottini & Bottini served as one of the plaintiffs' counsel in this shareholder derivative litigation for a cash payment of \$175 million, as well as significant corporate governance reforms designed to address the complaint's allegation that the Company had been damaged by regulatory fines and actions as a result of failure to properly comply with federal rules and regulations governing the sale of the company's prescription opioid products. Specifically, Plaintiff's complaint alleged that McKesson's directors failed properly to implement a Controlled Substance Monitoring Program (CSMP), as required by a settlement with the United States Department of Justice (DOJ) and Drug Enforcement Administration (DEA) in 2008. Plaintiffs' Delaware action was coordinated with a related action pending in the Northern District of California. The settlement was approved and final judgment was entered on January 20, 2020.
- **Plymouth County Retirement System v. Model N, Inc.**, Case No. CIV530291 (Superior Court for the State of California, County of Santa Clara). Bottini & Bottini was one of three counsel for Plaintiffs in the case, which was brought in Santa Clara, California and alleged claims under Sections 11 and 12 of the Securities Act of 1933. The complaint alleged that the Registration Statement and Prospectus for the Company's March 23, 2013 IPO were false and misleading. Recently, the case settled for \$8.55 million. Judge Marie Seth Weiner, Chair of the Complex Litigation Department, approved the Settlement and entered Final Judgment on April 4, 2016.

- **In re BOFI Holding, Inc. Shareholder Derivative Litig.**, Case No. 15CV2722-GPC-KSC (United States District Court for the Southern District of California). By Order dated June 9, 2016, the Hon. Gonzalo P. Curiel of the United States District Court for the Southern District of California appointed Bottini & Bottini as Lead Counsel over four related shareholder derivative actions brought on behalf of BofI Holding, Inc. Plaintiffs filed a Consolidated Amended Complaint on August 26, 2016. The Amended Complaint alleges that due to the misconduct of BofI's fiduciaries, BofI suffered from a myriad of internal-control and risk-management problems during the Relevant Period. According to the internal audits conducted by a former employee turned whistleblower named Erhart, BofI was making substantial loans to foreign nationals, including politically-exposed persons such as foreign officials in war zones, in potential violation of anti-money-laundering laws and other banking regulations. Contrary to BofI's representations to the Office of the Comptroller of Currency ("OCC"), hundreds of BofI accounts lacked required tax-identification numbers ("TIN"). By order dated August 8, 2017, the Court denied Defendants' motion to dismiss, and held that Plaintiff had adequately alleged "demand futility" with great particularity. Later, the court granted a subsequent motion to dismiss. Plaintiffs appealed and prevailed in part in the Ninth Circuit -- *In re BofI Holding, Inc. S'holder Litig.*, 848 Fed. Appx. 234 (9th Cir. Feb. 25, 2021). The case was remanded to the district court where it continues to be litigated.
- **In re PG&E Corp. Shareholder Derivative Litig.**, Case No. 3:16-cv- 00973-SI (United States District Court for the Northern District of California). Bottini & Bottini was counsel for the Plaintiff in a shareholder derivative action involving Pacific Gas & Electric Corp in federal court in San Francisco. The case sought damages on PG&E's behalf and against current and former officers and directors of the Company due to the defendants' breaches of fiduciary duty related to pipeline safety at PG&E, including a deadly 2010 explosion in San Bruno, California. PG&E was ultimately indicted for obstruction of justice and violation of federal and state safety standards by the Department of Justice, and was later convicted on several counts. In addition to filing the shareholder derivative case, Bottini & Bottini filed a case in California state court to enforce a shareholder inspection demand which sought company documents such as board of director minutes, and which documents were related to the alleged wrongdoing by the Company's officers and directors. In late 2016 and early 2017, the case and several related lawsuits in California state court were settled on highly favorable terms, including the payment of \$90 million in cash by the defendants (and/or their insurance carriers) to PG&E, plus the enactment of very significant corporate governance reforms designed to avoid future harm to PG&E and its shareholders. On July 18, 2017, the California state court granted final approval to the settlement agreement.
- **Cook v. McCullough (In re Career Education Shareholder Derivative Litig.)**, No. 11 C 9119 (N.D. Ill.). Bottini & Bottini, Inc. was lead counsel for the plaintiff in this shareholder derivative action on behalf of Career Education Corporation against its officers and directors. By order dated August 13, 2012, the Hon. John W. Darrah denied Defendants' motion to dismiss on demand futility grounds. See 2012 U.S. Dist. LEXIS 114621 (N.D. Ill. Aug. 13, 2012). Bottini & Bottini, Inc. settled the case on October 25, 2013 for a cash payment of \$20 million and significant corporate governance reforms at Career Education. By Order dated Jan. 28, 2014, Judge Darrah granted final approval to the settlement.

- **In re FireEye Inc. Sec. Litig.**, Case No. 1-14-cv-266866 (Superior Court for the State of California, County of Santa Clara, the Hon. Peter H. Kirwan). Bottini & Bottini served as co-counsel in this securities class action which asserted claims under the Securities Act of 1933 against FireEye Inc., its board of directors, and the underwriters who conducted a Secondary Offering of company stock on March 6, 2014. After surviving multiple motions to dismiss, defeating defendants' appeals seeking appellate review, and engaging in three years of litigation and discovery, the case settled in 2017 for \$10.25 million. Judge Kirwan issued an order granting final approval to the settlement on August 10, 2017.
- **In re Facebook, Inc. Shareholder Derivative Privacy Litigation**, No. 4:18-CV-01792-HSG (N.D. Cal.). Bottini & Bottini served as a member of Plaintiffs' Executive Committee in this shareholder derivative litigation on behalf of Facebook, Inc. relating to allegations that personal information of at least 50 million Facebook users was improperly shared with Cambridge Analytica in a major data breach.
- **In re Southern California Gas Leak Cases**, JCCP No. 4861 (Superior Court for the State of California, County of Los Angeles). Bottini & Bottini is one of the counsel for plaintiffs in this shareholder derivative action on behalf of Sempra Energy relating to losses suffered by the Company in connection with a massive natural gas leak at the Company's Aliso Canyon, California underground storage well, which has been described as one of the most devastating environmental disasters in U.S. history.
- **In re Sanchez Energy Derivative Litig.**, C.A. No. 9132-VCG (Delaware Chancery Court). Bottini & Bottini represented shareholders of Sanchez Energy Corp. in this shareholder derivative action, which alleged that the officers and directors of Sanchez Energy engaged in self-dealing and breached their fiduciary duties by engaging in transactions that benefitted themselves at the expense of the Company and its shareholders. The complaint alleged that the Company's insiders own and controlled a privately held company named Sanchez Resources. Eduardo Sanchez, the son of Sanchez Jr. and brother of Sanchez III, established and ran Sanchez Resources, while both Sanchez Jr. and Sanchez III maintained equity interests in it. In August 2013, Sanchez Energy, with the Board's approval, agreed to purchase working interests in the Tuscaloosa Marine Shale ("TMS") from Sanchez Resources (the "Transaction"). Sanchez Energy purchased these working interests at a price seventeen times higher than other oil and gas companies have paid for similar interests in the TMS. The beneficiaries of this over-priced purchase were the Sanchez family. On August 15, 2017, the parties announced that they reached a settlement which is worth approximately \$27.75 million. Under the terms of the Stipulation of Settlement, the directors of Sanchez Energy along with the directors of the company that sold it the mining interests will pay \$11.75 million to Sanchez Energy, and the equity of the seller in Sanchez Resources, valued at more than \$16 million, will be transferred to Sanchez Energy.

- **In re Tibco Software, Inc. Stockholders Litig.**, C.A. No. 10319-CB (Delaware Chancery Court). Bottini & Bottini was one of the counsels for plaintiffs in this shareholder class action lawsuit asserting claims for breach of fiduciary duty against Tibco's former officers and directors, and claims for aiding and abetting breach of fiduciary duty against Goldman Sachs, arising from the \$4.2 billion sale of Tibco to Vista Equity Partners in 2014. After hard-fought litigation, the case was settled in 2016 for \$30.4 million. On September 7, 2016, Chancellor Bouchard of Delaware Chancery Court approved the settlement, declaring it an "excellent outcome for the shareholders."
- **In re American Apparel Shareholder Derivative Litig.**, Case No. BC443763 (Superior Court for the State of California, County of Los Angeles). Bottini & Bottini served as Plaintiffs' Lead Counsel in this shareholder derivative litigation on behalf of American Apparel and against its former officers and directors, including founder and CEO Dov Charney. After the company filed for bankruptcy, the Litigation Trustee appointed by the bankruptcy court hired Bottini & Bottini to continue to pursue the claims, including the claims against Dov Charney, the former CEO of the Company who is alleged to have committed egregious sexual harassment of female employees at the company. The case is still being litigated.
- **In re Sogou, Inc. Securities Litigation**, Lead Case No. 18CIV06699 (Superior Court for the State of California, County of San Mateo). Bottini & Bottini served as Lead Counsel in this shareholder class action relating to Sogou's IPO.
- **In re Pinduoduo Securities Litigation**, Case No. 18CIV04256 (Superior Court for the State of California, County of San Mateo). Bottini & Bottini served as Co-Lead Counsel in this shareholder class action seeking damages under the Securities Act of 1933 relating to Pinduoduo's IPO.
- **In re PFF Bancorp, Inc. ERISA Litigation**, Master File No. 08-cv-1093 (C.D. Cal.). Mr. Bottini was one of the attorneys for plaintiffs in this ERISA class action, which alleged that defendants breached their fiduciary duties by continuing to allow plan participants to invest in the company's stock. The case settled for \$3 million, plus the allowance of a \$400,000 bankruptcy claim, after the company declared bankruptcy.
- **In re General Growth Properties, Inc. ERISA Litig.**, Master File No. 08-6680 (N.D. Ill.). Mr. Bottini and Mr. Chang were members of Plaintiffs' Executive Committee in this ERISA class action litigation, which alleged that defendants breached their fiduciary duties by continuing to allow plan participants to invest in the company's stock. The case settled for \$5.75 million in 2010. By Order dated December 9, 2010, the Hon. James B. Zagel of the United States District Court for the Northern District of Illinois granted final approval of the settlement.
- **In re Terex Corp. ERISA Litig.**, Master File No. 3:10-cv-00006-RNC (D. Conn.). Bottini & Bottini was one of Plaintiffs' counsel in this class action lawsuit under ERISA, which alleged that defendants breached their fiduciary duties by continuing to allow plan participants to invest in the company's stock. The case settled for \$2.5 million. Final approval of the settlement was entered by the Hon. Robert M. Chatigny of the United States District Court for the District of Connecticut on November 4, 2015.

- **Robinson v. Audience**, No. 12-cv-232227 (Santa Clara, California Superior Court). Bottini & Bottini was one of the counsels for plaintiffs in this securities class action alleging claims for strict liability under the Securities Act of 1933, arising out of an allegedly false and misleading Registration Statement and Prospectus for Audience's IPO. By order dated September 3, 2013, Judge Kleinberg denied defendants' demurrer, denied defendants' motion to stay, and granted plaintiffs' motion to compel. Plaintiffs moved for class certification, which motion was granted by Order dated Jan. 16, 2015. The case was settled for \$6,050,000. By Order dated June 10, 2016, the Court granted final approval to the settlement.
- **Wiley v. Envivio, et al.**, No. CIV517185 (San Mateo, California Superior Court). Bottini & Bottini was one of the counsels for plaintiffs in this securities class action which asserted claims under the 1933 Act relating to Envivio's IPO. In March 2014, Judge Marie Seth Weiner overruled defendants' demurrer. Bottini & Bottini, Inc. assisted in procuring a settlement involving an \$8.5 million cash payment which was approved by Judge Weiner on June 22, 2015.
- **Snellink v. Gulf Resources, Inc.**, No. 11-cv-03722-ODW (C.D. Cal.). Bottini & Bottini, Inc. served as co-lead counsel for the plaintiffs in this securities - fraud class action brought under the federal securities laws. By order dated May 15, 2012, the court denied Defendants' motion to dismiss. See 2012 U.S.

Dist. LEXIS 67839 (C.D. Cal. May 15, 2012). Bottini & Bottini, Inc. procured a settlement involving a \$2.125 million cash payment which was approved by the Honorable Otis D. Wright II on January 18, 2014.

- **Diaz v. First American Home Buyers Protection Corp.**, Case No. 13cv1585 BAS (JLB) (S.D. Cal.). Bottini & Bottini was Co-Lead Counsel for the plaintiffs in this consumer class action case challenging the marketing and sale of home warranty plans by Defendant First American. After the case was dismissed by the district court, Plaintiffs appealed and obtained reversal by the Ninth Circuit Court of Appeals. See *Diaz v. First American Home Buyers Protection Corp.*, 732 F.3d 948 (9th Cir. 2013) (holding that an unaccepted offer of judgment pursuant to F.R.C.P. 68 for full amount of plaintiff's damages does not moot a plaintiff's case; 9th Circuit refused to follow other circuits which had held to the contrary).
- **In re General Growth Properties, Inc. ERISA Litigation**, No. 08 C 6791 (N.D. Ill.). Mr. Bottini and Mr. Chang were members of Plaintiffs' Executive Committee in this class action under ERISA seeking recovery of losses to General Growth Properties, Inc.'s employee retirement savings plans. Notwithstanding General Growth's filing for bankruptcy court protection, the Honorable James B. Zagel approved a settlement of \$5.75 million on December 9, 2010.
- **Schuh v. HCA Holdings, Inc.**, No. 3:11-cv-01033 (M.D. Tenn.). Bottini & Bottini was one of the counsels for the plaintiffs in this securities class action lawsuit seeking damages under the Securities Act of 1933 relating to HCA's IPO. By order dated May 28, 2013, the Court denied defendants' motion to dismiss. See *Schuh v. HCA Holdings, Inc.*, 947 F. Supp. 2d 882 (M.D. Tenn. 2013). By order dated September 22, 2014, the Court granted Plaintiffs' motion for class certification. See Fed. Sec. L. Rep. (CCH) ¶98,187; 2014 WL 4716231 (M.D. Tenn.). In November 2015, the case settled for \$215 million.

- **Karlin v. Alcatel**, No. SA CV 00-0214-DOC (C.D. Cal.). Mr. Bottini represented investors who received a tender offer for their shares from Alcatel S.A., a French telecommunications company. Mr. Bottini was the lead partner at his firm, Wolf Haldenstein Adler Freeman & Herz LLP, which served as Co-Lead Counsel for the Class. The case settled for \$10.5 million on the eve of trial. See 2001 WL 1301216 (C.D. Cal. Aug. 13, 2001) (denying *defendants' motion for summary judgment*).
- **In re Novastar Home Mortgage, Inc. Mortgage Lending Practices Litigation**, No. CV05-1677, MDL Docket No. 1677 (S.D. Ga.). Mr. Bottini was one of the lead attorneys in this class action litigation under the Real Estate Settlement Procedures Act of 1974 ("RESPA"). After three years of litigation, Chief Judge William T. Moore entered a Final Judgment on September 18, 2007 approving a nationwide class action settlement of Plaintiffs' RESPA claims in which approximately \$20 million in cash payments were made available to class members.
- **Reyes v. Zynga, Inc.**, Case No. CGC-12-522876 (San Francisco Superior Court). Bottini & Bottini was co-lead counsel in this class action alleging violations of the Securities Act of 1933 on behalf of a class of investors who bought Zynga stock in the company's Secondary Offering, which closed on April 3, 2012. Bottini & Bottini successfully had the case remanded to state court after being removed to federal court by defendants (see 2013 WL 5529754). In addition, by Order dated August 26, 2013, the Court denied defendants' demurrer on subject matter grounds and held that plaintiffs could bring their '33 Act federal claims in state court and that SLUSA did not eliminate concurrent jurisdiction in state and federal court for '33 Act claims. By order dated September 29, 2014, the Court denied defendants' demurrer as to the sufficiency of the complaint's allegations and denied defendants' motion to stay the action.
- **In re SunPower Corp. Shareholder Derivative Litigation**, Master File No. C-09-05731 (N.D. Cal.). Bottini & Bottini served as Co-Lead Counsel in this shareholder derivative litigation in San Francisco, which involved accounting fraud and the restatement of the financial statements of SunPower Corporation. In October 2013, the case was settled in exchange for Sunpower's agreement to enact significant corporate governance reforms. By order dated August 22, 2014, the Court granted final approval to the settlement.

- **In re Pacific Capital Bancorp Derivative Litigation**, No. CIVRS1340306 (Cal. Super. Ct., County of Santa Barbara). Mr. Bottini and his prior firm, Chapin Fitzgerald Sullivan & Bottini LLP, were Lead Counsel in this shareholder derivative action which alleged breaches of fiduciary duties by certain officers and directors of Pacific Capital Bancorp. By Order dated October 8, 2010, the Court denied defendants' demurrer and held that Lead Plaintiff had adequately alleged demand futility under California law. After two years of litigation, in which over a million pages of documents were produced and reviewed and certain legal issues were litigated in the court of appeal, a substantial settlement was reached in which significant corporate governance changes were made to the Company, including changes to provide greater Board independence and accountability, strict internal financial controls, significant and substantial revisions to PCBC's credit policies (including the establishment of a new Credit Administration Group, the restriction of lending authority to specified senior loan officers, and enhanced new appraisal guidelines), new requirements obligating any individual desiring to serve on PCBC's board to own a minimum amount of stock in the Company, annual review of the Company's Code of Ethics, a new corporate governance training program for PCBC directors, new procedures to handle internal and external complaints from whistleblowers, annual review of all committee charters, and a vigorous insider trading policy. By Order dated January 19, 2012, the Court granted final approval of the settlement and entered a final judgment.
- **In re Herald, Primeo, and Thema Funds Securities Litigation**, No. 09 Civ. 0289 (RMB) (S.D.N.Y.). Bottini & Bottini, Inc. was Lead Counsel for the Thema Fund plaintiffs in this securities-fraud class action case under the PSLRA. The action was brought on behalf of all persons who invested in three Madoff "feeder funds" controlled by Bank Medici – the Herald, Primeo, and Thema funds. After a partial \$62.5 million settlement was obtained from one of numerous defendants, the Court dismissed the case on forum non conveniens grounds and denied preliminarily approval of the settlement.
- **In re Level 3 Communications, Inc. Securities Litigation**, No. 09-cv- 00200-PAB-CBS (D. Colo.). Mr. Bottini and his prior firm, Johnson Bottini LLP, were Co-Lead Counsel in this securities-fraud class action asserting claims under Section 10(b) of the Securities Exchange Act of 1934.
- **In re UCBH Holdings, Inc. Derivative Litig.**, No. CGC-09-492237 (San Francisco Superior Court). Mr. Bottini and his prior firm, Johnson Bottini LLP, were Lead Counsel in this shareholder derivative action. After the company declared bankruptcy, the Trustee asserted the claims contained in the lawsuit and eventually recovered \$4 million from the defendants.

Bottini & Bottini, Inc. Firm Resume

Page 14

- **In re Arena Resources, Inc. Shareholder Litigation**, No. CV10-01069 (Nev. Dist. Ct., County of Washoe). Mr. Bottini and his firm (Johnson Bottini LLP) served as one of the counsels for Plaintiffs in this shareholder class action challenging the acquisition of Arena Resources by SandRidge Energy, Inc. As a result of the prosecution of the action, SandRidge raised the cash portion of the merger consideration by \$2.00 per share, reduced the duration of the matching rights period, amended the terms of the non-solicitation clause in favor of Arena, reduced the amount of termination fees payable by a party from \$50 million to \$39 million, made additional material financial disclosures to Arena's shareholders and extended the date of the shareholder meeting to vote on the merger.
- **Bamboo Partners LLC v. The Robert Mondavi Corp.**, No. 26-27170 (Cal. Super. Ct., County of Napa). Mr. Bottini represented the plaintiff common shareholders of the Mondavi Corporation in connection with the acquisition of the company by Constellation Brands, Inc. Mondavi had a dual-class stock structure pursuant to which the common shareholders owned Class A shares and the Mondavi family members owned Class B shares. Plaintiffs alleged that the insider Class B Mondavi family members improperly received more consideration for their shares than the common Class A public shareholders. The case was settled when defendants agreed to pay an additional \$10.8 million to the Class A shareholder plaintiffs.
- **In re Dole Shareholder Litigation**, No. B281969 (Cal. Super. Ct., County of Los Angeles). In this mergers & acquisitions, going-private class action case, Mr. Bottini was one of two lead partners from his firm at the time (Wolf Haldenstein Adler Freeman & Herz LLP), which served as Co-Lead Counsel for the plaintiffs and was involved in all aspects of the litigation. A \$172 million settlement was obtained for the Class when the tender offer price was increased by \$4 per share.
- **In re Heritage Bond Litigation**, No. 02-MDL-1475-DT (C.D. Cal.). In this class action bondholder litigation, which was ordered consolidated in Los Angeles by the Panel on Multidistrict Litigation, Mr. Bottini represented the outside director defendants. After obtaining dismissal of most of the claims against the outside directors, Mr. Bottini obtained dismissal of the remaining claims against the outside directors for a combined payment of \$102,500. The other defendants not represented by Mr. Bottini paid \$27 million to settle the case. See 2005 U.S. Dist. LEXIS 13627 (C.D. Cal. June 10, 2005).
- **In re Dell, Inc. Derivative Litigation**, No. 06-cv-0839 (W.D. Tex.). By order dated March 1, 2007, the Honorable Sam Sparks appointed Mr. Bottini's prior firm, Johnson Bottini, LLP, Co-Lead Counsel in this shareholder derivative action. After approximately two years of litigation, the case settled while on appeal.
- **In re Sunterra Corp. Shareholder Litigation**, No. A525433 (Nev. Dist. Ct., County of Clark). Mr. Bottini was Co-Lead Counsel in this shareholder action which challenged the fairness and disclosures made in SEC filings pertaining to a buyout offer for the company and certain actions by present and former officers and directors of Sunterra. The case was settled in 2007 when Sunterra agreed to file a supplemental filing with the United States Securities and Exchange Commission providing additional material information pertaining to the tender offer.

Bottini & Bottini, Inc. Firm Resume

Page 15

- **Deane v. Tombros (In re NPS Pharmaceuticals Securities Litigation)**, No. 60913838 (Utah Dist. Ct., Salt Lake City). Mr. Bottini and his firm, Johnson Bottini LLP, were Lead Counsel in this shareholder derivative action filed against current and former officers and directors of NPS Pharmaceuticals, Inc. This matter was settled on terms that required the implementation of significant corporate therapeutic changes at NPS.
- **In re American Express ERISA Litigation**, No. 08 Civ. 10834 (JGK) (S.D.N.Y.). Mr. Bottini served as one of the lawyers representing the plaintiffs, who asserted class action claims under ERISA on behalf of plan participants due to breaches of fiduciary duties by the defendants.

Biographies of Attorneys

Francis A. Bottini, Jr.

Mr. Bottini practices in the areas of securities, consumer, and privacy class actions, mergers & acquisitions, antitrust, shareholder derivative litigation, and ERISA class action litigation. Prior to forming Bottini & Bottini, Inc., Mr. Bottini was a partner at several firms, including Chapin Fitzgerald & Bottini LLP, Johnson Bottini, LLP, and Wolf Haldenstein Adler Freeman & Herz LLP. Mr. Bottini has successfully achieved several multi-million dollar recoveries in securities, consumer, and antitrust class action cases throughout the country. Mr. Bottini served as an Adjunct Professor of Business Law at the University of San Diego from 1995 to 1997. Mr. Bottini is a 1991 graduate of St. Louis University (B.A. *magna cum laude*), and the University of San Diego School of Law (J.D. *cum laude* 1994), where he was the Lead Articles Editor of the San Diego Law Review and received the American Jurisprudence Award in Property. Mr. Bottini is admitted to practice before the United States Supreme Court, all California state and federal courts, the United States Court of Appeals for the Second, Seventh, Eighth, Ninth, and Tenth Circuits, the United States District Court for Colorado, and the United States District Court for the Northern District of Illinois. He is AV-rated by Martindale-Hubbell.

The following are some examples of Mr. Bottini's reported cases:

- **Aerogrow International, Inc. v. Eighth Judicial District of Nev.**, 511 P.3d 1035 (Nev. Supreme Court 2022). By Order dated June 30, 2022, the Nevada Supreme Court ruled in Plaintiff's favor, affirming a district court order upholding all Plaintiffs' claims in a shareholder class action, and in the process confirmed the applicable standard for bringing "invalid merger" claims under Nevada law. Bottini & Bottini is sole Lead Counsel in the case.
- **Diaz v. First American Home Buyers Protection Corp.**, 732 F.3d 948 (9th Cir. 2013) (holding that an unaccepted offer of judgment pursuant to F.R.C.P. 68 for full amount of plaintiff's damages does not moot a plaintiff's case; 9th Circuit refused to follow other circuits which had held to the contrary).
- **Reyes v. Zynga, Inc.**, No. 12-05065 JSW, 2013 WL 5529754 (N.D. Cal. Jan. 23, 2013) (granting plaintiff's motion to remand claims brought under the Securities Act of 1933 to state court).

Bottini & Bottini, Inc. Firm Resume

Page 16

- Cook v. McCullough, No. 11 C 9119, 2012, U.S. Dist. LEXIS 114621, 2012 WL 3488442 (N.D. Ill. August 13, 2012) (denying motion to dismiss in shareholder derivative action brought on behalf of Career Education Corporation against its officers and directors for breach of fiduciary duty);
- Snellink v. Gulf Resources, Inc., No. 11-cv-03722-ODW, 2012 U.S. Dist. LEXIS 67839 (C.D. Cal. May 15, 2012) (denying motion to dismiss in securities-fraud class action complaint);
- Smith v. Apollo Group, Inc., No. CV-11-0722-PHX-PGR, 2012 U.S. Dist. LEXIS 3672 (D. Ariz. Jan. 11, 2012) (denying defendants' motion to stay shareholder derivative case pending completion of an internal investigation by a Special Committee of the Board of Directors and also denying a stay of the case until resolution of a related securities-fraud class action case);
- Ferguson v. Corinthian Colleges, Inc., No. SACV 11-0127 DOC (AJWx), 2012 U.S. Dist. LEXIS 1358 (C.D. Cal. Jan. 5, 2012) (denying defendants' motion to stay case pending interlocutory appeal of order denying motion to compel arbitration as to plaintiffs' claims for injunctive relief under California Business & Professions Code §17200 et seq.); 2011 U.S. Dist. LEXIS 119261 (C.D. Cal. Oct. 6, 2011) (denying in part a motion to compel arbitration);
- Rosendahl v. Bridgepoint Education, Inc., No. 11cv0061 WQH (WVG), 2011 U.S. Dist. LEXIS 119735 (S.D. Cal. Oct. 17, 2011) (denying in part motion to dismiss consumer class action complaint alleging fraud and misrepresentation by for-profit college);
- Bottini v. City of San Diego, 27 Cal. App. 5th 281 (2018) (affirming trial court's grant of mandamus in action to set aside City Council resolution due to the improper use of baseline in California Environmental Quality Act ("CEQA") appeal; successfully arguing that prior California Supreme Court opinion was abrogated in light of subsequent U.S. Supreme Court precedent).
- In re Extreme Networks, Inc. Shareholder Derivative Litigation, No. C-07- 02268-RMW, 2009 U.S. Dist. LEXIS 111445 (N.D. Cal. Nov. 17, 2009), reconsideration denied by, 2010 U.S. Dist. LEXIS 32685 (N.D. Cal. Apr. 2, 2010) (denying motion to dismiss and upholding shareholder derivative complaint, finding that plaintiff had adequately alleged demand futility under Federal Rule of Civil Procedure 23.1);
- In re Brocade Communications Systems, Inc. Derivative Litigation, 615 F. Supp. 2d 1018 (N.D. Cal. 2009) (denying in part and granting in part motion to dismiss in shareholder derivative action, after Mr. Bottini was retained by the Company's Special Litigation Committee and an amended complaint was filed on behalf of the Company);
- In re Dynamic Random Access Memory Antitrust Litigation, No. M 02-1486, 2006 U.S. Dist. LEXIS 39841 (N.D. Cal. June 5, 2006) (granting motion for class certification in direct purchaser antitrust class action involving DRAM computer memory);

Bottini & Bottini, Inc. Firm Resume

Page 17

- Karlin v. Alcatel, No. SA CV 00-0214-DOC, 2001 WL 1301216 (C.D. Cal. Aug. 13, 2001) (denying defendants' motion for summary judgment);

On April 18-20, 2005, Mr. Bottini gave a presentation on Securities Class Action Litigation at the 2nd Annual CFO Forum in Seoul, South Korea.

Albert Y. Chang

Mr. Chang specializes in representing shareholders and consumer in class actions. He also has extensive experience litigating privacy cases and *qui tam* cases, and has substantial experience handling appeals.

Before joining Bottini & Bottini, Inc. in 2009, Mr. Chang had over ten years of experience in federal litigation. He served as a judicial law clerk to United States District Judge Suzanne B. Conlon for the Northern District of Illinois and to United States District Judge Roger T. Benitez for the Southern District of California.

In addition to his judicial clerkships, Mr. Chang litigated complex cases on behalf of both plaintiffs and defendants. He prosecuted securities and ERISA class actions on behalf of shareholders. He also defended executives, energy companies, insurers, and trade associations for six years at the New York office of Dewey & LeBoeuf LLP, where he focused on litigating high-stakes cases and conducting corporate internal investigations.

A member of the New York and California bars, Mr. Chang is admitted to practice in numerous federal trial and appellate courts. He is a graduate of Beloit College (B.A. 1997) and Indiana University School of Law-Bloomington (J.D. 2001). He is fluent in Cantonese and Mandarin.

Michelle Ciccarelli Lerach

Ms. Lerach is a 1993 graduate of the University of Kentucky School of Law and is admitted to the Kentucky and California bars. Ms. Lerach has dedicated her life to fighting for those without enough voice, from fighting for immigrants' rights as a young law student to serving as partner/Of Counsel to the nation's largest plaintiff's firms, representing shareholders, workers, and consumers in a broad range of complex and class-action litigation for fraudulent business practices, human rights abuses, and labor and employment violations.

After graduating from the University of Kentucky College of Law, Ms. Lerach served as law clerk to the Honorable Sara Walter Combs, Kentucky Court of Appeals, and practiced

law in Lexington (Newberry, Hargrove & Rambicure, PSC) and Louisville (Greenbaum, Doll & McDonald, LLP) before relocating to California in 1999.

In California, she joined Milberg Weiss and was a lead litigator in many cases, including *Does I v. The Gap, Inc.*, Case No. 01-0031 (D.N. Mariana Islands), a case on behalf of approximately 25,000 sweatshop workers against leading clothing manufacturers, which successfully concluded with a \$20 million settlement and a precedent-setting Monitoring Program to oversee labor and human rights practices in Saipan's garment factories. During her time at the firm and successor firms, she also worked on cases on behalf of the Sierra Club & the International Brotherhood of Teamsters (cross-border trucking), as well as a number of high-profile securities class actions such as Enron (\$7.3 billion recovered) and coordinated private actions like WorldCom. In 2008, she received the Consumer Attorneys of California, Women's Law Caucus Award as Outstanding Consumer Advocate.

Bottini & Bottini, Inc. Firm Resume

Page 18

Ms. Lerach's passion for law intersects with activism both in her pro bono work and in her teaching: she worked as a consultant to the Liberian Ministry of Gender & Development with respect to that country's proposed constitutional revisions, specifically as relates to gender neutrality; an outspoken critic of current GMO labeling policy, she was involved in the 2012 California ballot initiative to label GMOs (Prop 37), organizing university forums and debating opponents of the measure in San Diego, and served on the steering committee of Californians for GE Labeling, which spearheaded the renewed effort to achieve GMO labeling in California in 2016; and she is an advocate for sustainable farm internship programs, and was chosen as one of San Diego Magazine's 50 People to Watch 2011 for this work.

Ms. Lerach speaks regularly at a number of institutions, including previous presentations at the Buchmann Faculty of Law at Tel Aviv University (regarding the recently adopted Israeli class-action statute), Cornell University Law School (Joint JD/MBA Program), the University of Kentucky College of Law (Randall-Park Colloquium), and most recently the University of San Diego, moderating panels on Ethical Eating and Water Matters (in conjunction with the Changemaker Challenge) and the Future Thought Leaders series on behalf of the Berry Good Food Foundation on UCTV, for which she has received four San Diego Press Club Excellence in Journalism Awards. She was the author of "Improving Corporate Governance Through Litigation Settlements," Corporate Governance Review.

Ms. Lerach serves as the Vice Chair of the Board of the University of California Press Foundation, focused on progressive scholarship; a member of the Advisory Board of the Women Peacemakers Program at the Kroc Institute for Peace & Justice at the University of San Diego; an Advisor to Kiss the Ground, devoted to promoting regenerative agriculture, connecting sustainable agricultural practices to the larger issue of climate change, and Executive Producer to a documentary film of the same name slated for release 1/18; and Founder/President of the Berry Good Food Foundation.

Ms. Lerach is currently serving as one of the lead counsel in Mayberry et al., Derivatively as members and Beneficiaries of Trust Funds on behalf of the Kentucky Retirement Systems v. Aldridge et al, CASE No. 2019-CA-000043-OA (Circuit Court, Franklin, Kentucky), a derivative action seeking to recover billions of dollars in losses sustained by the Kentucky Retirement System due to wrongdoing committed by KKR, Blackstone, and various individual defendants.

Nina M. Bottini

Nina M. Bottini is a 2001 graduate of Heinrich-Heine-University School of Law, Dusseldorf, Germany, and received an LL.M. degree (Masters in Comparative Law) from California Western School of Law in 2006. Ms. Bottini specializes in securities class action litigation, ERISA class action litigation, antitrust, securities, and shareholder derivative actions.

Her representative cases include In re DRAM Antitrust Litigation, MDL No. 1486 (N.D. Cal.), and In re Brocade Communications Systems, Inc. Derivative Litigation, No. 1:05cv41683 (Cal. Super. Ct., County of Santa Clara).

Bottini & Bottini, Inc. Firm Resume

Page 19

Yury A. Kolesnikov

Mr. Kolesnikov practices complex civil litigation in state and federal courts across the country, focusing on securities class actions, consumer class actions, and shareholder derivative actions. He has been the principal brief writer in more than 30 appeals, including before the U.S. Court of Appeals for the Ninth Circuit, California Supreme Court, Delaware Supreme Court, and Missouri Supreme Court, has assisted on briefs before the Supreme Court of the United States, and has argued before the U.S. Court of Appeals for the Ninth Circuit (including en banc), Delaware Supreme Court, and multiple state intermediate appellate courts.

Mr. Kolesnikov's notable published appellate decisions in argued cases include:

- Bottini v. City of San Diego, 27 Cal. App. 5th 281 (2018) (4th Dist.) (affirming grant of writ of mandamus to set aside City Council's resolution in a CEQA appeal; holding, for the first time in a published decision, that Landgate's "substantially advances" test is no longer a viable regulatory takings test under the California Constitution);
- Juen v. Alain Pinel Realtors, Inc., 32 Cal. App. 5th 972 (2019) (6th Dist.) (affirming denial of petition to compel arbitration; rejecting defendants' reliance on custom-and-habit evidence and post-contract-formation assent to arbitration);
- Spracher v. Paul M. Zagaris, Inc., 39 Cal. App. 5th 1135 (2019) (1st Dist.) (affirming denial of petition to compel arbitration; concluding that plaintiff carried the heavy burden of proving that defendants waived the right to compel arbitration); and
- In re Fidelity Nat'l Home Warranty Co. Cases, 46 Cal. App. 5th 812 (2020) (4th Dist.) (concluding, as a matter of first impression, that an order dismissing a class action without resolving class notice does not constitute an appealable judgment; reversing in part after concluding that the time between assignment to a coordination motion judge and decision on petition for coordination must be excluded from the time to bring the case to trial).

Prior to going into private practice, Mr. Kolesnikov clerked for Judge David R. Thompson on the Ninth Circuit Court of Appeals and Chief Judge Irma E. Gonzalez and Judge Roger T. Benitez on the U.S. District Court for the Southern District of California and also externed for Judge Consuelo M. Callahan on the Ninth Circuit. Mr. Kolesnikov graduated first in his class from the McGeorge School of Law. During law school, he worked as a research assistant to Dean Elizabeth Rindskopf Parker, assisting the Dean with speaking, writing, and committee engagements focused on judicial independence, access to justice, civil liberties, foreign relations, and national security, and as a research assistant to Justice Anthony M. Kennedy, assisting with updating and revising course materials for an international law course on fundamental rights in Europe and United States. Mr. Kolesnikov was also the Chief Articles Editor of the McGeorge Law Review and participated in two international law moot court competitions, which included a second-place finish at the prestigious Niagara International Moot Court Competition.

Anne Bottini Beste

Ms. Beste is of counsel to Bottini & Bottini, Inc. She practices complex civil litigation, with an emphasis in consumer, shareholder, and privacy class actions. She is a 1992 graduate of Northwestern University School of Law. She received her undergraduate degree in 1989 from Boston College, where she was Phi Beta Kappa and graduated *magna cum laude* with a B.A. in Economics. From 1996 to 2001, Ms. Beste practiced complex civil litigation at Swidler Berlin Shereff Freidman, LLP in Washington, D.C. Her practice at Swidler Berlin included employment litigation, environmental litigation, and trade secret litigation. Ms. Beste is admitted to practice in Washington, D.C., Missouri, Illinois, and California.

Stephanie M. Ammirati

Ms. Ammirati is a paralegal specializing in complex civil litigation, consumer class actions, and shareholder derivative litigation. Before joining the firm in 2010, Ms. Ammirati developed a legal career as an attorney in both private practice and government service. She is a member of the Washington State Bar Association as well as the Idaho State Bar, and has an extensive range of experience in civil litigation.

Between 2006 and 2010 Ms. Ammirati served as a Deputy Attorney General at the Office of the Attorney General for the State of Idaho. Before her appointment as a Deputy Attorney General, Ms. Ammirati had nine years of experience in civil litigation while in private practice in Seattle. Additionally, she devoted time to volunteer work in the community by serving as a Court-Appointed Special Advocate (CASA) for many years. She also assisted domestic violence victims by providing pro bono legal services at the New Beginnings Family Law Clinic, and was a Board of Trustees Member of the FRIENDS of CASA.

Ms. Ammirati received her Juris Doctor from Loyola Law School where she graduated on the Dean's List and was the recipient of the Wiley W. Manuel Award for Pro Bono Legal Services. While in law school, she developed her legal skills through Loyola's externship programs, performing clinical work at the Civil Appellate Division of the Los Angeles City Attorney's Office, the Maynard Toll Pro Se Counseling Center, and the Alliance for Children's Rights. Ms. Ammirati received her Bachelor of Arts degree from Pepperdine University where she graduated *summa cum laude* and was awarded Valedictorian of her class.

Amelia Ardito

Ms. Ardito is a paralegal at Bottini & Bottini Inc. She graduated in 2016 from the University of Southern Maine and obtained her paralegal certificate from the University of California, San Diego.

Shelby Ramsey

Ms. Ramsey has ten years of experience as a complex litigation paralegal, primarily in plaintiffs' securities class actions, mergers and acquisitions, ERISA matters, shareholder derivative actions, and consumer and employee class action litigation.

Ms. Ramsey earned a Bachelor of Arts degree in Legal Studies, with a Minor in Speech Communications, in 2006 from Chapman University. She received her American Bar Association-approved Paralegal certificate from the University of San Diego in 2007.

EXHIBIT B

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

LR TRUST, JONATHAN REISS, and ALLEN
WIESENFELD, derivatively on behalf of
ALPHABET INC.,

Plaintiffs,

vs.

LARRY PAGE, SERGEY BRIN, JOHN L.
HENNESSY, L. JOHN DOERR, ROGER W.
FERGUSON, JR., DIANE B. GREENE, ANN
MATHER, ALAN R. MULALLY, SUNDAR
PICHAI, ERIC E. SCHMIDT, and K. RAM
SHRIRAM.,

Defendants,

-And-

ALPHABET INC.,

Nominal Defendant.

Case No.: 19CV341522

**ORDER AFTER HEARING ON
MAY 10, 2019**

- (1) Motion by Plaintiffs Northern California Pipe Trades Pension Plan, Teamsters Local 272 Labor Management Pension Fund, and James Martin to Consolidate Related Cases and Appoint Lead Plaintiffs, Co-Lead Counsel, and an Executive Committee;**
- (2) Motion by Plaintiffs LR Trust, Jonathan Reiss, and Allen Wiesenfeld to Consolidate Related Cases, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel; and**
- (3) Motion by Plaintiff Sjunde Ap-Fonden for Consolidation and Appointment of Lead Counsel**

1
2 NORTHERN CALIFORNIA PIPE TRADES
3 PENSION PLAN and TEAMSTERS LOCAL
4 272 LABOR MANAGEMENT PENSION
5 FUND,

6
7 Plaintiffs,

8
9 vs.

10 JOHN L. HENNESSEY, L. JOHN DOERR,
11 ALAN R. MULLALY, KAVITARK RAM
12 SHRIRAM, LAWRENCE E. PAGE, SERGEY
13 BRIN, ANN MATHER, DIANE B. GREENE,
14 ROGER W. FERGUSON, JR., SUNDAR
15 PICHAI, and ERIC EMERSON SCHMIDT,

16
17 Defendants,

18
19 -And-

20
21 ALPHABET INC.,

22
23 Nominal Defendant.

Case No.: 19CV343670

24
25 JAMES MARTIN, Derivatively on behalf of
26 ALPHABET INC.,

27
28 Plaintiff,

vs.

21 LAWRENCE E. PAGE, SERGEY BRIN, ERIC
22 E. SCHMIDT, ANDREW E. RUBIN, JOHN L.
23 HENNESSEY, LASZLO BOCK, L. JOHN
24 DOERR, ROGER W. FERGUSON, JR.,
25 DIANE B. GREENE, AMIT SINGHAL, ANN
26 MATHER, ALAN R. MULALLY, SUNDAR
27 PICHAI, K. RAM SHRIRAM, SHIRLEY M.
28 TILGHMAN, DAVID C. DRUMMOND, and
DOES 1-30,

Defendants,

-And-

Case No.: 19CV343672

1 ALPHABET INC.,

2
3 Nominal Defendant.

4
5 SJUNDE AP-FONDEN,

6 Plaintiff,

7 vs.

8 LASZLO BOCK, EILEEN NAUGHTON,
9 LAWRENCE EDWARD PAGE, SUNDAR
10 PICHAI, ANDREW RUBIN, and AMIT
11 SINGHAL,

12 Defendants,

13 -And-

14 ALPHABET INC.,

15 Nominal Defendant.

Case No.: 19CV344792

16
17 THE NEW YORK CITY EMPLOYEES'
18 RETIREMENT SYSTEM, THE TEACHERS'
19 RETIREMENT SYSTEM OF THE CITY OF
20 NEW YORK, THE NEW YORK CITY FIRE
21 DEPARTMENT PENSION FUND,
22 SUBCHAPTER 2, AND THE NEW YORK
23 CITY BOARD OF EDUCATION
24 RETIREMENT SYSTEM,

25 Plaintiff,

26 vs.

27 LAWRENCE E. PAGE, SERGEY BRIN, ERIC
28 E. SCHMIDT, ANDREW E. RUBIN, JOHN L.
HENNESSEY, LASZLO BOCK, L. JOHN
DOERR, ROGER W. FERGUSON, JR.,
DIANE B. GREENE, AMIT SINGHAL, ANN
MATHER, ALAN R. MULALLY, SUNDAR
PICHAI, K. RAM SHRIRAM, SHIRLEY M.

Case No.: 19CV346737

1 TILGHMAN, and DAVID C. DRUMMOND,

2 Defendants,

3 -And-

4 ALPHABET INC.,

5 Nominal Defendant.
6
7

8 The above-entitled matters came on for hearing on Friday, May 10, 2019 at 9:00 a.m. in
9 Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. A
10 tentative ruling was issued prior to the hearing. The appearances are as stated in the record.
11 Having reviewed and considered the written submissions and oral argument of all parties and
12 being fully advised, the Court orders as follows:
13

14 These related shareholder derivative actions arise from allegations that officers and
15 directors of Alphabet, Inc., the parent company of Google LLC, breached their fiduciary duties
16 and committed other misconduct in connection with multi-million-dollar severance awards to
17 male executives accused of assaulting female employees, amid a broader culture of
18 discrimination against women at the company.¹

19 Before the Court are three competing motions to consolidate the actions and appoint
20 lead plaintiffs and lead counsel. The moving plaintiffs are (1) Sjunde AP-Fonden (“AP7”);
21 (2) Northern California Pipe Trades Pension Plan, Teamsters Local 272 Labor Management
22 Pension Fund, and James Martin (the “Northern California Plaintiffs’ Group”); and (3) LR
23 Trust, Jonathan Reiss, and Allen Wiesenfeld (the “LR Trust Plaintiffs”).

24 On May 6, 2019, the Court granted the ex parte application of a fourth group of
25 plaintiffs—New York City Employees’ Retirement System, the Teachers’ Retirement System
26 of the City of New York, the New York City Fire Department Pension Fund, Subchapter 2, and
27

28
¹ Some of the plaintiffs also allege claims arising from a “bug” that allowed outside developers to access user data associated with the Google+ social network, including data that was marked as nonpublic in privacy settings.

1 the New York City Board of Education Retirement System (the “NYC Funds”)—to participate
 2 in the hearing on these motions by filing a response. The NYC Funds urge the Court to
 3 appoint them as lead plaintiffs and their attorneys as lead counsel.

4 5 I. Consolidation

6 “California procedural law is infused with a solicitude, if not an altogether outright
 7 preference, for the economies of scale achieved by consolidating related cases into a single,
 8 centrally managed proceeding.” (*Petersen v. Bank of America Corp.* (2014) 232 Cal.App.4th
 9 238, 248.) Consolidation is governed by Code of Civil Procedure section 1048, which states:
 10 “When actions involving a common question of law or fact are pending before the court, it may
 11 order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the
 12 actions consolidated and it may make such orders concerning proceedings therein as may tend
 13 to avoid unnecessary costs or delay.” “Consolidation under Code of Civil Procedure section
 14 1048 is permissive, and it is for the trial court to determine whether the consolidation is for all
 15 purposes or for trial only.” (*Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1149.)

16 Here, all parties generally agree that consolidation of these actions is appropriate.
 17 However, AP7 urges the Court not to order the consolidation of its complaint with those of the
 18 other plaintiffs at this juncture, given that AP7 has made a demand on Alphabet’s board to
 19 bring claims against defendants Lawrence Page and Sundar Pichai only. The other plaintiffs,
 20 by contrast, allege that demand on Alphabet’s board is futile. While the plaintiffs dispute the
 21 merits of their respective positions, they agree that demand refusal and demand futility are
 22 alternative, inconsistent theories to which different legal standards will apply at the demurrer
 23 stage.

24 The Court agrees with AP7 that it should be permitted to pursue its own theory of
 25 liability through the demurrer stage.² While the Northern California Plaintiffs’ Group correctly
 26 urges that inconsistent legal theories may be pleaded in the alternative within a single

27
 28 ² The NYC Funds agree that AP7’s complaint should not be consolidated with those of the other plaintiffs at this juncture, and briefing on any demurrer to that complaint should proceed separately.

1 complaint under California law, the Court anticipates that it would be challenging for plaintiffs
2 to do so here and that a lengthy and confusing pleading would result from this approach.
3 Further, plaintiffs' briefing on this issue reveals their strong and fundamental disagreement
4 over the right approach to this case. The Court would prefer to receive briefing on demurrer
5 from plaintiffs who fully believe in the theory they will be called to defend. Here, that will not
6 be possible if AP7, on the one hand, or the demand futility plaintiffs, on the other, are handed
7 the task of pursuing an approach to the case antithetical to their own.

8 At the hearing on this matter, counsel for AP7 raised the additional argument that AP7
9 should be able to directly engage in settlement and other discussions with the Special
10 Litigation Committee recently formed by Alphabet. The Court agrees that AP7 should have a
11 role in any settlement discussions, considering its fundamentally different posture from the
12 other plaintiffs.

13 The Court will accordingly permit AP7 to maintain and defend its own complaint
14 through the pleading stage and to serve as lead counsel of its own case for that purpose, and,
15 along with the lead demand futility plaintiffs, to engage in direct discussions with Alphabet
16 and/or its Special Litigation Committee. However, the Court will consolidate the actions for
17 all other purposes, considering the many common questions of law and fact they raise. Given
18 the general consistency among their pleadings, the demand futility plaintiffs will be directed to
19 file a single, consolidated complaint addressed to that theory.

21 II. Appointment of Lead Plaintiffs and Counsel

22 With regard to the appointment of lead plaintiffs and counsel, the three groups of
23 moving plaintiffs propose three different leadership structures. The Northern California
24 Plaintiffs' Group proposes that they be appointed lead plaintiffs and their counsel Cohen
25 Milstein Sellers & Toll PLLC and Bottini & Bottini, Inc. be appointed co-lead counsel, with
26 local California firms Berman Tabacco and the Renne Public Law Group also participating as
27 members of an executive committee. The LR Trust Plaintiffs propose that one plaintiff and
28 one counsel from each of the competing groups of demand futility plaintiffs should collectively

1 represent those plaintiffs. AP7 requests that it be appointed lead plaintiff and its counsel
 2 Kessler Topaz Meltzer & Check, LLP be appointed lead counsel, in association with its local
 3 Delaware counsel Prickett Jones & Elliott, P.A. Finally, the NYC Funds request that they be
 4 appointed lead plaintiffs, with their counsel Grant & Eisenhofer serving as lead counsel and
 5 other plaintiffs' counsel possibly participating on an executive committee.

6 A. Legal Standard

7 Trial courts have inherent authority to control the proceedings before them and ensure
 8 the orderly administration of justice, including by adopting suitable methods of practice in the
 9 exercise of this authority. (*Asbestos Claims Facility v. Berry & Berry* (1990) 219 Cal.App.3d
 10 9, 19, disapproved on another ground in *Kowis v. Howard* (1992) 3 Cal.4th 888, 896.) Indeed,
 11 the Legislature has recognized and codified these powers. (*Asbestos Claims Facility, supra*,
 12 219 Cal.App.3d at p. 19, citing Code Civ. Proc., §§ 128, 187.) A trial court's inherent
 13 authority empowers it to appoint lead counsel in a complex action. (*Asbestos Claims Facility*,
 14 *supra*, 219 Cal.App.3d at pp. 19-20; see also Cal. Rules of Court, rule 3.750(b)(7)
 15 [appointment of lead counsel should be considered in complex cases].)

16 In the absence of California authority governing the appointment of leadership in a
 17 shareholder derivative action, the Court looks to federal authority, which is persuasive. (See
 18 *Hefczyc v. Rady Children's Hospital-San Diego* (2017) 17 Cal.App.5th 518, 531 [discussing
 19 federal law, including rule 23 of the Federal Rules of Civil Procedure, as persuasive
 20 authority].) "Courts in [the Ninth Circuit] that have appointed lead plaintiffs have consulted
 21 the eight factors set out in *Larson v. Dumke*, 900 F.2d 1363, 1367 (9th Cir.1990), which was
 22 not a case about competing lead plaintiffs but about whether a putative derivative plaintiff
 23 satisfied the criteria set out in Federal Rule of Civil Procedure 23.1 for who may maintain a
 24 derivative action." (*Nicolow v. Hewlett Packard Co.* (N.D. Cal., Mar. 4, 2013, No. 12-05980
 25 CRB) 2013 WL 792642, at *7.)³ "Other courts that select a lead plaintiff have looked to
 26

27
 28 ³ The eight *Larson* factors are: (1) indications that the plaintiff is not the true party in interest; (2) the plaintiff's unfamiliarity with the litigation and unwillingness to learn about the suit; (3) the degree of control exercised by the attorneys over the litigation; (4) the degree of support received by the plaintiff from other shareholders; (5) the lack of any personal commitment to the action on the part of the representative plaintiff; (6) the remedy sought by

factors similar to those found in the [Private Securities Litigation Reform Act (“PSLRA”)] and the factors for selection of counsel set out in the *Manual for Complex Litigation*, such as the quality of the plaintiff’s pleadings, the vigorousness of the plaintiff’s efforts, the size of the plaintiff’s financial interest, and a general preference for institutional investors.” (*Ibid.*) “In cases where all proposed plaintiffs are adequate under Rule 23.1 courts have selected the lead plaintiff among them using [these] marginal factors,” with “financial interest, quality of the pleadings, and vigorousness of prosecution appear[ing] to carry the most weight in determining the plaintiff who will best serve the interests of the shareholders in a derivative suit.” (*Berg v. Guthart* (N.D. Cal., July 30, 2014, No. 5:14-CV-00515-EJD) 2014 WL 3749780, at *4.)⁴

B. Analysis

Although they vigorously dispute who among them is best qualified for the job, all plaintiffs and their counsel implicitly agree that this matter would benefit from the appointment of lead plaintiffs and counsel. While it is not required to appoint leadership, the Court also concludes that it would benefit Alphabet shareholders here given the complexity of the matter, the interest of members of the public and Alphabet employees in its progress, and the number of plaintiffs who seek to control the litigation. The Court anticipates that establishing a leadership structure will save time and money and will move the action forward more

plaintiff in the derivative action; (7) the relative magnitude of plaintiff’s personal interests as compared to his interest in the derivative action itself; and (8) plaintiff’s vindictiveness toward the defendants. (*Nicolow v. Hewlett Packard Co.*, *supra*, 2013 WL 792642, at *7.)

⁴ The Court also considers the similar factors discussed in the unpublished Delaware case of *Hirt v. U.S. Timberlands Service Co. LLC* (Del. Ch., July 3, 2002, No. CIV.A. 19575) 2002 WL 1558342. *Hirt* identified the relevant factors as:

- the “quality of the pleading that appears best able to represent the interests of the shareholder class and derivative plaintiffs;”
- the relative economic stakes of the competing litigants in the outcome of the lawsuit (to be accorded “great weight”);
- the willingness and ability of all the contestants to litigate vigorously on behalf of an entire class of shareholders;
- the absence of any conflict between larger, often institutional, stockholders and smaller stockholders;
- the enthusiasm or vigor with which the various contestants have prosecuted the lawsuit;
- competence of counsel and their access to the resources necessary to prosecute the claims at issue.

(At *2.) It also “recognized that no special weight or status will be accorded to a lawsuit simply by virtue of having been filed earlier than any other pending action.” (*Ibid.*, internal citation and quotations omitted.)

1 expeditiously compared to a scenario in which plaintiffs and their counsel must devote their
2 energies to negotiating internal disputes without any decision-making structure to guide them.

3 As an initial matter, it appears that all of the plaintiffs, with the possible exception of
4 Jonathan Reiss, would satisfy the standing requirements to maintain a derivative action.
5 Similarly, all four proposed leadership teams would include well-regarded firms experienced in
6 litigating shareholder derivative actions. The Court will accordingly focus its analysis on the
7 other “marginal” factors emphasized by both the federal and Delaware courts. It is, however,
8 disinclined to appoint AP7 and its counsel, at this juncture, given their choice to proceed
9 through a demand on Alphabet’s board. While the Court expresses no opinion on the ultimate
10 wisdom of this approach, it is at odds with the views of all of the other plaintiffs, who
11 understandably object to being led by a plaintiff with a fundamentally different outlook and
12 narrower focus than theirs.

13 Turning to the factors to which the courts give the most weight, the quality of the
14 pleadings and vigorousness of prosecution favor appointing either the Northern California
15 Plaintiffs’ Group and their counsel or the NYC Funds and their counsel. As described in their
16 briefing, plaintiff Martin propounded the first shareholder inspection demand and negotiated
17 with Alphabet regarding the scope of its responsive document production and the terms of a
18 protective order. Since then, the Northern California Plaintiffs’ Group has continued to
19 negotiate the production of additional documents by Alphabet and has interviewed potential
20 expert witnesses on corporate governance issues. On March 11, 2019, Martin publicly filed a
21 detailed Amended Shareholder Derivative Complaint in this Court after negotiating with
22 Alphabet to avoid a sealing dispute. Counsel for the Northern California Plaintiffs’ Group
23 agreed among themselves to a leadership structure and offered counsel for other plaintiffs seats
24 on the executive committee they propose. The NYC Funds have also filed a detailed complaint
25 after successfully negotiating the production of additional documents by Alphabet and
26 interviewing two confidential witnesses from within the company. To be clear, the Court is not
27 swayed by the Northern California Plaintiffs’ Group’s earlier filing of their complaints and
28 does not penalize the NYC Funds for taking the time to perform a thorough investigation of

1 their claims before filing. In the Court's view, both of these groups of plaintiffs have
2 demonstrated the ability to vigorously prosecute this action.

3 As to the other commonly emphasized factors, the NYC Funds, AP7, and the LR Trust
4 Plaintiffs contend that they are the most appropriate plaintiffs to supervise counsel in this
5 action. The NYC Funds and AP7 cite their large (\$1.1 billion and \$744 million, respectively)
6 holdings in Alphabet and prior experience leading such matters, to which the Court does assign
7 weight. However, the Northern California Plaintiffs' Group also includes institutional
8 investors with significant holdings in Alphabet. Courts have interpreted the financial interest
9 factor in different ways in the derivative context, with some adopting the PSLRA's focus on
10 the largest amount of absolute shares and others focusing on the relative economic impact on
11 each plaintiff. (*Berg v. Guthart*, *supra*, 2014 WL 3749780, at *5.) "[T]he weight given to the
12 size of a plaintiffs' holding is not used to generate a formalistic ranking, but rather comes into
13 play when a plaintiff owns a sufficient stake to provide an economic incentive to monitor
14 counsel and play a meaningful role in conducting the case." (*In re Revlon, Inc. Shareholders*
15 *Litigation* (Del. Ch. 2010) 990 A.2d 940, 955.) Ultimately, this factor "is not dispositive in the
16 context of a shareholder derivative action." (*In re Wells Fargo & Company Shareholder*
17 *Derivative Litigation*, *supra*, 2017 WL 130282, at *3 ["Given the significant financial stake of
18 both pairs of proposed co-lead plaintiffs, the Court finds that this factor will translate into a
19 marginal difference, if any, in the vigor of representation."].) Furthermore, although many
20 express a preference for institutional investors, courts have also appointed individual investors
21 to lead derivative actions that include qualified institutional plaintiffs. (See *Nicolow v. Hewlett*
22 *Packard Co.*, *supra*, 2013 WL 792642, at *8 [sophisticated individual investor with relevant
23 experience qualified to serve as lead plaintiff in derivative action].) Some have found a
24 combination of institutional and individual investors best, a view with which this Court agrees.
25 (See *Yousefi v. Lockheed Martin Corp.* (C.D. Cal. 1999) 70 F.Supp.2d 1061, 1071 ["with the
26 appointment of one lead plaintiff who is an individual private investor and one lead plaintiff
27 that is an institutional investor, the lead plaintiffs will represent a broader range of shareholder
28 interests than if the Court appointed an individual or an institutional investor alone"].) While

1 the Court assigns some weight to the larger holdings of the NYC Funds and AP7, it finds that
2 the plaintiffs comprising the Northern California Plaintiffs' Group are sufficiently incentivized
3 to monitor counsel and play a meaningful role in the case, and prefers their representation of a
4 range of shareholder interests.

5 Thus, the "marginal" factors to which other courts assign the most weight support the
6 appointment of either the Northern California Plaintiffs' Group and their counsel or the NYC
7 Funds and their counsel, but do not clearly favor one group of plaintiffs over the other. The
8 Court is pleased that multiple well-qualified leadership teams have stepped forward to pursue
9 this action, but is mindful of the need to avoid duplication of efforts as it progresses and notes
10 that neither the Northern California Plaintiffs' Group nor the NYC Funds have proposed
11 sharing the lead counsel role with one another. For these reasons, the Court will choose one of
12 these competing groups to lead the case.

13 In addition to the factors already discussed, the Court considers that the Northern
14 California Plaintiffs' Group's proposed team includes counsel with expertise in the legal issues
15 surrounding sexual harassment and employment litigation, and counsel who have defeated a
16 motion to dismiss demand futility claims in a derivative suit arising from underlying
17 allegations of sexual harassment. These plaintiffs have retained lead California counsel who
18 are readily available to make appearances and to meet and confer in person with defense
19 counsel, who are also based in California, and the Court is familiar with the good work of
20 Bottini & Bottini, Inc. in other cases. Counsel for the NYC Funds also have experience
21 successfully litigating a shareholder derivative action involving sexual misconduct by a senior
22 corporate executive and appear to have an impressive record of success in derivative litigation
23 more generally. Still, on balance, the Court has the greatest confidence that the Northern
24 California Plaintiffs' Group will continue to vigorously and efficiently prosecute this case.

25 Finally, the LR Trust Plaintiffs contend that Northern California Pipe Trades Pension
26 Plan and Teamsters Local 272 Labor Management Pension Fund cannot "alone" serve as lead
27 plaintiffs because they are governed by the Employee Retirement Income Security Act
28 ("ERISA"), which prohibits plan administrators from using plan resources except for the

benefit of plan beneficiaries. They further urge that these plaintiffs may be required to sell their shares in Alphabet for the benefit of their fiduciaries depending on market conditions and the funds' investment strategies. As an initial matter, the Northern California Plaintiffs' Group includes individual plaintiff James Martin in addition to the institutional plaintiffs, and thus does not request that the institutional plaintiffs "alone" be appointed lead plaintiffs. This mirrors the leadership structure approved in *In re Oxford Health Plans, Inc. Securities Litigation* (S.D.N.Y. 1998) 182 F.R.D. 42, one of the cases relied on by LR Trust. Furthermore, these cases do not establish "any general hostility towards public pension funds as lead plaintiffs," which is a common practice. (*In re KIT Digital, Inc. Securities Litigation* (S.D.N.Y. 2013) 293 F.R.D. 441, 448 [rejecting challenge to institutional lead plaintiff that was not based on specific proof or criticisms; distinguishing *Oxford* and noting the belief of the Committee on Banking, Housing and Urban Affairs that "an institutional investor acting as lead plaintiff can, consistent with its fiduciary obligations, balance the interests of the class with the long-term interests of the company and its public investors"]; see also *Berg v. Guthart, supra*, 2014 WL 3749780, at *4 [rejecting similar challenge].) Here, there is no indication that Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund cannot fulfill their fiduciary duties to their beneficiaries while serving as lead plaintiffs.

The Court will accordingly appoint the Northern California Plaintiffs' Group and their counsel to lead this action.

III. Conclusion and Order

The motions to consolidate the actions and appoint lead plaintiffs and lead counsel are GRANTED IN PART AND DENIED IN PART as follows:

The above-entitled actions are consolidated for all purposes, with the exception that AP7 will maintain a separate complaint and will serve as lead counsel of its own case through at least the demurrer stage. The Court will re-evaluate AP7's role in leadership once the

1 pleadings are settled and will be open to an earlier re-assessment if the presence of multiple
2 leadership teams becomes an impediment.

3 The plaintiffs comprising the Northern California Plaintiffs' Group are appointed lead
4 plaintiffs in the demand futility cases, and their counsel Cohen Milstein Sellers & Toll PLLC
5 and Bottini & Bottini, Inc. are appointed co-lead counsel. Berman Tabacco and the Renne
6 Public Law Group will serve on an executive committee, and plaintiffs shall meet and confer
7 about adding the NYC Funds, the LR Trust Plaintiffs, and/or their counsel to that committee.

8 As raised by various parties at the hearing on this matter, important details regarding
9 AP7's role and the responsibilities and authority of the lead plaintiffs and their counsel—
10 particularly concerning settlement—have not been fully litigated. After meeting and
11 conferring with the other plaintiffs, lead counsel shall submit to the Court a proposed order
12 detailing the lines of authority among co-lead counsel and with the executive committee; the
13 plans for use of counsel for the other plaintiffs, including the responsibilities and duties of
14 each; and the manner in which lead counsel will direct this litigation to avoid loss of direction,
15 duplication of efforts, lack of coordination, and unnecessary costs.⁵ The parties shall begin
16 these discussions promptly so that they can avail themselves of Alphabet's invitation to early
17 settlement discussions. The parties may proceed with settlement discussions without further
18 involvement by the Court if they come to agreement about how to approach negotiations;
19 otherwise, the Court will address remaining disputes regarding the leadership structure with the
20 parties at their June 14th, 2019 case management conference. Meanwhile, AP7 and the
21 Northern California Plaintiffs' Group shall avoid pre-empting the settlement process by
22 holding discussions to which the other plaintiffs have not consented and shall coordinate with
23 one another as much as possible with latitude to the full litigation of their differences through

24 ///

25 ///

26 ///

27 _____
28 ⁵ The Court declines to adopt every provision of the proposed order submitted by the Northern California Plaintiffs' Group in support of their motion at this juncture. To aid the parties' discussion, it refers them to the sample order at section 40.22 of the federal Manual for Complex Litigation.

1 the pleading stage.

2 IT IS SO ORDERED.

3
4 Dated:

May 16, 2019



Honorable Brian C. Walsh
Judge of the Superior Court

EXHIBIT C

EXHIBIT C

D R A F T: July 10, 2023

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

LEON MARTIN, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, vs. ROBERT B. FORD, <i>et al.</i> , Defendants, - and - ABBOTT LABORATORIES, Nominal Defendant.	Case No. 1:22-cv-5513 District Judge Manish S. Shah Magistrate Judge Sheila M. Finnegan
ILENE LIPPMAN, derivatively on behalf of ABBOTT LABORATORIES, Plaintiff, vs. ROBERT B. FORD, <i>et al.</i> , Defendants, - and - ABBOTT LABORATORIES, Nominal Defendant.	Case No. 1:23-cv-0266 District Judge Manish S. Shah Magistrate Judge Beth W. Jantz

[Additional captions follow on the next page.]

**Declaration of Matthew Steele in Support of
Motion for Appointment of Lead Plaintiff and Lead Counsel**

<p>LARRY HUETTEMAN, derivatively on behalf of ABBOTT LABORATORIES,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>ROBERT B. FORD, <i>et al.</i>,</p> <p style="text-align: right;">Defendants,</p> <p style="text-align: center;">- and -</p> <p>ABBOTT LABORATORIES,</p> <p style="text-align: right;">Nominal Defendant.</p>	<p>Case No. 1:23-cv-0296</p> <p>District Judge Manish S. Shah</p> <p>Magistrate Judge Sunil R. Harjani</p>
<p>MATTHEW STEELE, derivatively on behalf of ABBOTT LABORATORIES,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>LORI J. RANDALL, <i>et al.</i>,</p> <p style="text-align: right;">Defendants,</p> <p style="text-align: center;">- and -</p> <p>ABBOTT LABORATORIES,</p> <p style="text-align: right;">Nominal Defendant.</p>	<p>Case No. 1:23-cv-0850</p> <p>District Judge Manish S. Shah</p> <p>Magistrate Judge Sheila M. Finnegan</p>
<p>DAVID HAMILTON, derivatively on behalf of ABBOTT LABORATORIES,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>ROBERT B. FORD, <i>et al.</i>,</p> <p style="text-align: right;">Defendants,</p> <p style="text-align: center;">- and -</p> <p>ABBOTT LABORATORIES,</p> <p style="text-align: right;">Nominal Defendant.</p>	<p>Case No. 1:23-cv-02648</p> <p>District Judge Manish S. Shah</p> <p>Magistrate Judge Sheila M. Finnegan</p>

[Additional captions follow on the next page.]

THOMAS P. DINAPOLI, COMPTROLLER
OF THE STATE OF NEW YORK, AS
ADMINISTRATIVE HEAD OF THE NEW
YORK STATE AND LOCAL RETIREMENT
SYSTEM, AND AS TRUSTEE OF THE NEW
YORK STATE COMMON RETIREMENT
FUND, derivatively on behalf of ABBOTT
LABORATORIES,

Plaintiff,

v.

ROBERT B. FORD, *et al.*,

Defendants,

- and -

ABBOTT LABORATORIES,

Nominal Defendant.

Case No. 1:23-cv-04142

District Judge Manish S. Shah

Magistrate Judge Sheila M. Finnegan

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL NO. 710 PENSION
FUND and SOUTHEASTERN
PENNSYLVANIA TRANSPORTATION
AUTHORITY, Derivatively on Behalf of
Nominal Defendant ABBOTT
LABORATORIES,

Plaintiff,

v.

ROBERT B. FORD, *et al.*,

Defendants,

- and -

ABBOTT LABORATORIES,

Nominal Defendant.

Case No. 1:23-cv-04143

District Judge Manish S. Shah

Magistrate Judge Sheila M. Finnegan

I, Matthew Steele, declare as follows:

1. I am the plaintiff in *Steele v. Randall*, No. 1:23-cv-0850 (N.D. Ill.). I submit this declaration in support of the motion to (a) appoint myself as lead plaintiff and my counsel, Bottini & Bottini, Inc. (“Bottini & Bottini”) as lead counsel for plaintiffs; or, in the alternative, (2) to appoint myself and Bottini & Bottini as co-lead plaintiff and co-lead counsel together with one of the Institutional Movants¹ and one of their chosen counsel. I have personal knowledge of the facts stated in this declaration. I could and would competently testify to these facts, if called upon to do so.

2. I am a sales executive in the biopharmaceutical industry. I hold a bachelor’s degree in marketing and finance from The University of British Columbia.

3. I have been a shareholder of Abbott Laboratories (“Abbott”) since 1992. I currently hold 6,000 shares of Abbott common stock. I care about my investment in Abbott (in excess of \$600,000) as it is a meaningful portion of my investment portfolio.

4. I brought this shareholder derivative action to (a) recover the damages caused to Abbott by the defendants’ misconduct; (b) improve Abbott’s corporate governance, internal controls, and legal compliance; and (c) prevent the reoccurrence of the corporate misconduct alleged in the derivative action.

5. Before authorizing the commencement of this action, I reviewed the complaint with my counsel. I also authorized the commencement of a mandamus proceeding in the Circuit Court of Lake County, Illinois to compel Abbott to comply with my books-and-records inspection demand.

¹ The anticipated Institutional Movants are (1) International Brotherhood of Teamsters Local No. 710 Pension Fund (“Teamsters 710”); (2) Southeastern Pennsylvania Transportation Authority (“SEPTA”); and (3) New York State Common Retirement Fund (“NYSCRF”).

6. I will continue to work closely with my counsel in prosecuting this derivative litigation on Abbott's behalf.

7. I am able and willing to serve as a lead plaintiff. I understand that, if appointed lead plaintiff, I would owe a fiduciary duty to Abbott and its shareholders to represent their interests fairly and adequately and to vigorously prosecute the litigation on Abbott's behalf. I am prepared to continue to actively oversee counsel in prosecuting this derivative litigation on Abbott's behalf. I am also prepared to maintain my Abbott stock holdings for the entire duration of this litigation.

8. I support the appointment of Bottini & Bottini as lead counsel for plaintiffs in this litigation based on, among other things, the firm's expertise in and its successful track record of prosecuting complex shareholder derivative actions.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on July 14, 2023.

Matthew Steele

Matthew Steele

EXHIBIT D

EXHIBIT D

VITAE OF EDWARD T. JOYCE

THE LAW OFFICES OF EDWARD T. JOYCE & ASSOCIATES, P.C.

Edward T. Joyce graduated *cum laude* from Loyola University of Chicago Law School in June, 1967 where he was editor-in-chief of the Loyola University Law Review. He is admitted to practice before:

The Supreme Court of Illinois (November 29, 1967)

The Federal District Court for the Northern District of Illinois (December 13, 1967)

The Trial Bar for the Northern District of Illinois (November 23, 1982)

The Federal District Court for the Eastern District of Wisconsin (June 3, 1981)

The United States Court of Appeals for the Seventh Circuit (April 23, 1976)

The United States Court of Appeals for the Fifth Circuit (October 26, 1976)

The United States Court of Appeals for the First Circuit (April 8, 1993)

The Supreme Court of the United States (April 16, 1990).

Mr. Joyce started his professional career as an Associate in the law firm of Liebman, Williams, Bennett, Baird and Minow (now Sidley & Austin), where he was actively engaged in commercial litigation dealing with various business problems, including antitrust, federal and state securities and numerous major Chancery actions on behalf of large commercial lenders. After several years with Liebman, Williams, Bennett, Baird and Minow, he took a one-year leave of absence and represented the Honorable Paul Simon as the Financial Chairman of his campaign for Governor of the State of Illinois. Thereafter, he formed his own commercial litigation firm. Mr. Joyce is a licensed certified public accountant in the State of Illinois.

The Firm concentrates its litigation practice on commercial and business matters, including but not limited to claims involving: employment disputes, partnership disputes, partnership break-ups, fraud, consumer fraud, securities fraud, shareholder and other derivative actions, class actions, defamation, breach of fiduciary duty, professional malpractice (e.g., legal malpractice and accountant malpractice), and breach of contract. Representative cases include the following:

Pickens-Kane v. Insurance Services of Illinois, Circuit Court of Cook County, Illinois (class action dealing with fraud by various insurance companies).

Jones v. Luster Friedman, Circuit Court of Cook County, Illinois (class action for fraud).

Halverson v. Convenient Food Mart, Inc., Northern District of Illinois (represented the defendants with respect to their attempts to defeat all national and local class actions growing out of the convenient Food Mart franchise system).

Ferraro v. Talman Federal Savings Loan Association, Northern District of Illinois (stockholder's derivative action).

Cada v. Costa Line, Circuit Court of Cook County, Illinois (lead class counsel; ass action involving a fire which completely destroyed a Caribbean Cruise ship).

Wiltgen v. Richardson-Vicks, Circuit Court of Cook County, Illinois (consumer fraud class action).

Healy v. Loeb Rhodes, Northern District of Illinois (co-lead counsel in security fraud class action).

Thillens v. The Community Currency Exchange Association of Illinois, Inc., Northern District of Illinois (class action where a defendant class was certified involving 2,500 individual and commercial members of the Community Currency Exchange Association of Illinois).

Mueller v. White Credit, Inc., Northern District of Illinois (class action filed under ERISA interference with prospective economic advantage).

In re Financial Partners Litigation, Northern District of Illinois (commodities fraud class action).

Kenny v. Reliable Corporation, Circuit Court of Cook County (co-lead class counsel; consumer fraud class action).

Barkman v. Wabash, Northern District of Illinois (co-lead counsel; securities fraud class action).

In re Illinois Bell Switching Litigation, Circuit Court of Cook County, Illinois (co-lead counsel; class action on behalf of Illinois Bell subscribers who lost phone services as a result of the fire at Illinois Bell's Hinsdale facility).

Sharfman v. Disonics, Inc., Northern District of California (stockholders' derivative suit).

Myles M. Spicer, et al. v. Chicago Board Options Exchange, et al., Northern District of Illinois (co-lead counsel in class action suit against the CBOE and OCC for maintaining a disorderly market).

Purdy v. Security Savings & Loan Assn., Eastern District of Wisconsin (lead counsel in securities fraud class action).

Barthuli v. St. Francis Savings & Loan Assn., Eastern District of Wisconsin (lead counsel

in securities fraud class action).

Naunheimer v. World Cup USA 1994, Inc., Circuit Court of Cook County, Illinois (co-lead counsel in a consumer fraud class action).

Apostolou v. Geldermann, Northern District of Illinois (lead counsel in commodities fraud claim on behalf of 240 victims of Ponzi scheme).

D'Huyvetter & Swichkow v. McGladrey & Pullen, Superior Court of Fulton County, Georgia (lead counsel in defending national accounting firm against claims of intentional interference with prospective economic advantage).

Rhyne v. American Home Products, Circuit Court of Cook County, Illinois (co-lead counsel in consumer fraud class action against diet drug manufacturers).

Ross v. Dahl, Circuit Court of Cook County, Illinois (lead counsel defending director of privately owned corporation against claims of breach of fiduciary duty and tortious interference).

Ries v. Humana Health Plan, Inc., Northern District of Illinois (lead counsel in ERISA-class action).

Strassen v. Allstate, Circuit Court of Madison County, Illinois (one of multiple class counsel in consumer class action regarding denial of medical payments coverage).

Seymour v. Motorola, Circuit Court of Cook County, Illinois (lead counsel in action to enforce stock option rights).

Crotty v. Commonwealth Edison, Circuit Court of Cook County, Illinois (co-lead counsel in consumer class action regarding utility outage).

Cohen et al. v. Blockbuster, Inc., Cook County, Illinois (class counsel for national class challenging Blockbuster's late fee policy)

Wisconsin International Electric Power, LTD v. Wisconsin Electric Power Company, Milwaukee County, Wisconsin (lead counsel in a multi-million dollar international fraud and breach of contract case tried in Milwaukee, Wisconsin, where many of the key witnesses were nationals of Asian countries)

Carrero v. Health Care Service Corporation, Cook County, Illinois (one of the class counsel for a class action against Blue Cross and others for improper claims administration)

Employer's Consortium, Inc. v. Professional Industrial & Trade Workers Union, Cook County, Illinois (lead counsel for class action against union and its promoters for improper coverage and administration of health and welfare claims)

Williamson County Agricultural Association v. Aon, class counsel for class action against Aon Insurance and its affiliates for recovery of secret commissions for placing insurance.

Lee v. EPS, lead counsel in arbitration before JAMS resulting in \$17.5 million award for 100 plus investors in a roll-up transaction.

Lee v. Federal Insurance Co., lead counsel in insurance coverage action in San Francisco against D&O carriers, arising out of the Lee v. EPS matter listed above.

Pielet v. Hiffman et al., lead counsel in shareholder derivative action in the Circuit Court of Cook County against general partners for breach of fiduciary duty.

In re Motorola Inc. Derivative Litigation, liaison counsel in shareholder derivative action in the Circuit Court of Cook County against officers and directors for breach of fiduciary duty and mismanagement.

Goldfine v. Barack Ferrazzano, et al., lead counsel in professional malpractice action in the Circuit Court of Cook County as affirmed by the Illinois Supreme Court resulting in \$15 million award for plaintiff.

Himmel v. Wasson, liaison counsel in shareholder derivative action on behalf of Walgreens Corp. in the Circuit Court of Lake County against officers and directors for breach of fiduciary duty and mismanagement.

Cook v. McCullough, liaison counsel in shareholder derivative action on behalf of Career Education Corp. in the United States District Court for the Northern District of Illinois against officers and directors for breach of fiduciary duty and mismanagement.

Warner v. Parkinson, liaison counsel in shareholder derivative action on behalf of Baxter International Inc. in the Circuit Court of Lake County against officers and directors for breach of fiduciary duty and mismanagement.

Pritzker v. Pritzker, in the Circuit Court of Cook County—family dispute. Mr. Joyce represented the wives and minor children of the Pritzker family.

CERTIFICATE OF SERVICE

I, Edward T. Joyce, an attorney, hereby certify that the foregoing **Plaintiffs Matthew Steel's and Ilene Lippman's Motion for Appointment of Lead Plaintiff, Lead Counsel, and Liaison Counsel and Memorandum of Law in Support Thereof** was filed electronically via the ECF filing system and served upon counsel for all parties via the same.

Dated: July 14, 2023

/s/ Edward T. Joyce