

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LEON MARTIN, Derivatively on Behalf of)
Nominal Defendant ABBOTT) Case No. 1:22-cv-05513
LABORATORIES,)
Plaintiff,)) Hon. Manish S. Shah
v.)
ROBERT B. FORD, ROBERT J. ALPERN,)
M.D., SALLY E. BLOUNT, PH.D.,)
PAOLAGONZALEZ, MICHELLE A.)
KUMBIER, DARREN W. MCDEW,)
NANCYMCINSTRY, WILLIAM A.)
OSBORN, MICHAEL F. ROMAN, DANIEL)
J. STARKS, JOHN G. STRATTON, GLENN)
F. TILTON, ROBERT E. FUNCK, JOSEPH)
MANNING, and CHRISTOPHER J.)
CALAMARI,)
Defendants,)
- and -)
ABBOTT LABORATORIES,)
Nominal Defendant.)

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ILENE LIPPMAN, Derivatively on Behalf of)
ABBOTT LABORATORIES,) Case No. 1:23-cv-00266
)
 Plaintiff,) Hon. Manish S. Shah
 v.)
)
 ROBERT B. FORD, ROBERT J. ALPERN,)
 SALLY E. BLOUNT, PAOLA GONZALEZ,)
 MICHELLE A. KUMBIER, DARREN W.)
 McDEW, NANCY McKINSTRY,)
 WILLIAM A. OSBORN, MICHAEL F.)
 ROMAN, DANIEL J. STARKS, JOHN D.)
 STRATTON, GLENN F. TILTON, ROGER)
 BIRD, CHRISTOPHER J. CALAMARI,)
 ROBERT E. FUNCK, JR., JOSEPH)
 MANNING, and DANIEL SALVADORI,)
)
 Defendants,)
 - and -)
)
 ABBOTT LABORATORIES,)
)
 Nominal Defendant.)

[Caption Continued on Next Page.]

MATTHEW STEELE, Derivatively on Behalf)
of ABBOTT LABORATORIES,) Case No. 1:23-cv-00850
)
Plaintiff,) Hon. Manish S. Shah
v.)
)
LORI J. RANDALL, KEENAN S. GALE, TJ)
HATHAWAY, ROBERT J. ALPERN, M.D.,)
ROXANNE S. AUSTIN, SALLY E.)
BLOUNT, PH.D., PAOLA GONZALEZ,)
MICHELLE A. KUMBIER, DARREN W.)
McDEW, ROBERT B. FORD, NANCY)
McKINSTRY, WILLIAM A. OSBORN,)
MICHAEL F. ROMAN, DANIEL J.)
STARKS, JOHN G. STRATTON, GLENN)
F. TILTON, ROBERT E. FUNCK, JR.,)
JOSEPH MANNING, and CHRISTOPHER)
J. CALAMARI,)
)
Defendants,)
- and -)
)
ABBOTT LABORATORIES,)
)
Nominal Defendant.)

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DAVID HAMILTON, Derivatively on Behalf)
of ABBOTT LABORATORIES,) Case No. 1:23-cv-02648
Plaintiff,) Hon. Manish S. Shah
v.)
ROBERT B. FORD, ROBERT J. ALPERN,)
ROXANNE S. AUSTIN, SALLY E.)
BLOUNT, PH.D., PATRICIA PAOLA)
GONZALEZ, MICHELLE a. KUMBIER,)
EDWARD M. LIDDY, DARREN W.)
McDEW, NANCY McKINSTRY, PHEBE)
N. NOVAKOVIC, WILLIAM A. OSBORN,)
MICHAEL F. ROMAN, SAMUEL C.)
SCOTT III, DANIEL J. STARKS, JOHN G.)
STRATTON, GLENN F. TILTON, MILES)
D. WHITE, ROGER M. BIRD,)
CHRISTOPHER J. CALAMARI, ROBERT)
E. FUNCK, JR., KEENAN S. GALE, TJ)
HATHAWAY, JOSEPH J. MANNING,)
LORI J. RANDALL, and DANIEL)
SALVADORI,)
Defendants,)
- and -)
ABBOTT LABORATORIES,)
Nominal Defendant.)

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THOMAS P. DiNAPOLI, COMPTROLLER)	
OF THE STATE OF NEW YORK, AS)	Case No. 1:23-cv-04142
ADMINISTRATIVE HEAD OF THE NEW)	
YORK STATE AND LOCAL)	Hon. Manish S. Shah
RETIREMENT SYSTEM, AND AS)	
TRUSTEE OF THE NEW YORK STATE)	
COMMON RETIREMENT FUND,)	
Derivatively on Behalf of ABBOTT)	
LABORATORIES,)	
)	
Plaintiff,)	
v.)	
)	
ROBERT B. FORD, ROBERT J. ALPERN,)	
ROXANNE S. AUSTIN, CLAIRE)	
BABINEAUX-FONTENOT, SALLY E.)	
BLOUNT, PAOLA GONZALEZ,)	
MICHELLE A. KUMBIER, EDWARD)	
LIDDY, PHEBE N. NOVAKOVIC,)	
DARREN W. MCDEW, NANCY)	
MCKINSTRY, WILLIAM A. OSBORN,)	
MICHAEL F. ROMAN, SAMUEL C.)	
SCOTT III, DANIEL J. STARKS, JOHN G.)	
STRATTON, GLENN F. TILTON, MILES)	
D. WHITE, CHRISTOPHER J.)	
CALAMARI, ROBERT E. FUNCK, JR., J.)	
SCOTT HOUSE, JOSEPH MANNING,)	
LORI J. RANDALL, and DANIEL)	
SALVADORI,)	
)	
Defendants,)	
- and -)	
)	
ABBOTT LABORATORIES,)	
)	
Nominal Defendant.)	

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INTERNATIONAL BROTHERHOOD OF)	
TEAMSTERS LOCAL NO. 710 PENSION)	Case No. 1:23-cv-04143
FUND and SOUTHEASTERN)	
PENNSYLVANIA TRANSPORTATION)	Hon. Manish S. Shah
AUTHORITY, Derivatively on Behalf of)	
Nominal Defendant ABBOTT)	
LABORATORIES,)	
)	
Plaintiffs,)	
v.)	
)	
ROBERT B. FORD, HUBERT ALLEN,)	
ROBERT J. ALPERN, ROXANNE S.)	
AUSTIN, CLAIRE BABINEAUX-)	
FONTENOT, SALLY E. BLOUNT, PAOLA)	
GONZALEZ, MICHELLE A. KUMBIER,)	
EDWARD M. LIDDY, DARREN W.)	
MCDEW, NANCY MCKINSTRY,)	
WILLIAM A. OSBORN, MICHAEL F.)	
ROMAN, DANIEL J. STARKS, JOHN G.)	
STRATTON, GLENN F. TILTON, MILES)	
D. WHITE, ERICA BATTAGLIA,)	
CHRISTOPHER J. CALAMARI, ROBERT)	
E. FUNCK, JR., JOSEPH MANNING, LORI)	
J. RANDALL, DANIEL SALVADORI, and)	
JAMES E. YOUNG,)	
)	
Defendants,)	
- and -)	
)	
ABBOTT LABORATORIES,)	
)	
Nominal Defendant.)	

**RESPONSE IN FURTHER SUPPORT OF PLAINTIFFS INTERNATIONAL
BROTHERHOOD OF TEAMSTERS LOCAL NO. 710 PENSION FUND AND
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY MOTION
TO CONSOLIDATE RELATED DERIVATIVE ACTIONS, APPOINT CO-LEAD
PLAINTIFFS AND APPROVE THEIR SELECTION OF CO-LEAD COUNSEL**

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I. INTRODUCTION

Four motions for lead plaintiff appointment are before the Court. All of these plaintiffs have filed complaints based on safety and compliance issues involving Abbott’s infant formula, which became known following the shutdown at its Sturgis, Michigan plant. All but one of them have utilized documents received through a statutory books and records request to Abbott. And, all of them have counsel experienced, in varying degrees, in the issues presented by this case. But for purposes of leading this derivative action, two important factors – the most critical *Dollens* ones – stand out and weigh strongly in favor of Teamsters 710 Pension Fund and SEPTA and warrant their appointment as Co-Lead Plaintiffs: (1) the vigor with which they have pursued this litigation from the outset, and (2) the filing of a unique and well-researched complaint that encompasses the full scope of Abbott’s directors’ and officers’ oversight failures related to Abbott’s illegal, unsafe and unethical manufacture and sale of infant formula products, by using books and records to allege how no reporting system existed to inform those fiduciaries of any issues, and how even in response to *ad hoc* reports of glaring red flags, those fiduciaries took no actions.

Nothing in the leadership motions filed by plaintiffs NYSCRF, Hamilton, and Steele rebuts the clear edge Teamsters 710 Pension Fund (“Teamsters 710”) and SEPTA have demonstrated with respect to these factors. Given the importance of vigorous advocacy and a thorough well-pled complaint that will be needed to represent Abbott and its stockholders in this case, Teamsters 710 and SEPTA (together with their chosen counsel, large and highly skilled firms with deep substantive and financial resources) are the “most adequate” plaintiffs to lead this derivative action.

First, Teamsters 710 and SEPTA have the best track record of vigorously prosecuting the Abbott Derivative Litigation. After commencing their investigations in spring 2022, they tracked three prematurely filed derivative cases, while pursuing books and records investigations, then timely intervened to protect Abbott’s and its shareholders’ interests when those cases appeared to be moving forward, which likely placed the derivative claims at risk. Indeed, this Court recognized

that risk when, in February 2023, it “stayed its decision on appointment of lead counsel, and all potential applicants should wait until Teamsters 710 and SEPTA’s motion to intervene is resolved before seeking appointment.” ECF No. 31. No other stockholder showed up to keep the train from leaving the station and potentially harming stockholders’ interests. During this stay, only Teamsters 710 and SEPTA persuaded Abbott to produce certain internal records with fewer redactions, which provided critical information for alleging demand futility and substantive claims against Abbott’s directors and officers in their Complaint.

Next, no plaintiff can argue that their complaint is more comprehensive than Teamsters 710’s and SEPTA’s Complaint in the breadth of substantive allegations and claims providing stockholders with the best chance of recovery. Here, all complaints include obvious claims related to violations of law occurring at Abbott’s Sturgis Plant that caused a national infant formula shortage. Only Teamster 710’s and SEPTA’s Complaint, however, ties those oversight failures by Abbott’s fiduciaries to a larger systemic pattern of corporate oversight failure concerning Abbott’s production and sale of infant formula products in the U.S., including: (1) the Company’s deceptive marketing of its cow-milk-based infant formula products as safe for premature infants despite the known risk that cow-milk-based formula exacerbates the chances of premature infants developing deadly NEC; and (2) the Company’s anticompetitive practices designed to gain and maintain its dominant market share, especially through its participation in the Supplemental Nutrition program for WIC. Those claims fit squarely within the derivative allegations of Abbott failing to oversee its compliance with food safety regulations and practices in the infant formula business at the management and Board level. Teamster 710’s and SEPTA’s Complaint also utilizes Abbott’s internal records more effectively than NYSCRF or Hamilton by pleading more particularized allegations as to demand futility and Defendants’ bad faith. Importantly, Teamsters 710 and SEPTA assert derivative Section 10(b) claims for \$6.4 billion in stock repurchases during the relevant period – a significant claim for damages to the Company. In contrast, Steele alleges a far more limited waste claim for \$900 million in stock repurchases, and Hamilton and NYSCRF do not allege any repurchase claims.

NYSCRF, Hamilton, and Steele all argue that they possess the largest economic interest under *Dollens*¹ factor (4). However, this factor should not hold significant weight here. Indeed, whether plaintiffs' economic investments in Abbott are measured by number of shares or as a portfolio percentage, all plaintiffs have a small holdings in Abbott compared with the Company's \$185 billion market capitalization. Thus, this factor, which is less important than vigor and quality of the pleadings, is simply a wash.

While Steele argues his status as a "shareholder of record" provides him the best standing to pursue the Abbott Derivative Litigation, this argument is a red herring. This Court has allowed beneficial owners to pursue derivative claims.²

Finally, NYSCRF's and Steele's discussion of their and their counsel's credentials, in fact, highlights the success of the Teamster 710's and SEPTA's counsel, Cohen Milstein and Scott+Scott, in prosecuting other high profile and complex derivative actions. For example, Steele points to his counsel's work on the landmark *Alphabet* derivative litigation, which resulted in a global settlement worth over \$300 million. Notably, Cohen Milstein was co-lead counsel in the case, which Carol Gilden and Richard Speirs were integrally involved in litigating; further, Geoffrey Johnson and Jing-Li Yu of Scott+Scott, also had lead roles in negotiating and reaching the global settlement, which resolved their parallel *Alphabet* Delaware Chancery action (where Scott+Scott was the sole lead counsel). Similarly, NYSCRF focuses on its achievements in the *Wynn* derivative litigation where NYSCRF and fellow co-lead plaintiffs, the New York City Pension Funds, were represented by Cohen Milstein as sole lead counsel, with a litigation team including Richard Speirs. As the Court noted, Cohen Milstein "after significant litigation, numerous hearings and substantial discovery, negotiated the largest derivative settlement in Nevada history [i.e., \$90 million]." Further, as reflected in Cohen Milstein's and Scott & Scott's Firm Resumes for this case, the members of the litigation teams, who are leading Teamsters 710's

¹ *Dollens v. Zions*, No. 01 C 5931, 2001 WL 1543524 (N.D. Ill. Dec. 4, 2001).

² As this Court recognized, "ultimately . . . Section 7/80(a) does give a court discretion to allow a plaintiff who does not meet [a purported record-holder] requirement to bring a derivative action." *See Gilden Decl.*, Ex. 3 (May 23, 2023 Tr. at 4).

and SEPTA's vigorous prosecution of the Abbott Derivative Litigation, have recovered billions of dollars on behalf of companies and investors in other derivative and representative class actions.

Accordingly, Teamsters 710 and SEPTA should be appointed as Co-Lead Plaintiffs, and their selection of counsel, Cohen Milstein and Scott+Scott appointed as Co-Lead Counsel.

II. ARGUMENT

A. The *Dollens* Factors Favor the Appointment of Teamsters 710 and SEPTA as Co-Lead Plaintiffs

Viewed together the *Dollens* factors heavily favor the appointment of Teamsters 710 and SEPTA as Co-Lead Plaintiffs of this litigation. None of the arguments made by plaintiffs NYSCRF, Steele, or Hamilton change that analysis.

i. Teamsters 710 and SEPTA Have Litigated the Abbott Derivative Litigation More Vigorously

The Other Movants have not demonstrated that they have litigated this case more vigorously than the joint efforts of Teamsters 710 and SEPTA. At best, they have all filed complaints premised essentially on the Sturgis recall, with NYSCRF and Hamilton obtaining, and using in varying degrees, Abbott's internal books and records.

Teamsters 710 and SEPTA first began investigating this matter in spring 2022. Since then, they have diligently and expeditiously pursued their investigations into Abbott's directors' and officers' conduct in connection with the manufacture and sale of infant formula products in the U.S., beginning with the Sturgis recall. They each made Section 7.75 demands, entered into confidentiality agreements with Abbott, and then obtained critical books and records from Abbott. Importantly, Teamsters 710 and SEPTA joined forces and were the only stockholders to intervene and to stay the pending Abbott Derivative Litigation to complete their ongoing books and records investigations. Had Teamsters 710 and SEPTA not stepped in, the case would have proceeded on one of the less fulsome complaints thereby endangering stockholders' claims.³ While the stay was pending, only Teamsters 710 and SEPTA persuaded Abbott to re-produce certain Board material

³ See, e.g., *Cal. State Tchs. 'Ret. Sys. v. Alvarez*, 179 A.3d 824, 829-30 (Del. 2018).

with fewer redactions. Teamsters 710 and SEPTA continued to press the case after the Court granted intervention and informed the Court they were ready to file their Complaint, which would include books and records obtained from Abbott, “in the next few weeks.” *See Gilden Decl.* at ¶¶ - - to --, Ex. 3 (5/23/2023 May 23, 2023 Tr. at 6).⁴

While Teamsters 710 and SEPTA worked with the other plaintiffs in the pending cases to organize the lead plaintiff briefing, NYSCRF sat idly by only coming in at the eleventh hour shortly before the Status Report was due.⁵ It was only because the Court stayed the pending cases, which was a result of the Teamsters 710’s and SEPTA’s Motion to Intervene filed months earlier that NYSCRF was able to complete its books and records investigation and then belatedly intervene on June 5, 2023—despite its claim that it “actively monitored the pending derivative actions against Abbott since the first derivative action was filed in October 2022” (NYSCRF Br. at 6).⁶ NYSCRF’s last-minute entry prompted the Court to extend the deadline for the joint status report to June 15, 2023, and order Defendants to also file a status report, in light NYSCRF’s unexpected appearance. ECF No. 49. As such, NYSCRF’s efforts do not amount to vigorous litigation when compared to the joint efforts of Teamster 710 and SEPTA.

Both NYSCRF and Hamilton also argue that they vigorously litigated their Section 7.75 investigation; yet no evidence exists of those purported efforts. In contrast, on March 3, 2023,

⁴ At the May 23, 2023 hearing, Defendants’ counsel did not mention NYSCRF or that Defendants had moved to dismiss three related derivative actions pending in Illinois state court in favor of this action (which the Teamsters 710 and SEPTA later learned about) and that those plaintiffs could seek to re-file their actions before this Court. May 23, 2023 Tr. at 8-10.; *see also* Gilden Sup. Decl., Ex. 5 (Abbott MTD or Stay State Derivative Actions).

⁵ Steele’s purported “cooperat[ion] with respective counsel for . . . proposed intervenors” (Steele Br. at 13) was limited to discussions over the Status Report; in fact, Steele opposed Teamsters 710’s and SEPTA’s intervention even though that motion was made in Abbott’s and its shareholders’ best interests, which the Court acknowledged when granting it on May 23, 2023. *See Gilden Decl.*, Ex. 3 (“I think a complaint that does have the benefit of the results of a books and records investigation may very well be different and more substantial than a complaint that doesn’t have the benefit of that information.”).

⁶ As discussed in footnote 3 *supra*, Teamsters 710 and SEPTA recently learned of and are now monitoring three related derivative actions in state court, which Abbott and other defendants have moved to dismiss in favor of the cases proceeding in this forum, or in the alternative, to stay until the conclusion of the federal derivative litigation. *See Gilden Sup. Decl.*, Ex. 5 (Abbott MTD or Stay State Derivative Action). The Abbott Defendants have reserved their right to move to dismiss on substantive grounds should their motion be denied. Should that occur, Teamsters 710 and SEPTA will seek to intervene in those actions to protect Abbott’s and its shareholders’ interests related to collateral estoppel.

Teamsters 710 and SEPTA sent a joint letter to Abbott demanding that it remove certain redactions from its Board materials. *See Gilden Sup. Decl.* ¶11. They followed up via email on March 10, 2023, and met and conferred with Abbott on March 15, 2023. *Id.* On March 27, 2023, Abbott confirmed that it was conducting a review based on Teamsters 710’s and SEPTA’s demand for Abbott to produce certain documents without redactions. *Id.* On April 10, 2023, Abbott further confirmed via email that it would re-produce certain Board materials without redactions, and produced such documents to Teamsters 710 and SEPTA on April 20, 2023. *Id.* One week later, Hamilton filed his complaint.⁷

Moreover, Steele’s strategic decisions will only cause further delays to the Abbott Derivative Litigation. Despite purportedly beginning an investigation of Abbott in “September 2022,” Steele filed a plenary complaint months later on February 10, 2023 without the benefit of first obtaining books and records from Abbott. By filing a plenary [verified] complaint, Steele conceded that he had sufficient evidence to support his complaint’s allegations when it was filed. *See Fed. Rule Civ. P.* 11(b). In fact, Steele only served his Section 7.75 demand on the same day that he filed his derivative complaint.⁸ On July 20, 2023, Abbott confirmed that Steele did not enter into a confidentiality agreement with Abbott, and therefore, Abbott would not permit Steele to review any materials referencing the Company’s confidential information in the other plaintiffs’ filings in this litigation.⁹ Accordingly, Steele’s tactical decision to not obtain Section 7.75 documents from Abbott before filing his plenary complaint does not advance Abbotts stockholders’ interests and puts Steele’s litigation efforts at least several months behind those of Teamsters 710 and SEPTA, who spent months negotiating the Section 7.75 production. Moreover,

⁷ Hamilton contends that filing the first complaint with Section 7.75 documents reflects his vigorous litigation efforts, but Hamilton’s complaint lacks many theories of potential liability against Abbott’s directors and officers, which are reflected in Teamster 710’s and SEPTA’s more fulsome Complaint. *See Section II.ii.* As such, Hamilton’s action of filing the first complaint to include Section 7.75 documents does not favor him under any of the relevant *Dollens* factors.

⁸ Abbott has refused to produce its internal documents in response to Steele’s Section 7.75 demand, claiming that Steele lacks a proper purpose to obtain such documents because he has filed a plenary complaint. *See Gilden Sup. Decl.*, Ex. 6 (Abbott MTD Brief at 2).

⁹ *See Gilden Sup. Decl.*, Ex. 8 (July 20, 2023 Abbott email re: Steele and no confidentiality agreement).

and most importantly, it is unclear whether Steele will ever obtain any Section 7.75 documents from Abbott. As such, Steele's litigation tactics weighs heavily against the appointment of Steele to a position of leadership.

Finally, as detailed in Section II.ii, Teamsters 710's and SEPTA's vigorous litigation efforts led to the filing of the most comprehensive Complaint, which is another important *Dollens* factor pointing in their favor for appointment as Co-Lead Counsel.

ii. Teamsters 710 and SEPTA Filed the Highest Quality Pleading

The Complaint filed by Teamsters 710 and SEPTA is of higher quality than any of the other movants for several reasons giving stockholders the best opportunity for recovery. First, it is the most comprehensive complaint in breadth of scope and claims. All complaints include claims, in varying detail, related to oversight failures concerning Abbott's Sturgis plant's production and sale of illegal and unsafe infant formula products containing Cronobacter. But only Teamsters 710's and SEPTA's Complaint further alleges a pattern of oversight failures connected to Abbott's illegal, unsafe and unethical manufacture and sale of infant formula products in the U.S. that include additional allegations concerning: (1) deceptively marketing its cow-milk-based infant formula products as safe for premature infants despite the known risk that cow-milk-based formula exacerbates the chances of premature infants developing deadly NEC;¹⁰ and (2) aggressively marketing its infant formula products in the U.S. as part of the Company's anticompetitive practices to gain and maintain its dominant market share, especially through its participation in the Supplemental Nutrition program for WIC.

Second, Teamsters 710's and SEPTA's Complaint is also more comprehensive when comparing its other claims against those of the other Movants. Notably, Teamsters 710's and SEPTA's Complaint is the only one to allege **both** Section 14(a) and Section 10(b) under the Exchange Act. Not only does this ensure that this Court has jurisdiction over the Abbott Derivative

¹⁰ Significantly, on July 17, 2023, in the NEC MDL proceeding, Judge Pallmeyer denied Abbott's motion to dismiss plaintiff's punitive damages allegations, finding that, "In the court's view, the complaint plausibly alleges that Defendants knew of and disregarded the risks of using cow's milk in preterm infant formula." *See* Gilden Sup. Decl., Ex. 7 (July 17, 2023 NEC MTD Opinion).

Litigation, and the ability to assert its supplemental jurisdiction to hear state law claims involving breach of fiduciary duty, insider trading, corporate waste, and unjust enrichment, but the substantive claims allow for Abbott to recover for Defendants dissemination of misleading proxy statements, and also for causing the Company to repurchase over \$6.4 billion in its common stock at inflated prices. In contrast, Steele’s complaint only alleges Section 10(b) claims, while Hamilton and NYSCRF only allege Section 14(a) claims.

Third, when comparing Teamsters 710’s and SEPTA’s Complaint to NYSCRF’s and Hamilton’s complaints, it is clear that the latter two do not utilize Abbott’s Section 7.75 documents as effectively in their complaints.¹¹ Although NYSCRF mentions approximately eleven Board and its subcommittees meetings,¹² it is not as comprehensive as Teamsters 710’s and SEPTA’s Complaint’s which references twenty-nine Board and its subcommittees meetings.¹³ And, Hamilton’s complaint makes very little use of the Section 7.75 documents for demand futility purposes, referencing only three Board and its subcommittee meetings.¹⁴

In addition, unlike the Complaint’s particularized allegations, neither NYSCRF nor Hamilton pled the names of the specific directors and officers who attended the relevant meetings, where they failed to exercise their oversight duties related to Abbott’s manufacture and sale of infant formula products in the U.S.—which are critical to proving demand futility and bad faith. Teamster 710 and SEPTA also used Abbott’s Section 7.75 documents to craft allegations to sue certain officer defendants, in contrast to NYSCRF and Hamilton. For example, only the Teamsters 710 and SEPTA named Hubert Allen, Abbott’s General Counsel, as an officer defendant because he [REDACTED]¹⁵

¹¹ Interestingly, although NYSCRF provided the Teamster 710 and SEPTA with unredacted copies of its filings, its counsel was not interested in reviewing unredacted copies of Teamster 710’s and SEPTA’s complaint or filings.

¹² See, e.g., NYSCRF Complaint ¶¶10, 137, 142, 159, 166, 172, 177, 187-88, 216-19.

¹³ See, e.g., ¶¶159, 161-62, 170-71, 175, 181, 185-86, 190-92, 200-04, 208, 213, 225-26. Notably, many of these referenced paragraphs include minutes that were produced by Abbott with fewer redactions as a result of Teamsters 710’s and SEPTA’s vigorous litigation efforts.

¹⁴ See, e.g., Hamilton Complaint ¶¶68, 118, 120.

¹⁵ See, e.g., ¶¶159, 185, 201, 213.

Similarly, only the Teamsters 710's and SEPTA's Complaint names Abbott's Chief Ethics and Compliance Officer, James Young as an officer defendant based on Section 7.75 documents,

[REDACTED]¹⁶

Teamster 710's and SEPTA's better use of Abbott's Section 7.75 documents will ultimately help Abbott's and its shareholders' best interests when facing Defendants' expected motions to dismiss.

Moreover, as discussed above, Steele's complaint lacks references to Abbott's internal records; and therefore, no question exists that it is inferior when compared to Teamsters 710's and SEPTA's Complaint. *See also* Opening Br. at 9-10. Moreover, despite not gaining access to any of Abbott's internal records, Steele speculates that Teamster 710 and SEPTA received a "meager" Section 7.75 production from Abbott and that he will somehow obtain additional ones to support his allegations. *See* Steele Br. at 9. But Steele undermined his own efforts by filing a plenary action without internal records and refusing to sign a confidentiality agreement, and now faces the likelihood he will obtain ***no*** records.¹⁷

Thus, *Dollens* factor (2) also weighs substantially in Teamster 710's and SEPTA's favor.

iii. Teamsters 710 and SEPTA Are Institutional Investors With Standing to Assert Derivative Claims on Abbott's Behalf

As discussed in their Opening Brief, *Dollens* factor (3) favors institutional investors over individual investors. *See* Opening Br. at 12-13. Next, NYSCRF, Hamilton, and Steele all tout their respective economic interests as providing them with an edge under *Dollens* factor (4); but, in reality, this factor is a wash for all plaintiffs due to Abbott's \$185 billion market capitalization, which renders all plaintiffs' holdings in Abbott to be worth a minuscule fraction of its enterprise value. Further, the *Dollens* factors concerning vigorous advocacy and pleadings quality – weighing strongly in Teamster 710's and SEPTA's favor – are far more important than these *Dollens* factors.

Steele focuses on the beneficial holdings of Teamsters 710 and SEPTA, arguing they lack standing to assert a derivative lawsuit on Abbott's behalf because they are not purported

¹⁶ *See, e.g.*, ¶¶162, 170, 175, 181, 186, 190-92.

¹⁷ *See* Gilden Sup. Decl., Ex. 8.

“shareholders of record.” Steele, however, concedes that the Court has discretion to allow beneficial owners to file derivative actions. *See* Steele Br. at 7-8. In fact, beneficial holders routinely file derivative actions without making a formal motion to seek approval from the court prior to doing so and their standing is not challenged.¹⁸ *See, e.g., Vanco v. Mancini*, 495 F. Supp. 3d 712, 720 (N.D. Ill. 2020). Indeed, the Court already cast doubt on Steele’s case law when he made the same arguments several months ago in opposition to Teamster 710’s and SEPTA’s Motion to Intervene.¹⁹ Ironically, after challenging their standing to assert derivative claims, Steele concedes that he is willing to work as co-lead with any one of the institutional investors. *See* Steele Br. at 12.

iv. Teamsters 710 and SEPTA Are Represented by Highly Qualified Locally and Nationally Based Counsel, Cohen Milstein and Scott+Scott

This final *Dollens* factor also weighs in favor of appointing the Teamsters 710’s and SEPTA’s selected counsel of Cohen Milstein and Scott+Scott as Co-Lead Counsel, whose joint and vigorous litigation of the Derivative claims to date, along with their experience and track records, prove they are well-equipped to litigate this case.

a. The Cohen Milstein Team

With over 100 lawyers and a deep bench of talent and the financial resources to take on this matter, Cohen Milstein is poised to successfully lead the litigation of this case together with co-lead counsel, Scott & Scott. *Chambers USA* and *Legal 500* have consistently recognized Cohen Milstein as a “**Top Tier Firm**” and “**Leading Firm**” in Securities Litigation, Antitrust and Product

¹⁸ Indeed, allowing beneficial shareholders to pursue derivative claims makes sense as a matter of public policy. First, the SEC has estimated that 70-80% of all public company shares in the U.S. are held in street or nominee name, and investors would reasonably expect to have the right to sue unfaithful fiduciaries of a company. *See* Concept Release on the U.S. Proxy System, 75 Fed. Reg. 42,982, at 42,999 (July 22, 2010) (citing Report and Recommendations of the Proxy Working Group to the New York Stock Exchange, at 10-11, June 5, 2006). Steele’s interpretation would result in the vast majority of investors being excluded from pursuing derivative claims on U.S. companies’ behalf.

¹⁹ *See* Gilden Decl., Ex. 3 (May 23, 2023 Tr. at 3-4 (“It’s not, to me, a forgone conclusion that the intervenors’ claims are futile because they are not shareholders of record. The cases cited by the opponents to intervention don’t persuade me that it’s as clear-cut a proposition as that. The *Holzman* case, . . . was applying Delaware law and was not analyzing or interpreting the Illinois Business Corporations Act, so I don’t take that to be authority on that proposition. And the *Hill* case involved a plaintiff who didn’t own any stock at all, so the technical definition of “shareholder of record” wasn’t at issue there.”)).

Liability, Mass Torts. Further, in 2023, Cohen Milstein's securities practice group was recognized by *Law360* as a 2022 Practice Group of the Year.

Carol V. Gilden, who oversees the Firm's Chicago office and presence, is an accomplished litigator with decades of experience in the Northern District of Illinois and a broad-based national practice, and leads the Cohen Milstein team. As described in the Firm Resume for this case, Ms. Gilden's practice focuses on securities class actions and derivative matters, and includes antitrust cases and other complex litigation matters. Her cases have resulted in aggregate recoveries of over several billion dollars for investors. Working with Managing Partner and Securities Practice Group Head, Steven J. Toll, who as co-lead counsel recently settled the Wells Fargo Securities Litigation for \$1 billion, Gilden will lead the Cohen Milstein team of Richard Speirs and Amy Miller, who have successfully prosecuted derivative and other representative litigations for decades,²⁰ and Benjamin Jackson and Lyzette Wallace from the Firm's securities litigation practice group.

Of note, the Firm's derivative practice is extensive and has been highly successful in recent years achieving some of the largest derivative settlements, including *Alphabet* (\$310 million), *Wynn Resorts* (\$90 million), *L Brands* (\$100 million) and *Pinterest* (\$50 million). Recently, those Cohen Milstein attorneys achieved outstanding results in the following derivative actions:

- *Boeing Derivative Litigation*: In 2023, a Cohen Milstein team, consisting of Gilden, Toll, Speirs, and Miller, as sole counsel to a pension fund achieved a settlement worth over \$100 million in corporate governance value and \$6.25 million monetary recovery in a derivative action related Boeing 737 MAX airplane crashes based only on federal derivative Section 14(a) claims related to disclosure violations in the company's proxy statements.
- *FirstEnergy Derivative Litigation*: In 2022, a Cohen Milstein team including Toll, Speirs, and Miller as counsel to a named plaintiff recovered \$180 million — the largest derivative settlement ever in the Sixth Circuit — and substantial corporate governance

²⁰ Prior to joining Cohen Milstein in July 2019, Miller worked on numerous other successful high profile and complex derivative action. *See e.g.*, *McKesson Derivative Litig*, C.A. No. 4:17-cv-01850-CW (settlement of \$175 million plus substantial corporate governance reforms); *In re News Corporation Shareholder Derivative Litigation*, C.A. No. 6285-VCN (Del. Ch. 2013) (settled for \$139 million and extensive corporate governance reforms); *City of Monroe Employees' Retirement System, derivatively on behalf of Twenty- First Century Fox, Inc. v. Murdoch, et al.*, C.A. No. 2017-0833-AGB (Del. Ch. 2018) (\$90 million monetary settlement, along with corporate governance relief).

reforms, including the resignation of six directors; active board oversight of FirstEnergy’s political spending and lobbying activities; and specific disclosures in the annual proxy statement issued to shareholders.

- *Intuitive Derivative Litigation:* In 2017, a Cohen Milstein team that included Gilden, Toll, and Speirs represented the Public School Teachers’ Pension and Retirement Fund of Chicago in a derivative action that achieved a settlement one day before trial for cash and options worth \$20.0 million at final approval, paid by the individual defendants back to Intuitive, and for extensive corporate governance, insider trading, product safety, and FDA compliance measures designed to prevent the reoccurrence of the alleged wrongdoing involving with the daVinci Surgical System — a benefit of \$117 million to Intuitive and its shareholders.²¹

In addition to the primary team, Cohen Milstein has highly successful and nationally recognized practice groups in the areas of anticompetitive practices, complex tort litigation and consumer protection, and key attorneys from these practice areas, including nationally recognized antitrust partner Sharon Robertson, complex tort litigation partner Leslie Kroeger, and consumer protection litigation partner Geoffrey Graber, stand ready to lend further assistance in establishing the Teamsters 710’s and SEPTA’s Complaint’s allegations related to these areas, including advising in the development of appropriate governance reforms.²² See Gilden Decl., Ex. 2.

b. The Scott+Scott Team

Geoffrey M. Johnson, who heads Scott+Scott’s Corporate Governance and Shareholder Rights Group, and is based in Cleveland, Ohio, leads Scott+Scott’s team of Jing-Li Yu, Joseph Pettigrew, and Tyler Yagman in this litigation.²³ Johnson has over two decades of litigation

²¹ Toll, Gilden, and Speirs were also involved in settling some of the most important mortgage-backed securities (MBS) class-action lawsuits in the aftermath of the financial crisis, including: Countrywide Financial Corp., which settled for \$500 million in 2013; Residential Accredited Loans Inc. (RALI), which settled for \$335 million in 2014; Harborview MBS, which settled for \$275 million, also in 2014; Bear Stearns Mortgage Pass-Through Certificates Litigation, which settled for \$505 million settlement in 2016; and Novastar MBS, which settled for \$165 million in 2019.

²² Robertson is a partner in Cohen Milstein’s Antitrust group, who has successfully litigated numerous matters, particularly in pharmaceutical antitrust class actions, including *Urethanes (Polyether Polyols) Antitrust Litigation* (D. Kan.) (\$974 million recovery), *In re Lidoderm Antitrust Litigation* (N.D. Cal.) (\$104.75 million settlement); Kroeger is a partner in and the co-chair of the Cohen Milstein’s Complex Tort Litigation practice, where she has successfully litigated cases, including *In re Flint Water Cases* (E.D. Mich.) (\$626.25 million recovery). Graber, a former Deputy Assistant Attorney at the DOJ, is a partner in Cohen Milstein’s Consumer Protection practice, who has successfully prosecuted many cases, including *In re Anthem, Inc. Data Breach Litigation* (N.D. Cal.) (\$115 million settlement).

²³ Johnson and Yu are also alumni of the University of Chicago Law School. Johnson also pioneered several practices at Scott+Scott, including serving as lead or co-lead counsel in mortgage-backed securities litigation, *In re Washington Mutual Mortgage-Backed Securities Litigation*, No. 2:09-cv-00037 (W.D. Wash.) and *Putnam Bank v. Countrywide Financial, Inc.*, No. 10-cv-302 (C.D. Cal.). Johnson further pioneered the firm’s Section 11 and ERISA practices.

experience, and he and his team have delivered hundreds of millions of dollars in shareholder value to their clients and the corporations their clients have invested in. Recent significant derivative settlements won by members of the Scott+Scott team include:

- *L Brands Derivative Litigation*: In 2022, a Scott+Scott team led by Johnson, Yu, and Pettigrew, representing an individual shareholder and the Detroit Police and Fire Retirement System, co-led the negotiations a \$90 million settlement to fund an overhaul of L Brands's governance and workplace policies and procedures, including its sexual harassment and anti-retaliation policies.
- *Altria Group Derivative Litigation*: In 2023, Johnson, Pettigrew and Yu led a Scott+Scott team as co-lead counsel in derivative litigation involving Altria's disastrous investment in Juul Labs, achieving a \$117 million settlement to fund anti-youth vaping programs and enhanced transactional oversight, in addition to other corporate reforms. Hamilton's counsel also worked on this action.
- *Santander Consumer USA Holdings Derivative Litigation*: In 2021, a Scott+Scott team led by Johnson and Pettigrew obtained in a strong suite of corporate governance reforms at Santander, including adding an independent director to the Audit Committee, hiring new executives, creating an Accounting and Credit Loss Committee, with the court calling it "one of the more robust therapeutic recoveries that I have seen in a corporate case that really strongly addresses the shortcomings that the litigation exposed."

Currently, Johnson leads Scott+Scott,²⁴ representing plaintiff City of Birmingham Retirement and Relief System, as co-lead counsel in pending derivative litigation on behalf of Facebook, with damages exceeding \$5 billion. On May 11, 2023, the Court denied Defendants' motion to dismiss and emphasized, "The operative complaint in this action is encyclopedic and specific. . . . It tells a story of a company . . . where there are so many violations that it supports a pleading-stage inference that management is operating an enterprise based on recidivous law breaking." *See Gilden Sup. Decl.*, Ex. 3 (May 11, 2023 Tr. at 4.)

Before joining Scott+Scott, Yu was a litigation associate at Grant & Eisenhofer, P.A., in Wilmington, Delaware, where he litigated *City of Monroe Employees' Retirement System v. Murdoch*, C.A. No. 2017-0883-AGB (Del. Ch.).

²⁴ Partners, Maxwell Huffman and Justin Reliford, provide day-to-day leadership of the Facebook team. At their previous firms, Huffman prosecuted *In re Dole Food Co. Inc. S'holder Litig.* and won a \$148 million damages award after trial, and Reliford prosecuted *In re Cardinal Health Inc. Derivative Litigation*, achieving a \$124 million settlement of opioid-related director oversight breach of fiduciary duty claims.

Furthermore, Johnson is supported by Scott+Scott's world-class practices in securities (with hundreds of millions of dollars in recent settlements alone), antitrust (co-lead of *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 12-cv-07789 (S.D.N.Y.), with \$2.3 billion in settlements), consumer protection and healthcare and pharmaceutical litigation (with hundreds of millions of dollars in recovery), and other practices.

* * * * *

In sum, the size of this case, including the nature of the allegations, will require a substantial litigation effort. Co-lead counsel, along with co-lead plaintiffs, are particularly appropriate here. Moreover, as many of the cases cited herein confirm, a co-lead plaintiff and co-lead counsel structure is common in large and complex derivative actions and shareholder class actions.²⁵

III. CONCLUSION

For the foregoing reasons and all the reason stated in their Opening Brief, the Court should grant Teamsters 710's and SEPTA's motion in full.²⁶

²⁵ Notably, the *Boeing* case cited by NYSCRF was litigated with co-lead plaintiffs and two law firms. Further, there is no issue as to Teamsters 710 and SEPTA working efficiently in this matter as they have seamlessly prosecuted the case jointly to date, and do not bring an excessive number of counsel into the mix – just two.

²⁶ However, Teamsters 710 and SEPTA remain open to working with other plaintiffs if the Court deems it would be in Abbott's and its shareholders' best interests.

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Respectfully submitted,

/s/ Geoffrey M. Johnson

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