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Case No. 2024-1185-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DOUGLAS CARLSON, derivatively on behalf of Nominal Defendant IMMUNITYBIO, INC.,

Plaintiff,

v.

PATRICK SOON-SHIONG, NANT CAPITAL, LLC, NANTMOBILE, LLC, NANTCANCERSTEMCELL, LLC, RICHARD ADCOCK, JOHN OWEN BRENNAN, WESLEY CLARK, LINDA MAXWELL, BARRY J. SIMON,

Defendants,

-and-

IMMUNITYBIO, INC.,

Nominal Defendant.

C.A. No. 2024-1185-JTL

PUBLIC VERSION
Filed: November 26, 2024

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Douglas Carlson ("**Plaintiff**"), derivatively on behalf of Nominal Defendant ImmunityBio, Inc. ("**ImmunityBio**" or the "**Company**"), submits this Verified Stockholder Derivative Complaint against the defendants named herein for breach of fiduciary duty and unjust enrichment.

The allegations in this Complaint are based upon Plaintiff's personal knowledge as to himself, and upon information and belief, including the investigation of counsel, the review of publicly available information, and the review of books and records produced by the Company as of the date of this Complaint in response to Plaintiff's books and records demand pursuant to 8 *Del. C.* § 220 ("**Section 220**") as to all other matters, all of which books and records are expressly incorporated into this Complaint. For the avoidance of doubt, this incorporation by reference does not change the pleading standard applicable to any motion to dismiss that may be filed in this case.

NATURE AND SUMMARY OF THE ACTION

1. ImmunityBio is a pharmaceutical company controlled by Dr. Patrick Soon-Shiong ("**Soon-Shiong**"), a serial biotech entrepreneur whose reputation is shadowed by repeated allegations of self-dealing, oppressing minority stockholders, and other unsavory business practices. The Company's flagship drug is **Anktiva**, an immunotherapy targeting forms of bladder cancer that the FDA approved in August 2024 after previously rejecting it due to issues observed at a third-party manufacturing facility.

2. Anktiva's Biologics License Application ("**BLA**") was first submitted to the FDA in May 2022.[1] After review, the FDA delivered a Complete Response Letter ("**CRL**") to the Company on May 11, 2023,[2] rejecting the BLA because of deficiencies observed during the FDA's pre-license inspection of the Company's third-party Contract Manufacturing Organization ("**CMO**").[3] The CRL – the FDA's Complete Response – did not reflect any concerns by the FDA about Anktiva's clinical results, patient data, safety, or efficacy.

3. Later on May 11, 2023, the Company filed a quarterly report with the SEC on Form 10-Q stating that there was a risk that the FDA might never approve Anktiva. The Company issued this stark warning even though the FDA's Complete Response did not request that ImmunityBio subject Anktiva to any new preclinical or Phase 3 studies, and limited its recommendations to remediating the deficiencies with the Company's third party CMO. Nevertheless, the quarterly report ominously

[1] A BLA – a step toward FDA approval of a new drug – is a formal request for permission to introduce, or deliver for introduction, a biologic product to interstate commerce.

[2] A CRL is a notice issued by the FDA in response to a BLA (and certain other applications) indicating that the application will not be approved in its present form. The CRL explains why the application was rejected and typically includes the FDA's recommendations for how the applicant should address the deficiencies.

[3] A CMO provides drug development, packaging, and distribution and manufacturing services to pharmaceutical and biotechnology companies. By outsourcing manufacturing, pharma and biotech companies are free to focus on research, development, and marketing.

stated that the Company "may be unable to resolve the items outlined in the [CRL] in a timely manner, if at all, which could have a material impact on our results of operations, financial condition, and business."

4. Following these dire warnings, the price of ImmunityBio common stock predictably fell 55.14% on heavy volume to close at $2.79 per share on May 11, 2023.

5. Despite the CRL and *bearish* public statements in the Company's quarterly report, management and in particular Soon-Shiong remained privately *bullish* about Anktiva's chances for approval. [redacted]

6. Taking a page from his oft-used playbook illustrated below, Soon-Shiong exploited the temporary dip in the Company's stock price during the period between the FDA's issuance of the CRL and the Company's resubmission of the Anktiva BLA in order to enrich himself at the Company's expense.

7. ***First***, the Company, which Soon-Shiong controlled, borrowed $240 million from his affiliates on onerous terms [redacted] (the "**Debt Financing**").

8. ***Second,*** the Company agreed to modify the terms of $270 million worth of existing convertible notes held by Soon-Shiong's affiliates, effectively reducing the notes' conversion price from $5.67 per share to just $1.29 per share for no apparent business purpose (the "**Convertible Exchange**," together with the Debt Financing, the "**Soon-Shiong Transactions**"). In short, Soon-Shiong exchanged his Company debt into equity with a rock-bottom conversion price while the Company's stock was trading at a price he knew would immediately appreciate once the BLA was resubmitted. As expected, the subsequent public disclosure of the Company's BLA resubmission led to an immediate spike in the Company's stock price.

9. [redacted]

[redacted]

10. [redacted]

[redacted]

[redacted]

THE PARTIES

Plaintiff

11. Plaintiff Douglas Carlson is, and at all relevant times was, a holder of ImmunityBio common stock.

Nominal Defendant

12. Nominal Defendant ImmunityBio is a Delaware corporation that trades on the Nasdaq under the ticker symbol "IBRX." The Company was named ConKwest, Inc. ("**ConKwest**") prior to June 2015, when it was renamed NantKwest, Inc. ("**NantKwest**"). In March 2021, the Company changed its name to ImmunityBio, Inc. as the surviving company of a merger between NantKwest and a privately held company also named ImmunityBio, Inc. ("**Legacy ImmunityBio**"). At the time of the merger, both NantKwest and Legacy ImmunityBio were controlled by Soon-Shiong.

Individual Defendants

13. Defendant Soon-Shiong has been a member of the Board since December 2014 when he first made an investment in ConKwest. He has held a controlling interest in the Company and its predecessors-in-interest since at least 2015. Soon-Shiong served as the Co-Chairman of the Board from December 2014 to March 2015 and as the Company's Chief Medical Officer from January 2015 to March 2015. He was the Company's CEO and Chairman of the Board from March 2015 to October 2020. He has been Executive Chairman of the Board since October 2020 and Global Chief Scientific and Medical Officer since August 2021.

14. Defendant Richard Adcock ("**Adcock**") has been a member of the Board and the Company's President since March 2021. He has been the Company's CEO since Soon-Shiong stepped down from that position in October 2020.

15. Defendant John Owen Brennan ("**Brennan**") has been a member of the Board since March 2021 and has been Chairman of the Related Party Transactions Committee at all relevant times. He was a Legacy ImmunityBio director when it merged with NantKwest in March 2021.

16. Defendant Wesley Clark ("**Clark**") has been a member of the Board since March 2021 and has been a member of the Related Party Transactions Committee at all relevant times. He was a Legacy ImmunityBio director when it merged with NantKwest in March 2021.

17. Defendant Linda Maxwell ("**Maxwell**") has been a member of the Board since March 2021 and has been a member of the Related Party Transactions Committee at all relevant times.

18. Defendant Barry J. Simon ("**Simon**") has been a member of the Board since 2007. He has been the Company's Chief Corporate Affairs Officer since March 2021. He was previously the Company's President and Chief Administrative Officer from January 2017 to March 2021; its President and COO from 2015 to 2016; and its President and CEO from 2007 to 2015.

19. Collectively, defendants Soon-Shiong, Adcock, Brennan, Clark, Maxwell, and Simon are referred to as the "**Individual Defendants**."

Relevant Non-Parties

20. Michael D. Blaszyk ("**Blaszyk**") has been a member of the Board since July 2015.

21. Cheryl L. Cohen ("**Cohen**") has been a member of the Board since June 2019.

22. Christobel Selecky ("**Selecky**") has been a member of the Board since March 2021. She was a Legacy ImmunityBio director when it merged with NantKwest in March 2021.

The Soon-Shiong Corporate Defendants

23. Defendant Nant Capital, LLC ("**NantCap**") is a wholly owned subsidiary of California Capital Equity, LLC ("**CalCap**"). Soon-Shiong directly owns all of the equity interests in CalCap and thus has voting and dispositive power over CalCap's interests in NantCap.

24. Defendant NantMobile, LLC ("**NantMobile**") is a majority-owned subsidiary of NantWorks, LLC ("**NantWorks**"). Soon-Shiong indirectly owns all of the equity interests in NantWorks and thus has voting and dispositive powers over NantWorks' interests in NantMobile.

25. Defendant NantCancerStemCell, LLC ("**NantCell**") is a majority-owned subsidiary of NantWorks. Soon-Shiong indirectly owns all of the equity interests in NantWorks and thus has voting and dispositive powers over NantWorks' interests in NantCell.

26. Collectively, defendants NantCap, NantMobile, and NantCell are referred to herein as the "**Soon-Shiong Companies**."

SUBSTANTIVE ALLEGATIONS

Soon-Shiong's Background and History

27. After receiving his medical degree from UCLA in 1975, Soon-Shiong joined his alma mater as an Assistant Professor of Surgery and Medicine, eventually becoming Executive Director of UCLA's Wireless Health Institute, Professor of

Microbiology, Immunology & Molecular Genetics, and Professor of Bioengineering at its California NanoSystems Institute, where he worked to develop next-generation biologics.

28. Soon-Shiong's reputation in public and professional circles is multifaceted. On the one hand are his many achievements as a medical doctor, businessman, and philanthropist. On the other hand, there have been numerous allegations over the years of Soon-Shiong breaching his fiduciary duties, self-dealing, and oppressing minority stockholders.

29. For example, in the early 1990s Soon-Shiong and his brother Terrence Soon-Shiong founded a startup called VivoRx Pharmaceuticals (**VivoRx**") to develop diabetes treatments. In 1999, Terrence accused Soon-Shiong of diverting VivoRx's funds to American Pharmaceutical Partners, Inc. ("**Legacy APP**"), which Soon-Shiong founded in 1996, to acquire an injectables business from Fujisawa USA ("**Fujisawa**"). VivoRx ousted Soon-Shiong and sued him for fraud, accusing him of "betrayal, arrogance, greed, and personal aggrandizement that resulted in corporate misconduct of enormous proportions. From the outset, Patrick [Soon-Shiong] swindled his brother and [VivoRx] to obtain the technology to start his own company… and then embarked upon a course of deceit, fraud, and intentional concealment in utter disregard of his fiduciary duty… in furtherance of his own separate interests." *See VivoRx v. Soon-Shiong et al.*, Case No. BC218707 (Cal.

Super. L.A. County). The case was resolved by Soon-Shiong's affiliates who paid $24 million in a settlement.

30. In 2005, Soon-Shiong was sued for securities fraud over allegedly short-changing minority stockholders in his controlled company, Abraxis Pharmaceuticals, Inc. ("**Abraxis**"), when it merged with its parent company, American BioScience, Inc. ("**American BioScience**"), which Soon-Shiong also controlled. *See In Re. American Pharmaceutical Partners, Inc. Shareholders Litigation*, C.A. No.: 1823-VCL (Del. Ch.). The case was resolved by Soon-Shiong's affiliates paying a $10.8 million settlement.

31. In 2015, Soon-Shiong and another one of his controlled companies, NantHealth, Inc. ("**NantHealth**"), were sued by the University of Texas MD Anderson Cancer Center for "willfully, intentionally, and/or knowingly" infringing its cancer Moon Shots trademarks licensed to the U.S. Department of Health and Human Services and National Institute of Health for purposes of the national Cancer Moonshot Initiative, "us[ing] the information he learned from" his prior collaborations with MD Anderson "to co-opt the Moon Shots concept and trademarks for his own commercial use," going so far as to "change[] the name of his [own, different] program to Moonshot and Cancer Moonshot" The case was resolved through a confidential settlement, shortly after which Soon-Shiong changed

the names of NantHealth's programs. *See Board of Regents of the University of Texas System v. Nanthealth, Inc. et al.*, Case No. 16-3155 (S.D. Tex.).

32. In 2016, Soon-Shiong was sued for securities fraud in connection with secretly-vested warrants that increased his compensation and a secret related-party lease agreement that he and NantKwest entered into prior to its IPO, causing NantKwest to incur millions of dollars in unreported liability. *See Sudunagunta v. Nantkwest, Inc. et al*. Case No.: 2:16-cv-01947-MWF-JEM (C.D. Cal.). The action was settled for $12 million in favor of the class.

33. In 2017, Soon-Shiong, the controlling stockholder and Chairman of Altor Bioscience Corp. ("**Altor**"), caused Altor to merge with NantCell. Investors alleged that the merger was the product of an unfair process that resulted in a lowball price for Altor and that the deal's information statement failed to disclose material information. *See Gray et al. v. Soon-Shiong et al.*, 2017-0466-JRS (Del. Ch.). The case settled for $5 million.

34. Also in 2017, Soon-Shiong was sued by the performance artist Cher for fraudulently concealing Anktiva's highly promising research data from shareholders, allowing Soon-Shiong to buy out Cher and other public investors at a bargain price without full disclosure of Anktiva's prospects. *See Cher v. Altor Acquisition LLC, Patrick Soon-Shiong et al*., Case No. BC677768 (Cal. Super, L.A. County). The case

was ultimately dismissed at Cher's request for reasons that were not publicly disclosed.

35. The same year, NantHealth agreed to pay $16.5 million to resolve a securities fraud class action lawsuit for misleading investors by overstating market demand for its genetic sequencing services in the company's registration statement, IPO prospectus, and other public statements. Among other things, Soon-Shiong stated that the University of Utah "independently chose" to partner with NantHealth for a research project accounting for the bulk of NantHealth's business while concealing the fact that the University was contractually obligated to retain and pay NantHealth $10 million of research services following Soon-Shiong's ostensible $12 million donation to the University. *See Deora v. NantHealth, Inc.*, Case No. 2:17-cv-01825 (C.D. Cal.).

36. In 2019, Sorrento Pharmaceuticals, Inc. ("**Sorrento**") sued Soon-Shiong and his affiliates for fraud arising out of their purchase of Sorrento's drug candidate Cynviloq, a potential competitor to Abraxane, a drug invented by Soon-Shiong's company Legacy APP. Sorrento alleged that Soon-Shiong arranged for the purchase of Cynviloq as part of a "catch-and-kill" scheme to prevent the development of a competitive product and breached his contractual commitment to seek FDA approval for Cynviloq. *See Sorrento Therapeutics, Inc. v. NantCell, Inc. et al*., Case No. 19STCV11228 (Cal. Super., L.A. County). The case was resolved

with NantPharma LLC, another one of Soon-Shiong's controlled companies, being ordered to pay Sorrento $125 million in damages. Cynviloq has still not been approved by the FDA.

The Company's Background and History

37. Soon-Shiong's controlled company, Legacy APP, acquired Fujisawa in 1998. Legacy APP then leveraged its connections with hospital purchasing groups to turn around Fujisawa's unprofitable portfolio of injectable generic drugs. Legacy APP went public in 2001. A few years later, Legacy APP commercialized Abraxane, an FDA-approved treatment for metastatic breast cancer.

38. In November 2007, Legacy APP merged with American BioScience and then split into two entities: Abraxis, which focused on Abraxane and other proprietary products; and APP Pharmaceuticals, Inc. ("**APP**"), which focused on the injectables business.

39. In 2008, Fresenius SE bought APP for approximately $5.6 billion.

40. In 2010, Celgene bought Abraxis for approximately $3.6 billion.

41. In 2011, after selling his interests in APP and Abraxis, Soon-Shiong formed NantWorks as a holding company for his investment projects.

42. In November 2014, Soon-Shiong formed Legacy ImmunityBio as a NantWorks subsidiary.

43. In December 2014, Soon-Shiong invested $48 million in ConKwest (the Company's predecessor-in-interest) and became its CEO and Chief Medical Officer.

44. In June 2015, Soon-Shiong invested another $71 million in ConKwest and gained majority voting power.

45. In July 2015, ConKwest changed its name to NantKwest and commenced an initial public offering at a valuation of $2.6 billion. At the time, NantKwest was developing a proprietary line of enhanced natural killer cells to treat cancer, infectious diseases and inflammatory diseases. Upon completion of the IPO, Soon-Shiong directly and indirectly controlled over 60% of NantKwest's stock voting power.

46. Soon after NantKwest went public, Soon-Shiong began investing in Altor, which was developing compounds that act on cytokines which help regulate the immune system, including a cytokine fusion protein known as ALT-803.

47. By 2016, ALT-803 advanced to late-stage Phase 2 trials as a potential treatment for various forms of cancer, including non-muscle-invasive bladder cancer ("**NMIBC**"). In April 2016, Soon-Shiong was named Chairman of Altor's Board of Directors. By the end of 2016, Soon-Shiong had indirectly acquired a majority interest in Altor.

48. In May 2017, ALT-803 received Fast Track designation from the FDA for treating NMIBC in combination with a standard cancer vaccine, baccilus Calmette-Guérin ("**BCG**"), based on the data generated in ALT-803's clinical trials.[4]

49. In June 2017, NantKwest (controlled by Soon-Shiong) acquired Altor (also controlled by Soon-Shiong). After the acquisition, NantKwest continued to develop ALT-803 under the name N-803. At the time, a Phase 3 clinical trial for N-803 with BCG had just begun in BCG-unresponsive patients with *in situ* and papillary forms of NMIBC.

50. In December 2019, N-803 in combination with BCG received Breakthrough Therapy designation from the FDA for the treatment of NMIBC in patients who were unresponsive to BCG based on interim data indicating that the primary endpoint of the Phase 2 trial was already met mid-study.[5] N-803 was subsequently re-named Anktiva.

51. On December 21, 2020, NantKwest (controlled by Soon-Shiong) and Legacy ImmunityBio (also controlled by Soon-Shiong) announced their agreement to merge in a 100% stock-for-stock transaction (the "**Merger**"). Under the terms of

[4] The FDA's Fast Track program expedites development and review of drugs that treat serious conditions (such as cancer).

[5] Breakthrough Therapy designation expedites the development and review of drugs that are intended to treat serious conditions when preliminary clinical evidence shows a significant improvement over available therapy.

the Merger, a subsidiary of NantKwest merged with and into Legacy ImmunityBio, with Legacy ImmunityBio continuing as the surviving entity, as a direct wholly owned subsidiary of NantKwest.

52. On March 9, 2021, the Merger closed and NantKwest changed its name to ImmunityBio (the nominal defendant herein).

53. Before the Merger, Soon-Shiong and his affiliated entities owned approximately 88.9% of Legacy ImmunityBio's outstanding common stock, and approximately 64.6% of NantKwest's common stock. Following the Merger, Soon-Shiong and his affiliated entitles owned approximately 82% of the Company's stock. Soon-Shiong was thus the Company's controller as a matter of law.

The Company Continues to Develop Anktiva

54. On December 21, 2020, NantKwest and Legacy ImmunityBio issued a press release celebrating the Merger's creation of "a leading immunotherapy and cell therapy company focused on oncology and infectious disease." The press release stated that the Company would "have a broad, clinical-stage pipeline – including 13 assets in clinical trials and 11 in Phase II to III – as well as a robust early-stage pipeline to address other difficult to treat cancers."

55. In a separate press release issued that day, the Company announced that "ImmunityBio's IL-15 fusion protein, Anktiva, with FDA Breakthrough Therapy status for non-muscle invasive bladder cancer… has achieved primary endpoint with

72% complete response." The press release asserted that "[w]ith the observed efficacy and only 1% of patients reporting treatment emergent serious adverse events, but none of which were treatment-related, the data support the potential for Anktiva plus BCG as a novel option for BCG unresponsive [carcinoma in situ, "**CIS**"], a therapeutically challenging disease."

56. The press release further announced that the "FDA had granted Fast Track Designation to the pivotal trial based on Phase I data. In December 2019, the FDA granted ImmunityBio Breakthrough Therapy Designation based on interim Phase 2 data indicating the primary endpoint of the trial was already met." The press release quotes Soon-Shion stating that "[w]e expect to file a [BLA] following a meeting with the FDA in 2021."[6]

57. On September 13, 2021, ImmunityBio issued a press release disclosing that updated data from the Phase 2/3 study of Anktiva with BCG continued to show favorable data with no treatment-related adverse events reported.

58. In late November 2021, ImmunityBio submitted a briefing document to the FDA with updated data from the Anktiva Phase 2/3 study. Pursuant to 21

[6] The FDA must approve all new drugs before they can be commercialized. Because Anktiva is derived from living materials, the Company must file a BLA with certain government agencies, seeking permission to introduce a biologic product into interstate commerce.

C.F.R. § 312.47(b)(2), this material must be submitted to the FDA at least one month before a pre-BLA meeting.

59. On December 17, 2021, ImmunityBio received $300 million in debt financing from NantCap (controlled by Soon-Shiong). The press release announcing the financing stated that it came directly "from ImmunityBio's founder… Soon-Shiong." The press release further stated that the Company "anticipates a BLA filing… in Q1, 2022" and noted that the debt financing would be used to "expand our commercial operations in anticipation of our bladder cancer BLA filing in Q1, 2022."

60. On May 23, 2022, ImmunityBio announced that it submitted its BLA for Anktiva in combination with BCG for the treatment of BCG-unresponsive patients with the CIS form of NMIBC. The BLA included the results of previous clinical studies in that population, including the recently completed Phase 3 study, as well as at least three previously completed process performance qualification ("**PPQ**") runs at Anktiva's manufacturing facility.[7] The FDA accepted the BLA for filing in late July 2022, and assigned it a target response date of May 23, 2023 – a standard 10 month review.

[7] PPQ confirms that the manufacturing process performs as expected.

The Soon-Shiong Notes

61. Over the years, the Company issued millions of dollars in promissory notes to a web of entities affiliated with Soon-Shiong to finance the Company's research and development. The majority of the Company's liabilities are owed to Soon-Shiong's affiliated entities. As reflected in the Company's annual reports, the complexity of these transactions and the magnitude of the Company's debt liabilities to Soon-Shiong have caused the Company's auditor to designate them as critical audit matters which require additional testing of the Company's internal controls and the accuracy of its disclosures.

62. As of June 30, 2022, the Soon-Shiong Companies (NantCap, NantMobile, and NantCell) owned six outstanding fixed-rate promissory notes with a total balance of $312.5 million. The Company's notes were due on September 30, 2025, and bore annual interest rates ranging from 3% to 6%, payable upon maturity or on a quarterly basis.

63. On August 31, 2022, without any explanation, the terms of each fixed-rate promissory note were amended to give the Soon-Shiong Companies the right to convert the total balance due under each note into shares of the Company's common stock at a conversion price of $5.67 per share. The conversion could take place at any time, at the Soon-Shiong Companies' sole discretion.

64. On December 12, 2022, ImmunityBio disclosed that NantCap had agreed to provide an additional $50 million in debt financing to the Company, in connection with which approximately $56.6 million in notes held by NantWorks would be converted into shares of ImmunityBio. Specifically, NantWorks elected to convert one of the outstanding notes with a balance of $51.9 million into 9,986,920 shares of the Company's common stock at a price of $5.67 per share. The Company's stock closed that day at $6.77 per share.

65. As of December 31, 2022, the outstanding balance of the Company's convertible and non-convertible notes to the Soon-Shiong Companies was as follows:

			Balances at December 31, 2022			
	Maturity Year	Interest Rate	Outstanding Advances ($ 000)	Accrued Interest Added to Note ($ 000)	Less: Unamortized Discounts ($ 000)	Total ($ 000)
Non-Convertible Notes						
NantCap	2023	Term SOFR[8] + 8.0%	$ 475,000	$ —	$ 43,099	$ 431,901
Convertible Notes						
NantCap	2025	5.0%	55,226	9,320	5,188	59,358
NantCap	2025	6.0%	50,000	7,039	4,068	52,971
NantCap	2025	6.0%	40,000	—	2,580	37,420
NantMobile	2025	3.0%	55,000	5,110	5,978	54,132
NantCell	2025	5.0%	33,000	7,684	3,294	37,390
	Total Convertible Notes:		233,226	29,153	21,108	241,271
	Total Related Party Debt:		$ 708,226	$ 29,153	$ 64,207	$ 673,172

[8] "**SOFR**" refers to the Secured Overnight Financing Rate, a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities.

Anktiva's Temporary Setback

66. On May 11, 2023, ImmunityBio filed a Form 8-K disclosing that on May 9, the FDA delivered a CRL to the Company rejecting the Anktiva BLA because of deficiencies observed during the FDA's pre-license inspection of the Company's third-party CMO. The CRL provided recommendations specific to resolving issues with Anktiva's Chemistry, Manufacturing and Controls ("**CMC**"). There was *no* indication in the CRL of *any* issues with Anktiva's clinical results, patient data, safety, or efficacy.

67. On May 11, 2023, the Company filed a Form 10-Q stating that there was a risk that the FDA might never approve Anktiva. The Company issued this stark warning even though the FDA did not ask ImmunityBio for any new preclinical or Phase 3 studies and made specific recommendations concerning how the Company could remediate the deficiencies with its third party CMOs. Nevertheless, the 10-Q ominously stated that the Company "may be unable to resolve the items outlined in the [CRL] in a timely manner, if at all, which could have a material impact on our results of operations, financial condition, and business."

68. The May 11, 2023 Form 10-Q further stated:

> It is unclear when the FDA will approve our BLA, if at all. If the FDA requires additional data, finds that the CMC information in the BLA is deficient, disagrees with our interpretation or analysis of clinical data, identifies any deficiency in our clinical data, or finds deficiencies in our pre-approval inspection, we may fail to obtain approval of the BLA for [Anktiva], or approval may be delayed.

69. Following these dire warnings, on May 11, 2003, the price of ImmunityBio common stock fell $3.43 per share, or 55.14%, on heavy volume to close at $2.79 per share.

70. Nevertheless, analysts following the Company and Soon-Shiong remained bullish about Anktiva's prospects. For example, on May 12, 2023, Jefferies reported that the "FDA issued a CRL for Anktiva in NMIBC-CIS related to 3rd-party CMO manufacturing deficiencies. In our 1x1, Mgmt noted the next step is to speak with FDA imminently to align on the requests & gain clarity on resubmission timeline. Mgmt is confident to resolve the issue." Management's confidence that the issues raised in the CRL would be resolved were a far cry from the Company's bleak warnings in the May 11, 2023 Form 10-Q.

71. Jefferies further emphasized that the CRL was based on "noted deficiencies related to FDA's pre-license inspection of [the Company's] 3rd-party CMO" and not underlying clinical, patient, safety, or efficacy concerns. Jefferies reiterated that during an in-person meeting, ImmunityBio management "expressed

confidence on resolving the ***manufacturing issue*** identified in the letter and confirmed [that] the assays [the] FDA requested are related to the same issue.… As for longer follow-up data with updated duration of response requested by the FDA, [ImmunityBio management] reaffirmed they have the data available and no new clinical study or new patient data is requested."[9] In short, Jefferies confirmed that the FDA never so much as implied that Anktiva would not be approved because of any substantive issues concerning clinical results, patient data, safety, or efficacy, and that the FDA's concerns were limited to issues with the Company's third-party CMO.

72. On May 16, 2023, Jefferies published a subsequent report noting that the firm's "Key Opinion Leader" on ImmunityBio "[l]ikes Anktiva's profile and expects adoption once approved despite the CRL."

73. Despite these positive reports, the Company's stock price continued to lag, trading as low as $1.25 per share on October 19, 2023.

The Board Acquiesces to Soon-Shiong's Opportunism

74. With the disclosure of the CRL and subsequent decline in the price of the Company's stock, Soon-Shiong saw an opportunity to exchange the Soon-Shiong

[9] Unless otherwise noted, all emphasis in quotations has been added.

Companies' convertible notes for cheap stock in his Company, which he knew was sitting on a potential blockbuster cancer treatment.

75. On May 9, 2023 – the same day the Company received the CRL from the FDA – Soon-Shiong lent the Company $30 million pursuant to a non-convertible debt financing arrangement on substantially similar terms as prior financings, including an interest rate of Term SOFR plus 8% per annum and a maturity date of December 31, 2023. His decision to lend $30 million in cash to the Company secured by non-convertible debt demonstrated his confidence in Anktiva's future.

76. On June 30, 2023, a press release on GlobeNewswire announced the filing of a securities fraud class action against the Company, Soon-Shiong, and members of the Company's management, alleging that defendants made materially false and misleading statements regarding the Company's third-party CMOs and the prospects for regulatory approval of the Anktiva BLA stemming from the Company's disclosure of the CRL on May 11, 2023. *See Salzman v. ImmunityBio, Inc. et al.*, Case No. 3:23-cv-012160-BEN-WGV (S.D. Cal.).

77. On July 20, 2023, the Company issued a Form 8-K confirming that the Company and certain managers were named as defendants in *Salzman* action, stating that "the Company believes the lawsuit is without merit and intends to defend the case vigorously."

78. Apparently institutional investors were equally unconcerned with the claims in the *Salzman* action and remained confident in Anktiva's chances of approval. In fact, on the same day the Form 8-K was filed (July 20, 2023), the Company reported it executed a stock purchase agreement with certain institutional investors for the purchase and sale of 14,569,296 shares of the Company's common stock and warrants to purchase an additional 14,569,296 shares of common stock at an exercise price of $3.2946 per share, generating gross proceeds of approximately $40 million. The warrants could be exercised immediately after the issuance date and expire three years after the initial issuance date. The Company also reported that it entered into a placement agency agreement with Jefferies to arrange for the sale of the securities described above.

79. [redacted]

80. [redacted]

81. [redacted][10]

[10] An FDA "Type A meeting" is between the agency and a drug sponsor, typically occurring during the development of a new drug or biologic. The meeting is requested to address a stalled drug development program or to discuss a critical issue that, if not promptly resolved, could significantly delay the development process. The sponsor must submit a written request to the FDA, including a detailed agenda, questions for discussion, and relevant background information. The goal of a Type A meeting is to provide the sponsor with clear and actionable guidance to address the issues at hand. The FDA typically provides meeting minutes summarizing the discussion and agreed-upon next steps. Type A meetings, while not *prima facie* evidence that a drug will be approved, are typically convened to address issues that may be impeding the progress of a drug development program.

[redacted]

The "Proposed Financing Transaction"

82. [redacted]

83. [redacted]

84. [redacted]

[redacted]

85. [redacted]

[redacted]

86. [redacted]

[redacted]

87. [redacted]

[redacted]

88. On September 11, 2023, the Company announced that it had entered into an agreement with NantCap, NantMobile and NantCell pursuant to which those Soon-Shiong Companies *exchanged* all their Convertible Notes, totaling

approximately $240 million in aggregate principal amount plus accrued and unpaid interest, for 209,291,936 shares of ImmunityBio common stock, calculating to an exchange price of **$1.29** per share (*i.e.,* the Convertible Exchange). That day, the Company's stock closed at $1.54 per share – a 19.4% premium to the implied stock price in the Convertible Exchange.

89. At the same time, the Company executed another $200 million convertible promissory note with NantCap at an annual interest rate of Term SOFR plus 8%, payable on a monthly basis (i.e., the Debt Financing). The outstanding principal amount and any accrued and unpaid interest on the new note is due on September 11, 2026. NantCap also has the sole option to convert all of the outstanding principal and accrued unpaid interest into shares of the company's common stock at a conversion price of $1.935 per share.

90. The press release announcing the Soon-Shiong Transactions failed to disclose that [redacted]

The Company Resubmits the Anktiva BLA

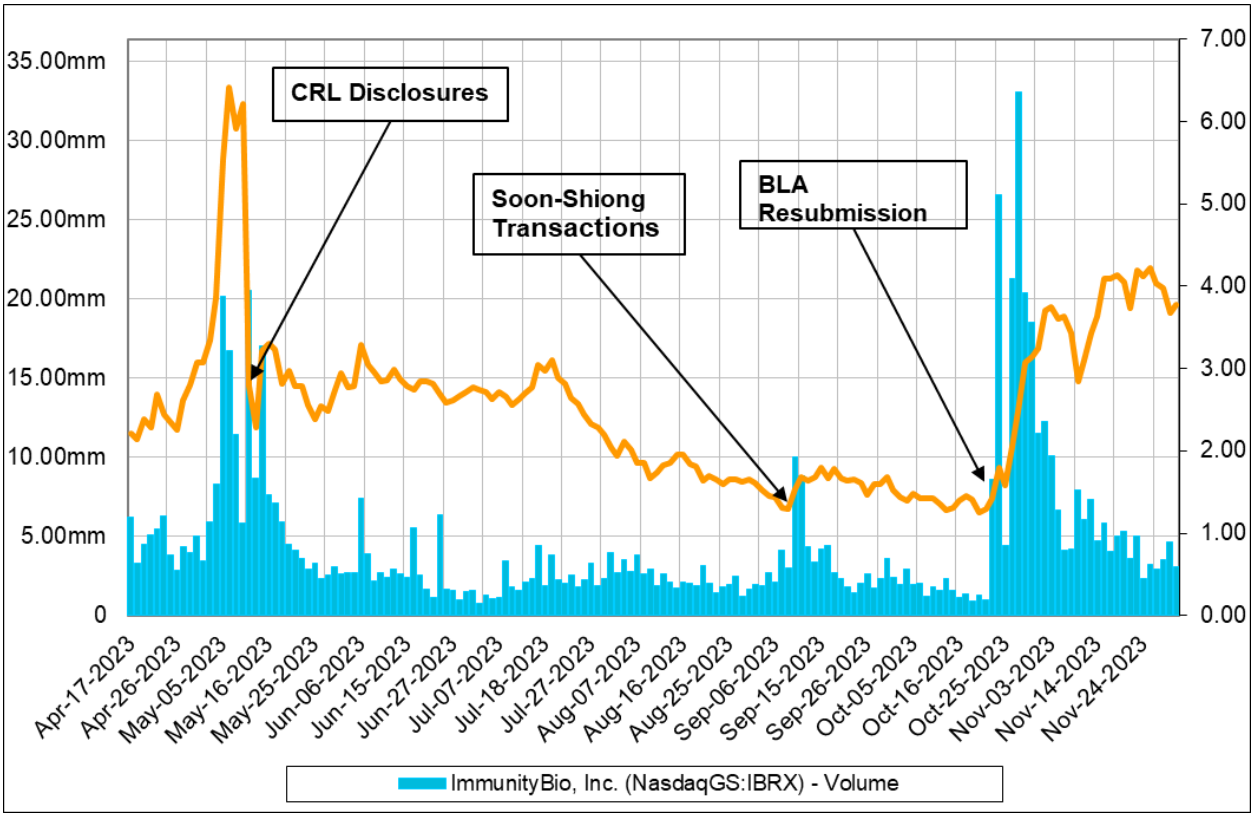
91. On October 23, 2023, only one month following the Soon-Shiong Transactions, ImmunityBio disclosed that it had resubmitted the Anktiva BLA to the

FDA addressing the points raised in the CRL (the "**BLA Resubmission**").[11] The Company added that the BLA Resubmission contains updated data indicating a prolonged duration of response in the patient group identified as responders for the treatment. The FDA subsequently set April 23, 2024 as its date to complete its review.

92. The BLA Resubmission caught the market by surprise. Following the BLA Resubmission, the Company's shares climbed for two straight trading days on above-average volume as the market reacted to the news. On October 26, 2023, the Company's shares traded even higher after it disclosed that the FDA accepted its BLA Resubmission as complete. Soon-Shiong stated, "[w]e are pleased that the FDA has accepted ImmunityBio's resubmission of the [Anktiva] BLA as a complete response, following our productive interactions leading up to the resubmission. We look forward to working closely with the [FDA] to finalize the review and to bringing this important immune-enhancing therapeutic to patients suffering from bladder cancer."

[11] See https://ir.immunitybio.com/news-releases/news-release-details/immunitybio-announces-biological-license-application?field_nir_news_date_value[min]=, last accessed on October 10, 2024.

93. The Company's share price increased from $1.30 per share on October 23, 2023, to $3.75 per share on November 3, 2023, amounting to a 188.5% increase in just two weeks. The stock price chart for the relevant period is below:



The FDA Approves Anktiva

94. On April 22, 2024, the FDA approved Anktiva. The next day, ImmunityBio shares rose approximately 33% before the market opened. The Company's press release disclosing the FDA's approval stated that "the approval was based on the safety and efficacy outcome of complete responses and duration of complete response from a single-arm, multicenter trial, under which 77 evaluable patients received Anktiva with BCG maintenance therapy for up to 37 months." In

other words, the data underlying the *initial* Anktiva BLA submission was the basis for approval, further evidencing that the delay was due to solely issues with the Company's third-party CMOs and not to questions about Anktiva's clinical results, patient data, safety, or efficacy. This was known to Soon-Shiong and the rest of the Board when they entered into the Soon-Shiong Transactions.

THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES

95. At all relevant times, each of the Individual Defendants as directors of the Company owed ImmunityBio and its public stockholders fiduciary duties of trust, loyalty, good faith, due care, and candor, and was required to use his or her utmost ability to control and manage ImmunityBio in a fair, just, honest, and equitable manner. At all relevant times, each of the Individual Defendants was required to act in furtherance of the best interests of ImmunityBio and its stockholders to benefit all stockholders equally and not in furtherance of their personal or other interests.

96. At all relevant times, each of the Individual Defendants owed ImmunityBio and its stockholders the fiduciary duty to exercise good faith and diligence in the administration of the Company's affairs and in the use and preservation of its property and assets.

97. Because of their positions of control and authority as directors of the Company, each of the Individual Defendants exercised control over the wrongful acts complained of herein.

98. In discharging their duties, each of the Individual Defendants must exercise reasonable and prudent supervision over the management, policies, practices, and controls of the Company's financial affairs. Among other things, the Individual Defendants must conduct themselves with complete loyalty to the Company, avoid wasting the Company's assets, and never enrich themselves at the Company's expense.

99. As directors of ImmunityBio, the Individual Defendants were at all relevant times bound by the Company's Code of Business Conduct and Ethics (the "**Code**"), which states in relevant part as follows:

> At ImmunityBio, we all are responsible for understanding the important legal and ethical issues that affect our business and for acting with integrity at all times. Integrity means more than just complying with the law. It is one of ImmunityBio's core values. It reflects who we are as a company and as individuals. Conducting ourselves with integrity helps us build confidence within and enhance collaboration among our teams. Importantly, conducting ourselves with integrity helps us earn the trust and respect of the people we serve, the patients who benefit from our products.
>
> This Code… along with our written compliance policies, are essential resources for all colleagues. They outline ImmunityBio's policies on business conduct[.]

100. The "Introduction" section of the Code states in relevant part, that the Company's officers, directors, and employees are expected to:

> • Avoid situations where your personal interests are, or appear to be, in conflict with ImmunityBio's interests;
>
> • Protect and properly use ImmunityBio's information, assets, and resources;
>
> • Protect information that is owned by our customers and vendors; [and]
>
> • Safeguard non-public information and refrain from using that information for personal gain[.]
>
> This Code sets forth some general principles that you must apply to your own conduct, using common sense and good judgment.

101. Under "Principle 1: Be Honest And Ethical," the Code states in relevant part:

> You must not improperly use business courtesies to gain a competitive advantage…. Never take unfair advantage of anyone through manipulation, concealment, disclosure of confidential information, or false or misleading statements.
>
> * * *
>
> You are personally responsible for the integrity of the information, reports, and records under your control.
>
> * * *

> You must avoid actual or potential conflicts of interest. A conflict may exist if your activities or interests, or the activities or interests of your family members, make it difficult for you to perform your job objectively and effectively.

102. Under "Principle 2: Comply With The Law," the Code states in relevant part:

> You may not directly or indirectly – through, for example, significant others, family members or controlled entities – buy or sell stocks or other securities of ImmunityBio or any other company based on non-public information obtained from your work at ImmunityBio. In addition, you may not "tip" others by providing them non-public information under circumstances that suggest that you were trying to help them make an investment decision. These obligations are in addition to your obligations with respect to non-public information generally.

103. In addition to the duties set forth in the Code, Defendants Brennan, Clark, and Maxwell, who approved the Soon-Shiong Transactions as members on the Related Party Transaction Committee, owed specific duties to ImmunityBio under the Related Party Transaction Committee charter ("**RPTC Charter**"),which states in relevant part:

> Related Party Transactions. The Committee shall review and approve all proposed transactions that would require disclosure pursuant to Item 404 of Regulation S-K or any other transaction between the Company and any other person where the parties' relationship is not arms'-length including, without limitation, any transaction between the Company and (i) any director or executive officer of the Company; (ii) any nominee for election as a director; (iii)

> any holder of Company securities owning more than 5% of any class of Company stock and (iv) any member of the immediate family of any of the foregoing… (the "Related Party Transactions").

DEFENDANTS' BREACH OF FIDUCIARY DUTIES

104. As directors of the Company, each of the Individual Defendants breached their fiduciary duties to the Company and their duties under the Code by approving the Soon-Shiong Transactions despite knowing that Soon-Shiong had knowledge of the Company's confidential information concerning its response to the CRL and the timing of the BLA Resubmission.

105. As members of the Related Party Transactions Committee, defendants Brennan, Clark, and Maxwell further breached their fiduciary duties to the Company and their duties under the RPTC Charter by approving the Soon-Shiong Transactions despite knowing that Soon-Shiong had knowledge of the Company's confidential information concerning the Company's response to the CRL and the timing of the BLA Resubmission.

106. Defendant Soon-Shiong further breached his fiduciary duty to the Company and his duties under the Company's Code of Conduct by causing or allowing the Soon-Shiong Companies to enter into the Soon-Shong Transactions despite having knowledge of the Company's confidential information concerning its response to the CRL and the timing of the BLA Resubmission.

107. Accordingly, it should have been apparent to the Individual Defendants that the Soon-Shiong Transactions unfairly benefitted Soon-Shiong and the Soon-Shiong Companies at the expense of ImmunityBio. Specifically, the Individual Defendants knew that: (*i*) the terms of the Debt Financing were unduly onerous, particularly because third parties had expressed interest in lending to the Company; and (*ii*) the Company issued Soon-Shiong's affiliates over 160 million shares of stock at an artificially low price while knowing that the Company's stock price would increase when the BLA Resubmission was disclosed to the public.

108. The foregoing misconduct was unjustifiable and constituted a breach of the Individual Defendants' fiduciary duties to the Company as directors of ImmunityBio and pursuant to the Code and RPTC Charter. The foregoing misconduct was not, and could not have been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit Soon-Shiong and his affiliates at the expense of the Company because it afforded them a financial benefit at the expense of the Company in the form of, among other things, additional interest payments on the Debt Financing and the issuance of millions of shares of Company stock at just $1.29 per share when it was foreseeable on the basis of the Company's confidential information known to them that the Company's stock price would soon increase significantly.

109. ImmunityBio has been damaged as a result of the Individual Defendants' misconduct.

THE SOON-SHIONG TRANSACTIONS WERE NOT ENTIRELY FAIR

110. Because ImmunityBio is a controlled company, transactions involving the controller – such as the Soon-Shiong Transactions – are subject to entire fairness review.

111. Given the short time between the Company's entry into the Soon-Shiong Transactions and its public disclosure of the BLA Resubmission, the Individual Defendants knew that the BLA Resubmission was forthcoming and that the result would likely be favorable.

112. The Convertible Exchange unfairly diluted the Company and its minority stockholders. Prior to the Convertible Exchange, the conversion price of the Company's convertible notes to the Soon-Shiong Companies was $5.67 per share. Had Soon-Shiong elected to convert the notes pursuant to their original terms, the Company would have issued 47,619,048 shares of common stock. On September 11, 2023, the Board reduced the conversion price to just $1.29 per share – 77% lower than the original $5.67 conversion price and over 19% lower than the closing stock price that day. As a result, the Company issued 161,672,888 shares of common stock to the Soon-Shiong Companies at an artificially low price.

113. The Debt Financing was also unfair to the Company. After retiring $270 million worth of convertible notes in the Convertible Exchange, the Company promptly borrowed $200 million from the Soon-Shiong Companies on markedly worse terms. The retired notes paid interest at 3% to 6%, whereas the notes issued in the Debt Financing pay Term SOFR plus 8.0% – currently just under 13%. The retired notes had a conversion price of $5.67, whereas the conversion price for the notes issued in the Debt Financing is $1.935. The interest on the retired notes was paid quarterly or upon maturity, whereas interest on the notes issued in the Debt Financing is paid monthly.

114. The Company did not publicly disclose ***anything*** regarding the process or negotiations culminating in the Soon-Shiong Transactions. [redacted]

115. [redacted]

[redacted]

116. [redacted]

117. [redacted]

[redacted]

118. [redacted]

119. It is instructive that on January 2, 2024 the Company announced that it had entered into a $300 million transaction with Oberland Capital [redacted] on terms markedly more favorable than those in the Soon-Shiong Transactions.

120. As reported by ImmunityBio, "the additional capital provides significant financial resources for the Company to accelerate its commercialization efforts in anticipation of a potential regulatory approval, as well as to expand its pipeline within the broader urological cancer space. The proceeds will also be used to fund ongoing business operations and clinical trials expanding N-803 (Anktiva®) indications into multiple solid tumors."

121. Adcock stated that the "transaction raises significant capital for the Company to support important growth plans, yet with limited equity dilution and with a cap on total payments tied to the initial investment…. Besides providing a capital source at a key inflection point for ImmunityBio, this investment demonstrates strong confidence by Oberland Capital in our future, and in particular in the potential value of Anktiva in bladder cancer, as well as the direction of our clinical pipeline."

122. The Oberland Capital transaction was a $300 million Revenue Interest Purchase Agreement ("**RIPA**") that is non-dilutive to current investors [*i.e.,* to Soon-Shiong], of which $200 million was funded at closing, and $100 million is to be funded contingent upon FDA approval of the BLA Resubmission.

123. In connection with the RIPA with Oberland Capital, the Company and NantCap agreed to extend the maturity dates of certain existing promissory notes with an aggregate principal amount of approximately $505 million from December

31, 2024 until December 31, 2025, and to allow NantCap to convert up to $380 million of principal and accrued unpaid interest into shares of common stock at a price per share equal to a 75% premium over the closing market price on January 3, 2024 – yet another financial benefit for the Soon-Shiong Companies.

DEMAND FUTILITY

124. Plaintiff repeats and realleges each and every allegation above as though fully set forth herein.

125. Plaintiff brings this action derivatively and, in the right, and for the benefit of ImmunityBio to redress Defendants' breaches of fiduciary duties and other misconduct.

126. Plaintiff is an ImmunityBio stockholder, was an ImmunityBio stockholder at the time of the wrongdoing alleged herein, and has been an ImmunityBio stockholder continuously since that time.

127. Plaintiff will fairly and adequately represent the interests of ImmunityBio in enforcing and prosecuting its rights.

128. As the result of the facts set forth herein, Plaintiff has not made any demand on the Board to institute this action. Doing so would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

129. At the time that Plaintiff commenced this derivative action, the Board consisted of nine directors: defendants (*i*) Soon-Shiong; (*ii*) Adcock; (*iii*) Blaszyk; (*iv*) Brennan; (*v*) Clark; (*vi*) Cohen; (*vii*) Maxwell; (*viii*) Selecky; and (*ix*) Simon.

Soon-Shiong Received a Material Personal Benefit from the Soon-Shiong Transactions

130. Soon-Shiong cannot disinterestedly and independently consider a demand because he is the beneficiary of the Soon-Shiong Transactions via his controlling interests in the Soon-Shiong Companies. Moreover, ImmunityBio's 2024 Annual Proxy Statement filed with the SEC on April 29, 2024 concedes that Soon-Shiong does not qualify as an independent director under Nasdaq rules. Accordingly, demand is excused as to Soon-Shiong.

Brennan, Clark, and Maxwell Face a Substantial Likelihood of Liability

131. As members of the Related Party Transactions Committee, Brennan, Clark, and Maxwell were tasked with reviewing and approving all proposed transactions between the Company and any other person where the parties' relationship is not arms'-length. In discharging this duty, Brennan, Clark, and Maxwell, among other things, [redacted]

[redacted] and (*i*) favored the interests of Soon-Shiong and the Soon-Shiong Companies over those of the Company and its public stockholders through an unfair process that resulted in a transaction unfair to the Company.

132. Taken together, these facts lead to a reasonable inference that Brennan, Clark, and Maxwell were operating under a controlled mindset with a desire to please Soon-Shiong and thus ingratiate themselves to the Company's controller instead of negotiating the best deal possible for the Company and its public stockholders. This conduct was intentional on their part, in bad faith, and so egregious that it is a breach of their duty of loyalty to the Company. Accordingly, Brennan, Clark, and Maxwell face a substantial likelihood of liability for their misconduct and demand is excused.

Adcock, Blaszyk, and Selecky Lack Independence from Soon-Shiong

133. Adcock, Blaszyk, Clark, and Selecky are incapable of exercising their independent business judgment about whether to bring this action because each of them lacks independence from Soon-Shiong, who received a material personal benefit from the Soon-Shiong Transactions.

Adcock Lacks Independence from Soon-Shiong

134. Adcock is the Company's President and CEO, for which he received total compensation of over $4 million in 2022 and over $1.1 million in 2023. According to his LinkedIn profile, his job at ImmunityBio is his sole employment.

135. Adcock therefore relies on the good graces of Soon-Shiong, the Company's controller, for his continued livelihood. Indeed, this has been the case for years. His most recent job before ImmunityBio was at Verity Health System ("**Verity**") where he was Chief Operating Officer between September 2017 – September 2020, and Chief Executive Officer between January 2018 – September 2020. Verity is owned by NantWorks, which is controlled by Soon-Shiong. Moreover, NantWorks acquired Verity when Verity was in financial distress. Specifically, at the time Soon-Shiong entered the picture, Verity had more than $1 billion of debt from bonds and unfunded pension liabilities, and needed hundreds of millions of dollars to repair aging facilities and purchase new equipment. In light of Adcock's continued employment by Soon-Shiong during this turbulent time, he is likely to be particularly beholden to Soon-Shiong.

Blaszyk Lacks Independence from Soon-Shiong

136. Blaszyk's business relationship with Soon-Shiong goes back almost 20 years. Blaszyk has been a director at all of Soon-Shiong's companies since at least 2006. Specifically, in addition to serving as an ImmunityBio director since 2015, Blaszyk has served on the board of directors of NantHealth since 2016. He was also a director at Abraxis from approximately 2006 to 2008 and a director and Audit Committee Chair at APP from approximately 2007 to 2008. Blaszyk also served as a director at NantKwest at the time it merged with Legacy ImmunityBio. A member of the NantKwest board of directors' special committee that approved the deal with Legacy ImmunityBio, Blaszyk claimed that the transaction was a "compelling opportunity to drive value creation for [NantKwest] shareholders." As Soon-Shiong owned over 67 million shares of NantKwest at the time of the merger, representing nearly 68% of the company, the transaction certainly created value for Soon-Shiong, who held approximately 82% of the company's common stock after the merger. As one of Soon-Shiong's regular "go-to" directors, Blaszyk is incapable of exercising his independent business judgment about whether to bring this action against Soon-Shiong and the Soon-Shiong Companies.

Selecky Lacks Independence from Soon-Shiong

137. Defendant Selecky has a longstanding business relationship with Soon-Shiong which precludes her from exercising her independent business judgment

about whether to bring this action against Soon-Shiong and the Soon-Shiong Companies. Before becoming a director at Legacy ImmunityBio in August 2020, she was a director at Verity Health System between 2016 – 2020. Verity Health System is owned by NantWorks, which is controlled by Soon-Shiong. As one of Soon-Shiong's regular "go-to" directors, Selecky is incapable of exercising her independent business judgment about whether to bring this action against Soon-Shiong and the Soon-Shiong Companies.

CAUSES OF ACTION

Count I
Breach of Fiduciary Duty
Against the Individual Defendants

138. Plaintiff repeats and re-alleges each and every allegation above as though fully set forth herein.

139. As directors and officers of the Company, the Individual Defendants owe ImmunityBio the highest duties of loyalty, candor, and good faith and, in furtherance of those duties, were required at all times to act in the best interests of the Company without regard to their own personal interests.

140. The Individual Defendants breached their fiduciary duty of loyalty by approving the Soon-Shiong Transactions while in possession of MNPI soon to be released by the Company that would foreseeably positively affect ImmunityBio's

share price, and by granting and accepting excessive and unfair benefits to Soon-Shiong and the Soon-Shiong Companies pursuant to the Soon-Shiong Transactions.

141. The Individual Defendants further breached their fiduciary duties of loyalty and candor by failing to disclose the full, unvarnished truth about the Soon-Shiong Transactions – namely, that they were approved while the Individual Defendants were in possession of MNPI about the BLA Resubmission that would foreseeably positively affect the Company's share price upon its public release.

142. ImmunityBio has sustained and will continue to sustain significant damages as a direct and proximate result of the Individual Defendants' breaches of their fiduciary duties. The Individual Defendants, therefore, are liable to the Company.

143. Plaintiff, on behalf of ImmunityBio, has no adequate remedy at law.

Count II
Unjust Enrichment
Against Soon-Shiong, NantCap, NantMobile, and NantCell

144. Plaintiff repeats and re-alleges each and every allegation above as though fully set forth herein.

145. Soon-Shiong and the Soon-Shiong Companies received financial benefits from the Soon-Shiong Transactions as a result of breaches of fiduciary duties by the Individual Defendants as alleged above.

146. It would be unconscionable and against the fundamental principles of justice, equity, and good conscience for Soon-Shiong and the Soon-Shiong Companies to retain their benefits under the Soon-Shiong Transactions under the circumstances set forth above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of ImmunityBio, demands judgment as follows:

A. Finding that any demand upon the Board concerning the wrongdoing complained of herein would be futile;

B. Finding that the Individual Defendants breached their fiduciary duties to the Company;

C. Finding that defendants Soon-Shiong, NantCap, NantMobile, and NantCell were unjustly enriched;

D. Awarding ImmunityBio the damages that it sustained as a result of Defendants' breaches of fiduciary duties and unjust enrichment;

E. Directing ImmunityBio to take all necessary actions to improve its corporate governance and internal procedures to protect it and its public stockholders from a repeat of the breaches of the fiduciary duties set forth herein, including, without limitation, putting forward for stockholder vote resolutions for amending the Company's Bylaws and Certificate of Incorporation and taking such other action

as may be necessary to place before the stockholders for a vote concerning a proposal to strengthen the Company's controls over related party transactions;

F. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and

G. Granting such other and further relief as the Court deems just and proper.

ASHBY & GEDDES

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