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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

_____, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

PERSHING SQUARE CAPITAL
MANAGEMENT, L.P., PS
MANAGEMENT GP, LLC, WILLIAM
ACKMAN, PS FUND 1, LLC, PERSHING
SQUARE, L.P., PERSHING SQUARE II,
L.P., PERSHING SQUARE GP, LLC,
PERSHING SQUARE
INTERNATIONAL, PERSHING
SQUARE HOLDINGS, LTD., MICHAEL
PEARSON, VALEANT
PHARMACEUTICALS
INTERNATIONAL, INC. and VALEANT
PHARMACEUTICALS
INTERNATIONAL,

Defendants.

Case No. 17-cv-4776

CLASS ACTION

CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

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1 Plaintiff, by and through its undersigned counsel, brings this securities class
2 action for violations of Section 14(e) of the Securities Exchange Act of 1934 (the
3 “Exchange Act”), 15 U.S.C. § 78n(e), Rule 14e-3 promulgated thereunder, codified
4 at 17 C.F.R. § 240.14e-3, Section 20A of the Exchange Act, codified at 15 U.S.C.
5 § 78t-1, and Section 20(a) of the Exchange Act, codified at 15 U.S.C § 78(t)(a), as a
6 related case to *In re Allergan, Inc. Proxy Violation Securities Litigation*, Case No.
7 8:14-cv-2004-DOC (KESx) (“*In re Allergan*” or the “Common Stock Class
8 Action”). This action is brought on behalf of Plaintiff and other investors that
9 traded certain Allergan, Inc. (“Allergan” or the “Company”) derivative securities
10 (described more fully below) during the period February 25, 2014 through April 21,
11 2014, inclusive (the “Class Period”), against Defendants Pershing Square Capital
12 Management, L.P. (“Pershing Square”), PS Management GP, LLC (“PS
13 Management”), William Ackman (“Ackman”), PS Fund 1, LLC (“PS Fund I”),
14 Pershing Square, L.P. (“PSLP”), Pershing Square II, L.P. (“PS II”), Pershing
15 Square GP, LLC (“PSGP”), Pershing Square International (“PS International”) and
16 Pershing Square Holdings, Ltd. (“PS Holdings”) (collectively, “Pershing”), as well
17 as against Michael Pearson (“Pearson”), Valeant Pharmaceuticals International, Inc.
18 (“Valeant”) and Valeant Pharmaceuticals International (“Valeant USA”)
19 (collectively, “Valeant”¹ and, together with Pershing, “Defendants”).

20 Plaintiff alleges the following based upon personal knowledge as to itself and
21 its own acts and upon information and belief as to all other matters. Plaintiff’s
22 information and belief is based upon, *inter alia*, the independent investigation of
23 Plaintiff’s counsel which included the analysis of: (1) regulatory filings made by
24 Allergan, Valeant and Pershing with the United States Securities and Exchange
25 Commission (“SEC”); (2) research reports by securities and financial analysts; (3)

26
27 ¹ The term “Valeant,” as used herein, also includes non-party AGMS, Inc.
28 (“AGMS”).

1 transcripts of Allergan's, Valeant's and Pershing Square's earnings and other
2 investor conference calls; (4) publicly available presentations, press releases,
3 interviews and media reports by Valeant, Allergan and Pershing Square; (5)
4 economic analyses of the movement and pricing of Allergan publicly traded
5 common stock and derivative securities; (6) consultations with experts; (7) publicly
6 available pleadings, evidence and deposition testimony in *Allergan, Inc. v. Valeant
7 Pharmaceuticals International, Inc.*, Case No. 8:14-cv-1214-DOC (KESx) (C.D.
8 Cal.); and (8) other publicly available material and data identified herein.

9 **I. INTRODUCTION**

10 1. This action is based upon Defendants' illicit insider trading and front-
11 running scheme that caused billions of dollars in damages to Plaintiff and other
12 similarly situated investors (collectively, the "Class" or "Derivatives Class") who
13 sold Allergan call options, purchased Allergan put options and/or sold Allergan
14 equity forward contracts contemporaneously with Pershing's illegal purchase of
15 Allergan common stock, Allergan call options and Allergan equity forward
16 contracts during the Class Period. As described more fully below, the truth about
17 this scheme was known to Pershing and the other Defendants by at least February
18 25, 2014, the beginning of the Class Period.

19 2. Between February 25 and April 21, 2014, Pershing, through a funding
20 vehicle named "PS Fund 1," purchased over 14 million Allergan shares at prices as
21 low as \$117.91 per share for a total cost of approximately \$2 billion. Pershing's
22 purchases were based upon inside information concerning Valeant's plans to launch
23 a hostile takeover and tender offer for Allergan, and allowed Pershing to reap
24 enormous profits at the expense of Plaintiff and other members of the Class. The
25 charts on page 72 herein and attached hereto as Exhibit 1, along with the
26 certification attached hereto as Exhibit 2, demonstrate that Plaintiff sold Allergan
27 call options and purchased Allergan put options on or about the same dates that
28

1 Pershing purchased Allergan common stock, call options and equity forward
2 contracts.

3 3. Both call options and put options are financial derivative instruments
4 whose value derives from the price of the underlying security (in this case, Allergan
5 common stock) to which they relate. Both call options and put options are subject
6 to price fluctuation depending on the price of the underlying security. A call option
7 is a contract between a seller (the option writer) and a purchaser (the option holder),
8 under which the option purchaser has the right, but not the obligation, to exercise
9 the option, and thereby purchase the underlying security at an agreed-upon price
10 (the “strike” or “exercise” price) from the seller by a pre-set expiration date. The
11 call option purchaser will benefit if the value of the underlying security appreciates
12 so that the option can be either: (1) resold at a price higher than the price at
13 purchase; or (2) exercised at a strike price lower than the market price of the
14 underlying security. Conversely, call option sellers (Plaintiff and other members of
15 the proposed Class in this matter) generally lose value on their positions when the
16 market price of the underlying security rises. Call option sellers are underpaid for
17 their options when the price of the security underlying their options is artificially
18 deflated.

19 4. A put option is a contract between a seller (the option writer) and a
20 purchaser (the option holder), under which the put option purchaser has the right,
21 but not the obligation, to exercise the option, and thereby sell the underlying
22 security at an agreed-upon price. The put option seller is obligated to purchase the
23 underlying security at the agreed-upon price if the option is exercised on or before
24 the expiration date. As in the case of a call option seller discussed above, put
25 option purchasers (Plaintiff and other members of the proposed Class in this matter)
26 generally lose value on their positions when the market price of the underlying
27 security rises. Put option purchasers overpay for their options when the price of the
28 security underlying their options is artificially deflated.

1 5. An equity forward contract, also a derivative instrument, is a contract
2 between two parties, pursuant to which the seller of the forward contract is
3 obligated to sell the underlying equity (in this case, Allergan common stock) at a
4 specified date at an agreed-upon price to the forward purchaser. As in the cases of
5 a call option seller and put option purchaser discussed above, equity forward sellers
6 (members of the proposed Class in this matter) generally lose value on their
7 positions when the market price of the underlying security rises. Equity forward
8 sellers are underpaid for their contracts when the price of the security underlying
9 their contracts is artificially deflated.

10 6. As a result of Defendants' fraudulent scheme, the value of the
11 underlying security underlying the options and equity forwards traded by Plaintiffs
12 and other members of the proposed Class — Allergan's common stock — was
13 artificially deflated during the Class Period. Therefore, the prices of Allergan call
14 options and Allergan equity forwards sold by Plaintiff and other members of the
15 proposed Class were artificially deflated during the Class Period, while the prices of
16 Allergan put options purchased by Plaintiff and other members of the proposed
17 Class were artificially inflated during the Class Period. Accordingly, Plaintiff
18 brings this action on behalf of itself and other investors that sold Allergan call
19 options, purchased Allergan put options and sold Allergan equity forward contracts,
20 contemporaneously with Pershing's unlawful purchases.

21 **The Common Stock Class Action As It Relates To The Present Action**

22 7. The wrongdoing described herein is also the subject of a pending
23 securities class action, the Common Stock Class Action, filed in this District on
24 December 16, 2014. In that action, on March 15, 2017, the Court issued an order
25 (“Class Certification Order”) certifying a class (the “Common Stock Class”)
26 consisting of:

27 All persons who sold Allergan common stock contemporaneously with
28 purchases of Allergan common stock made or caused by Defendants

1 during the period February 25, 2014 through April 21, 2014, inclusive
2 and were damaged thereby.

3 8. In certifying the Common Stock Class, the Court also denied
4 Defendants' separate motion to dismiss for failure to join necessary parties under
5 Federal Rule of Civil Procedure 19(a)(1)(B)(i). In so doing, the Court concluded
6 that derivatives traders "can also be given notice the same time the Class members
7 are given notice of this lawsuit meaning they will have notice and opportunity to
8 intervene to bring their own claims before the case is resolved."

9 9. On April 28, 2017, the plaintiffs in the Common Stock Class Action
10 filed a motion seeking approval of notice to the class of the pendency of the
11 Common Stock Class Action. On June 5, 2017, the Court issued an Order denying
12 the plaintiffs' motion for an order approving the class notice, recognizing that "[t]he
13 derivatives traders' potential interests seem more analogous to those of dropped
14 class members, who may have valid claims, but whose claims will not be pursued
15 through this litigation." The Court further noted that "the derivatives traders may
16 have a stronger interest than absent class members, as their hypothetical claims may
17 be essentially precluded if Plaintiffs prevail here." In this regard, the Court also
18 held that if the plaintiffs "recover all of Defendants' gains or losses avoided that
19 there will be nothing left for others to recover who were allegedly harmed by
20 Defendants conduct."

21 10. On June 12, 2017, the plaintiffs in the Common Stock Class Action
22 filed a motion seeking the Court's approval of a modified Notice and Summary
23 Notice of Pendency of Class Action. On June 14, 2017, the Court issued an Order
24 approving the plaintiffs' modified Notice and Summary Notice, finding that the
25 notices "satisfactorily incorporate reference to the likelihood of a damages cap"
26 pursuant to the Court's June 5, 2017 Order. Plaintiffs' approved Notice of
27 Pendency of Class Action states:
28

1 ***IF YOU TRADED PRICE-INTERDEPENDENT DERIVATIVE***
2 ***SECURITIES OF ALLERGAN (I.E., DERIVATIVE SECURITIES***
3 ***WITH A VALUE THAT IS A FUNCTION OF OR RELATED TO***
4 ***THE VALUE OF ALLERGAN COMMON STOCK (“ALLERGAN***
5 ***DERIVATIVE SECURITIES”), YOUR TRANSACTIONS IN***
6 ***THOSE SECURITIES ARE NOT COVERED BY THE ACTION.***
7 ***THE COURT HAS NOT DETERMINED, AND THIS NOTICE***
8 ***DOES NOT EXPRESS ANY OPINION AS TO, WHETHER***
9 ***TRADING IN ALLERGAN DERIVATIVE SECURITIES GIVES***
10 ***RISE TO ANY CLAIMS. BUT BECAUSE DEFENDANTS’***
11 ***LIABILITY FOR DAMAGES IS LIKELY CAPPED AT THEIR***
12 ***GAINS OR LOSSES AVOIDED FROM THE SECURITIES LAW***
13 ***VIOLATIONS ALLEGED IN THIS ACTION, IT IS POSSIBLE***
14 ***THAT PLAINTIFFS WILL RECOVER THE ENTIRETY OF THE***
15 ***DAMAGES POOL AVAILABLE TO PERSONS ALLEGEDLY***
16 ***HARMED BY THE DEFENDANTS’ CONDUCT. IF SO, IT IS***
17 ***POSSIBLE THAT THERE WILL BE NOTHING LEFT FOR***
18 ***OTHERS TO RECOVER FROM DEFENDANTS ON ANY***
19 ***SIMILAR CLAIMS AGAINST DEFENDANTS THAT THEY MAY***
20 ***HAVE AND THOSE CLAIMS MAY BE EFFECTIVELY***
21 ***PRECLUDED.***

22 11. Thus, Plaintiff and other members of the proposed Class in the present
23 action are expressly excluded from the Common Stock Class Action, though their
24 rights and interests are impacted. Any recovery by the Common Stock Class may
25 have a prejudicial effect on Plaintiff and other Class members herein harmed by
26 Defendants’ misconduct. Plaintiff has filed the instant action on behalf of itself and
27 certain other Allergan derivatives investors to prevent the alleged adverse effects of
28

1 a potential judgment against Defendants in the Common Stock Class Action, and to
2 preserve their due process rights that may be infringed as a result of such judgment.

3 **Defendants' Illicit Scheme**

4 12. Defendants' illicit insider trading and front running scheme began in
5 February 2014 when Defendant Ackman, hedge fund billionaire and fearsome
6 "activist" investor, and Defendant Pearson, the CEO of cash-strapped but
7 acquisition hungry Valeant, struck a simple but unlawful bargain. In exchange for
8 information regarding Valeant's plans to launch a hostile takeover and tender offer
9 for fellow pharmaceutical company Allergan, Ackman agreed to secretly acquire
10 nearly 10% of Allergan's stock and commit those shares to support Valeant's bid.

11 13. This illegal bargain was highly beneficial to both Pershing and
12 Valeant. Pershing obtained a virtually risk-free trading opportunity to "front run"
13 Valeant's bid and accumulate a multi-billion dollar stake in Allergan before the bid
14 and tender offer became public. Although Pershing had never before invested in a
15 pharmaceutical company, Ackman was committing nearly \$4 billion of Pershing's
16 capital to "invest" in Allergan – the largest position in Pershing's history – when he
17 had inside information the rest of the market did not. Ackman knew that once
18 Valeant publicly disclosed its offer to buy Allergan at a substantial premium,
19 Allergan's stock price would immediately increase and deliver Pershing billions of
20 dollars in short-term profits.

21 14. In return, Valeant secured crucial voting support from Pershing's large
22 block of Allergan shares – something Valeant knew it needed to effect its hostile
23 takeover and overcome Allergan's defensive measures. Moreover, given Valeant's
24 debt burden, which was amassed through its aggressive growth-by-acquisition
25 strategy, Pearson knew that Valeant could not afford the large "toehold" stake
26 necessary to successfully execute a hostile takeover of a \$37 billion company like
27 Allergan. By trading inside information for votes, however, Valeant obtained the
28

1 support of a near 10% voting block without providing any significant up-front
2 capital of its own.

3 15. Defendants' plan not only made Valeant's hostile bid more likely to
4 succeed, but also enabled Valeant to profit even if the bid failed. Specifically,
5 Pearson convinced Ackman to agree that if Valeant's takeover bid was trumped and
6 defeated by a competing bid, Pershing would kick back 15% of its insider trading
7 profits to Valeant. Defendants formalized their plan in a contract on February 25,
8 2014, the first day of the Class Period.

9 16. Subsequently, in a series of complex and undisclosed transactions
10 between February 25 and April 21, 2014, PS Fund 1 acquired 9.7% of Allergan's
11 stock, mainly through deep-in-the-money, American-style over-the-counter
12 ("OTC"), zero-strike call options, executed through a single counterparty, Nomura
13 International plc ("Nomura"). This percentage of Allergan's stock was by design
14 just below the "short swing" profits prohibited by Section 16 of the Exchange Act,
15 which requires holders of greater than 10% of a company's stock to disgorge any
16 profits made in a six-month buy-sell period.

17 17. In addition, Pershing, with Valeant's approval, acquired the vast
18 majority of this stake in Allergan through call options in order to circumvent the
19 disclosure requirements of the Hart-Scott Rodino Antitrust Improvements Act of
20 1976 ("HSR"). 15 U.S.C. § 18(a); Revised Jurisdictional Thresholds for Section
21 7A of the Clayton Act, 79 Fed. Reg. 3,814 (Jan. 23, 2014). Moreover, using
22 Nomura as a single counterparty minimized the risk of inadvertent disclosure to the
23 marketplace of the material nonpublic information regarding Valeant's anticipated
24 hostile bid. By April 21, the last day of the Class Period, Pershing held over 28
25 million Allergan shares, or 9.7% of the Company, with an aggregate value of

1 approximately **\$3.2 billion** –all prior to any disclosure to the marketplace of the
2 material nonpublic information regarding Valeant’s anticipated hostile bid.²

3 18. After the close of trading on April 21, 2014, Valeant disclosed its
4 intention to acquire Allergan, along with Pershing’s 9.7% position in the Company.
5 Upon this disclosure, Allergan’s stock price increased by approximately \$20 per
6 share in one day, jumping 22% from its “unaffected” price and causing Pershing’s
7 shares to be worth nearly **\$1 billion** more than it paid for them.

8 19. As expected, Valeant’s takeover bid put Allergan “in play” for other
9 competing acquisition proposals. Ultimately, another bidder, Actavis plc
10 (“Actavis”), offered Allergan shareholders \$219 per share – more than the \$200 per
11 share Valeant offered. But Defendants’ warehousing scheme was a rousing
12 success. After splitting up the proceeds and paying Valeant its approximately \$400
13 million cut, Ackman walked away with over \$2.2 billion in pure profit made off the
14 backs of unwitting Class members that engaged in the subject derivative
15 transactions during the Class Period.

16 **Allergan Litigation Against Pershing and Valeant**

17 20. On August 1, 2014, Allergan and an employee and stockholder of
18 Allergan, Karah H. Parschauer (“Parschauer”), filed suit against certain Defendants
19 alleging that Pershing and Valeant violated federal securities laws in connection
20 with Valeant’s tender offer for Allergan, and in connection with Valeant’s and
21 Pershing Square’s proxy solicitations³. *Allergan, Inc. v. Valeant Pharmaceuticals*
22 *International, Inc.*, Case No. CV 14-1214-DOC (ANx).

23 _____
24 ² The Pershing Defendants began purchasing Allergan securities at a time when
25 they unquestionably had material nonpublic information relating to Valeant’s tender
26 offer, in violation of Rule 14e-3’s trading prohibition.

27 ³ Defendants named in the *Allergan* Litigation were: Valeant Pharmaceuticals
28 International, Inc., Valeant Pharmaceuticals International AGMS, Inc., AGMS,
Inc., Pershing Square Capital Management, L.P., PS Management GP, LLC, PS
Fund 1, LLC; William A. Ackman, and Does 1-10.

1 21. On November 4, 2014, the Court found, after limited discovery and
2 argument relating to a preliminary injunction motion, that Valeant’s alleged
3 conduct and communication of material nonpublic information to Pershing
4 concerning Allergan, and Pershing’s subsequent trading while in possession of that
5 inside information, raised “serious questions” about violations of Section 14(e) of
6 the Exchange Act and Rule 14e-3 promulgated thereunder. *Id.*, ECF No. 234 (the
7 “PI Ruling”). The Court also held that persons or entities that transacted in
8 Allergan securities during the period of Pershing’s insider trading “ha[d] a private
9 right of action under Rule 14e-3” that “c[ould] be remedied through damages.”

10 **The Elements of Plaintiff’s Claims Are Satisfied**

11 22. Each of the elements of Plaintiff’s securities claims are satisfied here.
12 ***First***, in violation of Rule 14e-3(d) and Section 20A(c), Valeant unlawfully
13 communicated material nonpublic information relating to its tender offer to
14 Pershing “under circumstances in which it is reasonably foreseeable” – indeed
15 certain – that the communication would be used by Pershing to illegally trade on
16 that inside information. In fact, Valeant told Pershing about Valeant’s confidential
17 plans to launch a tender offer precisely because Valeant wanted Pershing to trade
18 on that information. Valeant wanted as many shares as possible to be held by
19 stockholders that Valeant perceived as likely to support an Allergan takeover, but
20 since it could not pay for the shares directly, it turned to Pershing. The illicit tip
21 from Valeant was Pershing’s incentive to join the scheme. Pershing agreed to this
22 *quid pro quo* arrangement and acquired 9.7% of Allergan’s outstanding stock,
23 primarily through OTC call options, while in possession of that material, nonpublic
24 information.

25 23. ***Second***, consistent with the PI Ruling and as further alleged herein,
26 Pershing’s trades, which it indisputably knew were based on material nonpublic
27 information acquired from the “offering person” (Valeant), occurred *after* Valeant
28 had taken numerous “substantial steps” towards the tender offer – and therefore

1 violated Section 14(e) and Rule 14e-3(a) of the Williams Act. Beginning in early
2 2014, Valeant took numerous substantial steps toward a hostile tender offer,
3 including, *inter alia*:

- 4 • hiring three separate law firms to advise it concerning the transaction,
5 including pursuing a hostile tender offer;
- 6 • holding no less than *six formal meetings* with its Board of Directors
7 and related committees to discuss the transaction, at which internal
8 presentations expressly described the transaction as “hostile;”
- 9 • seeking out bankers to “line up financing” for and to provide
10 presentations regarding the transaction (including the inevitable hostile
11 bid);
- 12 • entering into a formal confidentiality agreement with Pershing
13 concerning the transaction;
- 14 • negotiating a separate agreement with Pershing that specifically
15 identified the transaction as potentially proceeding as a “*tender offer*”
16 and the procedures Valeant would follow if and when a tender offer
17 occurred;
- 18 • conducting due diligence regarding Allergan;
- 19 • pledging \$75.9 million of Valeant’s own capital to fund the deal (an
20 amount, not coincidentally, just shy of triggering antitrust disclosure
21 requirements); and
- 22 • securing Pershing’s agreement to use Valeant’s insider information,
23 acquire a friendly toehold stake in the target company and
24 subsequently vote that stake in favor of a Valeant deal.

25 24. Valeant’s “formal” announcement of its tender offer in June 2014
26 revealed what had been a foregone conclusion since at least February 2014. As
27 Pearson explained when announcing the tender offer: “On April 22, we announced
28

1 our offer for Allergan. *We suspected at the time it would ultimately have to go*
2 *directly to Allergan shareholders. We were correct.*”

3 25. None of the Defendants disclosed Valeant’s takeover intentions until
4 long after the purchases were made, and long after Allergan derivatives traders –
5 including Plaintiff – and the overall derivatives market had been damaged to the
6 benefit of Pershing and Valeant.

7 26. Defendants knew their *quid pro quo* arrangement violated the
8 securities laws. In an express effort to circumvent Rule 14e-3, Defendants
9 constructed a “co-bidder” fiction – falsely suggesting they should be considered a
10 single “person” or “offering person” under the Rule. Defendants’ actions and the
11 immense profits from the attempted takeover evince they were not acting as a single
12 “offering person” at the time of Pershing’s trades.

13 27. Pershing – which had never invested in a pharmaceutical company in
14 its history – never intended to buy or take control of Allergan or its assets; the plan
15 all along was for Pershing to acquire its stake on inside information and then sell it,
16 either to Valeant or another buyer. Valeant was the sole “offering person” in the
17 tender offer.

18 28. Indeed, Pershing did not directly or indirectly offer *anything* to any
19 Allergan stockholders in the tender offer. The “Purchaser” of Allergan stock was a
20 Valeant affiliate, AGMS, in which Pershing held *zero* interest. The Form S-4 filed
21 in connection with the tender offer unambiguously stated that Valeant was the
22 “offering person” in the transaction, and Pershing was not: “*none of Pershing*
23 *Square, PS Fund 1 or any of Pershing Square’s affiliates is offering to acquire*
24 *any shares of Allergan common stock in the [tender offer].”*

25 29. The question and answer portion of the S-4 was even more
26 unequivocal: “Q: Who is Offering to Acquire My Shares of Allergan Common
27 Stock? A: *The offer is being made by Valeant* through Purchaser, a wholly owned
28 subsidiary of Valeant.” Indeed, Ackman himself admitted that Pershing was not an

1 “offering person,” clarifying on the April 22, 2014 investor call announcing
2 Valeant’s bid that “*I am not the one making the offer.*”

3 30. In short, because the crux of their plan required that Pershing’s 9.7%
4 toehold in Allergan would eventually be bought out by Valeant in any tender offer,
5 Ackman was, by definition, never anything but a *seller* to Valeant, and could not
6 possibly be a “bidder” for its own Allergan shares.

7 31. Plaintiff and other Class members suffered damages as a result of
8 Defendant Pershing’s trades because they did not know the information they were
9 entitled to know under the disclose-or-abstain-from-trading principle of Rule 14e-3,
10 and consequently sold call options, purchased put options and/or sold equity
11 forward contracts for an unfair price, and did not receive the benefit of the premium
12 that followed once the Pershing Defendants’ material nonpublic information
13 became known to the market.

14 32. Defendants thus exploited exactly the informational advantage that
15 Rule 14e-3 was designed to prevent, and reaped billions of dollars in profits when
16 Valeant’s takeover plans were announced. Defendants’ scheme resulted in unfair
17 disparities in market information, and Plaintiff and other Class members have been
18 denied the benefits of disclosure and the protections of the Williams Act.

19 33. Through this action, Plaintiff seeks an award of damages and an order
20 requiring Defendants to return their unjust profits, and prejudgment interest
21 thereon, to Plaintiff and other Class members harmed by their misconduct – a result
22 that would further the core purposes of the federal securities laws while ensuring
23 the integrity of securities markets and providing investors with the protections that
24 Congress intended.

25 **II. PARTIES AND RELEVANT NON-PARTIES**

26 **A. Plaintiff**

27 34. Plaintiff _____ (“_____”) is a _____ limited
28 liability company with its principal place of business at _____.

1 _____ . As set forth in its Certification (Exhibit 2, hereto), Plaintiff
2 T_____ traded in derivatives instruments during the Class Period and suffered
3 damages as a result of the conduct complained of herein.

4 **B. Allergan**

5 35. Nonparty Allergan is a multi-specialty healthcare company established
6 more than 60 years ago. At all relevant times, and until its acquisition by Actavis in
7 March 2015, Allergan’s common stock traded on the New York Stock Exchange
8 (“NYSE”) under the ticker symbol “AGN.” Based in Irvine, California and
9 incorporated in Delaware, Allergan had a global presence, with approximately
10 11,500 employees in 38 countries. During the Class Period, Allergan had a market
11 capitalization of approximately \$39 billion.

12 36. Historically, Allergan positioned itself as strongly science-focused and
13 touted its industry-leading research and development (“R&D”) operation as a key
14 asset. In 2013, Allergan spent over \$1 billion on R&D – or approximately 16.8%
15 of product net sales – among the highest percentage among comparable
16 pharmaceutical companies. Allergan credited its R&D efforts for its growth and
17 robust product pipeline.

18 **C. Valeant Defendants**

19 37. Defendant Valeant is a publicly traded company that manufactures and
20 markets pharmaceuticals, over-the-counter products and medical devices in the eye
21 care, dermatology and neurology therapeutic classes. Valeant is based in Laval,
22 Quebec and trades on the NYSE under the stock ticker symbol “VRX.”

23 38. Defendant Valeant USA is a wholly owned subsidiary of Valeant.
24 Valeant USA is based in New Jersey and incorporated in Delaware. Valeant USA
25 became a member of PS Fund 1 on April 3, 2014.

26 39. Non-party AGMS was a Delaware corporation and wholly owned
27 subsidiary of Valeant. AGMS was formed solely to acquire Allergan stock in the
28 tender offer in exchange for Valeant shares and cash.

1 40. Defendant Pearson was, at all relevant times, the Chairman and CEO
2 of Valeant and President of Valeant USA and, in those capacities and as further
3 alleged herein, was responsible for the day-to-day management, and controlled and
4 directed the business and activities of Valeant and Valeant USA.

5 41. Valeant has a markedly different business model than Allergan.
6 Valeant eschews R&D investment and instead has achieved extraordinary growth
7 through an aggressive program of acquisitions followed by cost-cutting. Valeant's
8 philosophy – derived directly from Pearson, an alumnus of consulting firm
9 McKinsey & Company – turns on the idea that “Big Pharma” R&D is
10 nonproductive. Rather than spend a material percentage of revenue trying to
11 develop new products, Valeant looks for pharmaceutical “start-ups” with
12 established product pipelines, buys them at low prices using highly-leveraged
13 financing structures, implements aggressive cost-cutting measures (which typically
14 includes massive layoffs of legacy employees and slashing of R&D) and tries to
15 leverage those products into profitable brands. In 2013, Valeant spent just 3% of
16 revenue on R&D.

17 42. Between 2010 and 2014, Valeant employed this growth-by-acquisition
18 strategy to increase its market capitalization from \$3 billion to over \$44 billion. In
19 just the past several years, Valeant acquired cold-and-flu remedy manufacturer
20 Afexa Life Sciences, Inc. (December 2011), medical cosmetics company Medicis
21 Pharmaceutical Corp. (December 2012), skin-care and aesthetics products
22 manufacturer Obagi Medical Products, Inc. (April 2013), eye care company Bausch
23 & Lomb Holdings, Inc. (August 2013) and dermatological device maker Solta
24 Holdings Inc. (January 2014), as well as many smaller acquisitions. Valeant earned
25 an industry reputation as a “serial acquirer,” completing over 100 transactions since
26 2008.

27 43. Valeant's business model of buying up and expanding through
28 acquisitions of more-established companies has also made senior management

1 incredibly rich. Valeant's acquisitions over the last several years have already
2 made Pearson a billionaire, as his compensation is directly tied to Valeant's growth
3 through acquisitions. Shortly before the beginning of the Class Period, Valeant
4 announced that it would seek to become one of the five largest pharmaceutical
5 companies in the world by the end of 2016 – an outcome that Pearson told investors
6 during a January 7, 2014 conference call would have “a significant impact” on his
7 annual compensation. In fact, as set forth in Valeant's 2015 proxy statement,
8 approximately 20% of Pearson's 2014 annual cash bonus award was based solely
9 on his ability to do “at least one significant deal that creates substantial shareholder
10 value” during the year.

11 44. While Valeant's growth-by-acquisition strategy has made its CEO and
12 top executives incredibly wealthy, it has its detractors. Some observers question
13 the debt load the company takes on to fund its acquisitions. Indeed, while Valeant
14 has set ambitious acquisition and growth targets for itself for years, by early 2014
15 when it started its assault on Allergan, financing to fund its acquisitions was
16 becoming scarce.

17 45. Although Valeant's tender offer and attempted hostile takeover of
18 Allergan was ultimately unsuccessful, it still reaped hundreds of millions of dollars
19 in virtually risk-free profits through Defendants' insider-trading scheme. This
20 represented just under half of Valeant's total profits for all of 2014, and alone was
21 *more than the company's profits for the prior four years combined*. In fact, “the
22 effort generated \$287 million in net profit” for the company (after deducting \$110
23 million in expenses) and, accordingly, Valeant's Board “gave full credit for this
24 strategic objective” in awarding Pearson \$8 million in non-equity incentive
25 compensation for 2014.

26 **D. Pershing Defendants**

27 46. Defendant Ackman is the billionaire founder and CEO of Pershing.
28 Ackman resides in New York. At all relevant times, Ackman controlled Pershing

1 and its affiliated entities, including Defendants PS Fund 1, PSLP, PS II, PS
2 International, PS Holdings and PSGP. Ackman was ultimately responsible for all
3 actions by any of these entities described in this complaint, each of which
4 participated in the scheme pursuant to Ackman's direction and control, and
5 possessed the identical material nonpublic information Ackman possessed at all
6 relevant times.

7 47. Ackman has spent years developing his reputation as a feared
8 "activist" investor. Ackman's strategy involves identifying investment
9 opportunities and aggressively buying up shares, followed by some sort of "active"
10 (and frequently adversarial) strategy using a variety of hostile tactics, such as
11 aggressive "negotiations" with a company's management or contentious proxy
12 contests, to force the company to adopt certain changes Ackman believes will be
13 beneficial. For example, in 2005, Pershing acquired a substantial percentage of
14 Wendy's International's stock and then pressured management to divest certain
15 assets – including selling or closing about 450 Wendy's restaurants and divesting
16 the company's Tim Hortons Canadian doughnut-store business – which drove up
17 the stock price. By 2006, Pershing was able to sell its entire stake in Wendy's
18 International for nearly double what it invested. As described by one investment
19 firm manager, Ackman's "game is to drive up the stock and get out – fast."

20 48. While Pershing's investment tactics have made Ackman a billionaire,
21 Ackman suffered a series of bad investments immediately prior to the Class Period
22 that caused many to question his investment acumen. For example, in 2014,
23 Pershing suffered significant losses in a high-profile "short selling" bet that health
24 supplement distributor Herbalife was in fact a "pyramid scheme" whose stock value
25 would soon plummet. Despite Ackman's highly vocal accusations and media
26 campaign, Herbalife stock increased substantially, resulting in hundreds of millions
27 of dollars in losses for Pershing that year. In 2013, Pershing lost nearly \$500
28

1 million on a wager that it could pressure retailer J.C. Penney Co. to re-vamp its
2 merchandise strategy.

3 49. Before Allergan, Pershing had never before invested in a
4 pharmaceutical company. As Ackman explained to investors during an April 24,
5 2014 presentation, Pershing had not historically invested in pharmaceutical
6 companies and, in fact, had never even “looked at a pharmaceutical company
7 before” because they do not generally have the kind of predictability or “standard of
8 durability of . . . cash flows” like Pershing’s “typical” investments in companies
9 such as Burger King, Procter & Gamble, and Kraft — companies that have brands
10 or other unique assets that “protect the business from new entrants” and are
11 purportedly “shareholder friendly” in the way they allocate capital. Instead,
12 Ackman explained, pharmaceutical companies often invest “huge amounts in
13 speculative R&D,” suffer from “price pressure from multiple different players and
14 government,” have “bloated overhead structures” and have a poor track record of
15 “value-destroying acquisitions.” Of course, these issues became irrelevant to
16 Ackman’s preferentially informed “investment” in Allergan.

17 50. Pershing’s “investment” in Allergan was its single largest investment
18 in firm history, and reflected Pershing’s attempt to reverse its bad run. From a
19 financial perspective, that has undoubtedly occurred. As alleged herein,
20 Defendants’ illegal insider trading scheme enabled Pershing to reap virtually risk-
21 free profits of over \$1 billion when Valeant first announced its bid for Allergan,
22 which ultimately grew to more than \$2.5 billion on Pershing’s \$3.2 billion
23 investment.

24 51. Ackman carried out his improper insider trading activities through
25 eight Pershing entities that he controlled, and which he used to fund, orchestrate
26 and profit from the inside information he received relating to Valeant’s takeover
27 plans and contemplated tender offer for Allergan. As set forth herein, each of these
28 entities – Pershing Square, PS Management, PS Fund 1, PSLP, PS II, PS

1 International, PS Holdings and PSGP – served as the vehicles through which the
2 insider trades were carried out and they directly participated in the insider trading
3 plan alleged herein, including by being bound by or parties to key agreements such
4 as the February 25, 2014 Relationship Agreement (defined below), the February 16,
5 2014 Confidentiality Agreement (defined below), and the Guarantee (defined
6 below) that they executed in order to “induce” Nomura to trade. These entities are
7 therefore primarily liable for claims alleged herein, including violations of Rule
8 14e-3.

9 52. Defendant Pershing Square is an investment adviser founded in 2003
10 and registered with the SEC under the Investment Advisers Act of 1940. Pershing
11 Square is a Delaware limited partnership with its principal place of business in New
12 York. Pershing Square manages a group of affiliated hedge funds, including
13 defendants PS Fund 1, PSLP, PS II, PS International and PS Holdings. Through its
14 various hedge funds (including those that formed PS Fund 1), Pershing Square
15 currently manages over \$17 billion in capital. Ackman is the CEO and an over
16 75% owner of Pershing Square, including through his ownership of PS
17 Management. Pershing Square was at all relevant times the non-member manager
18 of PS Fund 1 and directed the business and affairs of PS Fund 1, including the
19 manner and timing of PS Fund 1’s purchases of Allergan securities. Pershing
20 Square also was the investment advisor for PSLP, PS II, PS International and PS
21 Holdings. As such, Pershing Square controlled and directed the business and
22 affairs of PSLP, PS II, PS International and PS Holdings.

23 53. Pershing Square, together with PSLP, PS II, PS International, PS
24 Holdings and PSGP entered into the February 9, 2014 confidentiality agreement
25 with Valeant pursuant to which Valeant disclosed material nonpublic information
26 concerning Valeant’s takeover bid and contemplated tender offer for Allergan. The
27 February 9, 2014 confidentiality agreement was amended and restated as of
28

1 February 20, 2014, and together those agreements are referred to herein as the
2 “Confidentiality Agreement.”

3 54. In the Confidentiality Agreement, Ackman, Pershing Square and
4 Pershing Square’s “controlled affiliates” – including PS Management, PSLP, PS II,
5 PS International, PS Holdings and PSGP – agreed to keep the identity of Valeant’s
6 takeover target, Valeant’s interest in a takeover of and contemplated tender offer for
7 Allergan, and all of the terms or other facts relating to takeover plan, a secret. As
8 made clear in the Confidentiality Agreement, each of PS Management, PSLP, PS II,
9 PS International, PS Holdings and PSGP (as Ackman and Pershing Square’s
10 “controlled affiliates”) were provided with this material non-public information and
11 undertook the responsibilities to maintain its confidentiality, as each such entity
12 was “directly or indirectly” controlled by Ackman and/or affiliates of entities that
13 Ackman controlled. Specifically, Ackman was at all relevant times the owner and
14 “managing member” of PSGP, the general partner of PSLP and PS II, and the
15 owner and “managing member” of PS Management, the general partner of PS
16 International and PS Holdings.

17 55. Pershing Square, together with PS Management, PSLP, PS II, PS
18 International, PS Holdings and PSGP also entered into the February 25, 2014
19 Relationship Agreement (“Relationship Agreement”), which provided the formal
20 “structure” that governed and facilitated Valeant’s and Pershing’s insider-trading
21 scheme. Specifically, that Relationship Agreement adopted the definition of
22 “Pershing Square” as set forth in the Confidentiality Agreement, which included PS
23 Management, PSLP, PS II, PS International, PS Holdings and PSGP. Indeed, the
24 Relationship Agreement also specifically defines Pershing Square to include its
25 “controlled affiliates,” such as PS Management, PSLP, PS II, PS International, PS
26 Holdings and PSGP. Section 7(f) of the Relationship Agreement likewise adopts
27 the same definition of “affiliate” as the Confidentiality Agreement.

28

1 56. In the Relationship Agreement, each of Pershing Square, PSLP, PS II,
2 PS International, PS Holdings and PSGP agreed, among other things:

- 3 (a) to “become members” in the newly formed PS Fund 1 “which shall
4 purchase Allergan Equity” pursuant to Defendants’ scheme;
- 5 (b) that PS Fund 1 “will be the exclusive person or entity through which
6 Pershing Square, or any of its affiliates, shall become the beneficial
7 owner of Allergan Equity;”
- 8 (c) that “Pershing Square” as defined to include PSLP, PS II, PS
9 International, PS Holdings and PSGP, “shall make such other
10 contributions to [PS Fund 1] from time to time in its discretion as may
11 be required to purchase the Allergan Equity it decides that the [PS
12 Fund 1] should acquire;” and
- 13 (d) that “the consent of both Pershing Square and [Valeant] shall be
14 required for launching . . . a tender offer or an exchange offer,” and
15 that if the Allergan transaction was “pursued by [Valeant] through a
16 tender or exchange offer . . . each of [Valeant], Pershing Square and
17 [PS Fund 1] will be identified as co-bidders”

18 57. Defendant PS Management is the sole general partner of Pershing
19 Square. PS Management is a Delaware limited liability company with its principal
20 place of business in New York. Ackman is an over 75% owner of PS Management
21 and is PS Management’s “managing member.”

22 58. Defendant PS Fund 1 is a Delaware limited liability company with its
23 principal place of business in New York. PS Fund 1 was formed on February 11,
24 2014 pursuant to the Limited Liability Company Agreement of PS Fund 1, LLC
25 (the “February 11, 2014 LLC Agreement”). Ackman executed the February 11,
26 2014 LLC Agreement as the “Managing Member” of each of the Pershing entities
27 that were parties to the February 11, 2014 LLC Agreement.
28

1 59. Two months later, after PS Fund 1 had expended over \$1.5 billion to
2 acquire over 12 million Allergan shares while in possession of material, non-public
3 information relating to Valeant’s takeover bid and contemplated tender offer for
4 Allergan, Ackman, separately and on behalf of each of Pershing Square, PSLP, PS
5 II, PS International and PS Holdings, amended and restated the February 11, 2014
6 LLC Agreement in order to join Valeant USA as a “member” of PS Fund 1 (the
7 “Amended LLC Agreement,” and with the February 11, 2014 LLC Agreement, the
8 “LLC Agreement”). Although Valeant USA joined as a “member” of PS Fund 1,
9 Valeant USA contributed just 2% of the capital PS Fund 1 used to acquire Allergan
10 stock. The rest of the capital was provided by PSLP, PS II, PS International and PS
11 Holdings. Ackman executed the Amended LLC Agreement as the “Managing
12 Member” of each of the five Pershing entities – signing his name five times (once
13 for each entity). In fact, the only two individuals whose signatures are on the
14 Amended LLC Agreement are those of Defendants Ackman (for all of the Pershing
15 entities) and Pearson (for Valeant).

16 60. The singular purpose of PS Fund 1 was the funding and buying
17 Allergan securities in advance of Valeant’s contemplated tender offer, by and
18 among several Pershing Square-affiliated hedge funds and management entities:
19 Pershing Square, PSLP, PS II, PS International and PS Holdings. Indeed, the
20 Amended LLC Agreement expressly stated that PS Fund 1 was formed “for the
21 purposes of (i) serving as the Co-Bidder Entity under the Relationship Agreement,
22 (ii) on the terms set forth in the Relationship Agreement, acquiring and disposing of
23 Allergan Equity, (iii) taking actions related to causing Allergan, Inc. (“Allergan”) to
24 enter into and consummate a business combination transaction and (iv) activities
25 reasonably related thereto.”

26 61. Further, the Amended LLC Agreement:

27 (a) reinforced in Section 19 that PS Fund 1 “was formed solely for the
28 purpose [of buying Allergan securities in advance of Valeant’s contemplated

1 tender offer] and, since the date of its formation, has not engaged in any
2 [other] activities;”

3 (b) specifically incorporated the Relationship Agreement and the
4 Confidentiality Agreement. For example, Section 24 stated that these three
5 agreements “constitute[d] the entire agreement among the parties hereto . . .
6 .;”

7 (c) provided that PSLP, PS II, PS International and PS Holdings had the
8 power to “remove the Manager [*i.e.*, Pershing Square] as manager of [PS
9 Fund 1]” (Section 5) and that they only consented to Pershing Square
10 managing PS Fund 1 to the extent it did so in accordance with “the
11 Relationship Agreement” (Section 4) – which as set forth herein provided the
12 formal “structure” that governed and facilitated Defendants’ insider-trading
13 plan and even specifically identified the transaction as potentially proceeding
14 as a “*tender offer*;” and

15 (d) provided that if PS Fund 1 did not have sufficient funds to pay Valeant
16 its 15% kickback of insider trading profits under the Relationship
17 Agreement, each of PSLP, PS II, PS International and PS Holdings would
18 individually kick back sufficient funds to make up for any shortfall (Section
19 10).

20 62. In addition to agreeing to maintain the confidentiality of Valeant’s
21 takeover plans and contemplated tender offer for Allergan, and to take the other
22 actions as required by the Confidentiality Agreement, providing funding for PS
23 Fund 1’s illegal trades and entering into the February 11, 2014 LLC Agreement and
24 Amended LLC Agreement, and entering into and participating in the illicit insider
25 trading activity pursuant to the Relationship Agreement, PSLP, PS II, PS
26 International, PS Holdings and PSGP took additional independent actions to cause
27 PS Fund 1 to acquire Allergan shares. For example, on April 17, 2014, PSLP, PS
28 II, PS International and PS Holdings entered into a “guarantee” in favor of Nomura

1 in order to cause Nomura to acquire Allergan shares pursuant to Defendants'
2 insider-trading scheme (the "Guarantee"). Indeed, the Guarantee specifically stated
3 that it was entered into by these entities "[i]n order to *induce*" Nomura to acquire
4 Allergan securities pursuant to the insider trading scheme alleged herein (Section
5 1). Ackman executed the Guarantee on behalf PSLP, PS II, PS International and PS
6 Holdings – signing the agreement four times (once for each entity). Indeed,
7 Ackman's four signatures are the only signatures on the Guarantee.

8 63. Defendant PSLP, a Delaware limited partnership, is an investment
9 fund managed by Defendants PSGP and Ackman. PSLP was a member of PS Fund
10 1, and a party to the February 11, 2014 LLC Agreement and the Amended LLC
11 Agreement. PSLP funded the illegal insider-trading scheme alleged herein by
12 contributing to PS Fund 1 capital used to make the insider purchases of Allergan
13 stock. PSLP also caused PS Fund 1's trading by entering into the Guarantee in
14 favor of Nomura "in order to induce" Nomura to acquire Allergan shares. In return,
15 PSLP received its share of the illicit gains from the scheme.

16 64. Defendant PS II, a Delaware limited partnership, is an investment fund
17 managed by Defendants PSGP and Ackman. PS II was a member of PS Fund 1,
18 and a party to the February 11, 2014 LLC Agreement and the Amended LLC
19 Agreement. PS II funded the illegal insider-trading scheme alleged herein by
20 contributing to PS Fund 1 capital used to make the insider purchases of Allergan
21 stock. PS II also caused PS Fund 1's trading by entering into the Guarantee in
22 favor of Nomura "in order to induce" Nomura to acquire Allergan shares. In return,
23 PS II received its share of the illicit gains from the scheme.

24 65. Defendant PSGP is the sole general partner of PSLP and PS II. PSGP
25 is a Delaware limited liability company with its principal place of business in New
26 York. Ackman is an over 75% owner of PSGP and is PSGP's "managing member."
27 As alleged more fully below, PSGP, through Ackman, controlled PSLP and PS II,
28 and caused them to participate in the unlawful insider-trading scheme alleged

1 herein. As the sole general partner of PSLP and PS II, PSGP is liable for the wrongs
2 committed by PSLP and PS II.

3 66. Defendant PS International, a Cayman Islands exempted company, is
4 an investment fund managed by defendants PS Management and Ackman. PS
5 International's headquarters' address is identified in various filing as the same as
6 Pershing Square's headquarters in New York City. PS International was a member
7 of PS Fund 1, and a party to the February 11, 2014 LLC Agreement and the
8 Amended LLC Agreement. PS International entered into and executed the February
9 11, 2014 LLC Agreement and the Amended LLC Agreement in the United States,
10 and agreed that the agreements would be governed by Delaware law. Both
11 agreements were to be performed in the United States. The agreements further
12 provided that all notices to PS International should be sent to it in New York, care
13 of Pershing Square. PS International funded the illegal insider-trading scheme
14 alleged herein by contributing to PS Fund 1 capital used to make the insider
15 purchases of Allergan stock. PS International also caused PS Fund 1's trading by
16 entering into the Guarantee in favor of Nomura "in order to induce" Nomura to
17 acquire Allergan shares. In return, PS International received its share of the illicit
18 gains from the scheme.

19 67. Defendant PS Holdings, a company incorporated under the laws of
20 Guernsey, is an investment fund managed by defendants PS Management and
21 Ackman from Pershing Square's offices in New York. PS Holdings conducts
22 business in the United States through Pershing Square out of Pershing Square's
23 New York offices. PS Holdings was a member of PS Fund 1, and a party to the
24 February 11, 2014 LLC Agreement and the Amended LLC Agreement. PS
25 Holdings entered into and executed the February 11, 2014 LLC Agreement and the
26 Amended LLC Agreement in the United States, and agreed that the agreements
27 would be governed by Delaware law. PS Holdings funded the illegal insider
28 trading scheme alleged herein – using funds held in the United States – by

1 contributing to PS Fund 1 capital used to make the insider purchases of Allergan
2 stock. PS Holdings also caused PS Fund 1's trading by entering into the Guarantee
3 in favor of Nomura "in order to induce" Nomura to acquire Allergan shares. In
4 return, PS Holdings received its share of the illicit gains from the scheme.

5 68. Defendants PSLP, PS II, PS International and PS Holdings each were
6 directly involved in the insider-trading scheme alleged herein, each acquired the
7 material, nonpublic information relating to Valeant's takeover plans and
8 contemplated tender offer for Allergan (through Ackman) and each agreed to keep
9 this information confidential pursuant to the Confidentiality Agreement. Further,
10 each of PSLP, PS II, PS International and PS Holdings entered into and was bound
11 by the Relationship Agreement to carry out Ackman's trades in Allergan, each
12 contributed the capital used to effectuate the insider trades and each received the
13 profits from those insider trades. PSLP, PS II, PS International and PS Holdings
14 also each acquired, either directly or through their membership and investment in
15 PS Fund 1, economic ownership of Allergan common stock while in possession of
16 material inside information – and, as result of the misconduct alleged herein, these
17 entities each received ill-gotten gains derived from the scheme. Through Ackman,
18 PSLP, PS II, PS International and PS Holdings, each knew of and intended to
19 participate in the insider-trading scheme when they contributed capital to PS Fund 1
20 and entered into or agreed to be bound by the February 11, 2014 LLC Agreement
21 and the Amended LLC Agreement, the Confidentiality Agreement, the Relationship
22 Agreement and the Guarantee, and entered into those agreements for the express
23 purpose of participating in and profiting from PS Fund 1's unlawful insider trades
24 in Allergan securities.

25 69. PS Fund 1 distributed the profits it made by illegally trading in
26 Allergan securities to its then-members, PSLP, PS II, PS International and PS
27 Holdings, after Actavis closed on its acquisition of Allergan on March 17, 2015.
28 Following this distribution, PSLP, PS II, PS International and PS Holdings ceased

1 being members of PS Fund 1, and PS Fund 1 ceased all operations and was
2 liquidated by the end of March 2015. These facts were revealed in an August 2015
3 public filing by PS Holdings.

4 **III. JURISDICTION AND VENUE**

5 70. This Court has subject matter jurisdiction over this action pursuant to
6 15 U.S.C. § 78aa and 28 U.S.C. § 1331.

7 71. This Court has personal jurisdiction over Defendants because each of
8 them has sufficient minimum contacts in California to satisfy California’s long-arm
9 statute and constitutional due process requirements through Defendants’
10 participation in a hostile takeover of Allergan, which is located in California, and
11 their unlawful trading in Allergan securities while in the possession of material,
12 nonpublic information relating to a tender offer for Allergan.

13 72. Venue is proper in the United States District Court for the Central
14 District of California pursuant to 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b) and (c).

15 **IV. BACKGROUND FACTS**

16 **A. Valeant Takes Substantial Steps Toward The Tender Offer**

17 1. Valeant Enlists Pershing to “Front-Run” Its Hostile Takeover
18 Efforts

19 73. Valeant identified Allergan as an attractive target to fuel Valeant’s
20 highly leveraged acquisition machine since the fall of 2012. On September 10,
21 2012, Pearson contacted Allergan’s CEO, David Pyott (“Pyott”), to discuss a
22 business combination with Allergan. Shortly after telling Pearson that he would
23 discuss Valeant’s interest in a merger with Allergan’s Board of Directors, Allergan
24 rejected any potential deal, and Pyott informed Pearson personally that the Allergan
25 Board was not interested in a transaction with Valeant. Pearson was thus aware in
26 2014 that Allergan would not be receptive to a “friendly” merger.

27 74. Despite Allergan’s outright rejection of Valeant’s advances, Valeant
28 continued to analyze an Allergan takeover throughout 2013 and early 2014. In fact,

1 of the many companies that Valeant explored during this period, Pearson believed,
2 and later admitted, that Allergan was the “most attractive strategic transaction
3 available to Valeant.”

4 75. Just weeks before Pershing’s covert purchasing program began,
5 Pearson told investors at a January 7, 2014 investor conference that two of
6 Valeant’s key “strategic initiatives” for 2014 were to “become one of the top five
7 most valuable pharmaceutical companies as measured by market cap by the end of
8 2016” and to complete a significant deal that creates “substantial shareholder
9 value.” Pearson acknowledged that Valeant’s ability to achieve these strategic
10 initiatives had a “significant impact” on his annual compensation, and therefore
11 Valeant had been “spending a lot of [its] time . . . exploring lots and lots of different
12 deals.” Having put out the bait that Valeant would continue its acquisition binge,
13 Pearson laid the groundwork for selling the incredibly valuable inside information
14 he possessed – the identity of Valeant’s target – to Ackman.

15 76. Pearson also realized that an acquisition of any real size had become
16 significantly more difficult following Valeant’s \$8.6 billion Bausch & Lomb
17 acquisition in 2013 (the largest by the company at the time). Valeant’s debt load
18 had increased significantly since then and obtaining financing to acquire a company
19 as large as Allergan – which at the time had a \$37 billion market capitalization –
20 was particularly difficult.

21 77. Thus, in early 2014, the first step in Valeant’s revived Allergan plan
22 was to figure out how to effect a hostile takeover, knowing that Allergan would
23 oppose any deal with Valeant. Because hostile acquirers must secure stockholder
24 votes to either approve their offer *without* target board support or unseat the board
25 and stack it with directors who will vote for approval, they often buy as many
26 shares as possible to achieve a “toehold” in the target’s stock before disclosing their
27 intentions to the target’s management and shareholders.

28

1 78. But Valeant could not afford the “toehold” it knew it needed to effect a
2 hostile bid. As reflected in an internal February 18, 2014 email, Valeant’s senior
3 executives knew the company had “neither sufficient available cash nor borrowing
4 capacity to acquire [a] meaningful toe-hold position” in Allergan in the first part of
5 2014. Pearson admitted after the Class Period that Valeant “did not have \$4 billion
6 sitting at the bank” and confirmed that, given Valeant’s debt load, a hostile takeover
7 of Allergan would have been prohibitively expensive in early 2014.

8 79. An alliance with Pershing, however, offered a convenient solution to
9 Valeant’s dilemma. Unlike Valeant, Pershing had the financial capacity to acquire a
10 significant stake in Allergan. Pershing also had a well-known reputation for
11 waging aggressive proxy contests and challenging incumbent boards of directors
12 and management – characteristics that served Valeant’s purposes perfectly.

13 2. Valeant Entices Ackman to Support Its Takeover Strategy In
14 Exchange for Inside Tender Offer Information

15 80. Having identified an alliance with Pershing as a way to finance and
16 better position its takeover of Allergan, Valeant took a series of substantial steps
17 toward a tender offer by engaging in a scheme with Pershing to start acquiring a
18 significant stake in Allergan.

19 81. Valeant and Pershing’s discussions concerning Allergan began in
20 earnest in January 2014, when Pershing’s “special advisor,” William F. Doyle
21 (“Doyle”) – who had been Ackman’s classmate at Harvard Business School and
22 Pearson’s colleague at McKinsey and later Johnson & Johnson – discussed ways
23 that Valeant and Pershing could work together at an industry conference.

24 82. Two weeks later, on January 31, 2014, Pearson met with Doyle again
25 and the two arranged an introductory meeting between Ackman, Pearson and
26 Valeant Board member Mason Morfit (“Morfit”) on February 4, 2014. Besides
27 serving on Valeant’s Board, Morfit was a partner at ValueAct Capital – a hedge
28

1 fund with a \$2.5 billion stake in Valeant and one of its largest shareholders.⁴
2 ValueAct Capital, which is a self-described “activist investor” like Pershing, had
3 likewise been pushing for a Valeant/Allergan combination. Pearson and Morfit
4 were naturally very familiar with Pershing’s market reputation and aggressive
5 approach to making money for its investors, including handling unsolicited bids.

6 83. During the February 4, 2014 meeting, Pearson and Ackman discussed
7 Valeant’s business model and growth plans, and specifically reviewed several
8 potential unsolicited acquisition targets, including Allergan. According to Ackman,
9 the two specifically discussed how “Pershing Square could be helpful in situations
10 where management of a target corporation was not receptive to an acquisition
11 proposal.” In other words, the whole purpose of Pearson’s and Ackman’s
12 cooperation presumed the need to resort to hostile takeover tactics, which inevitably
13 include the threat and/or implementation of a tender offer. It was also clear from
14 the outset that Valeant – not Pershing – would be acquiring Allergan, and that
15 Pershing would have no control over the offer and no role in the combined
16 company if the deal closed. In fact, Pearson flatly rejected the idea that Pershing or
17 Ackman would have any say in managing the combined company if Valeant’s bid
18 was successful, later testifying that “*I don’t want [Ackman] on our board and our*
19 *board doesn’t want him on our board,*” and that Valeant was firmly opposed to
20 anyone else from Pershing having any role whatsoever in the combined company.

21
22 ⁴ In addition, Morfit has been elected to the boards of a number of other companies
23 in which ValueAct has invested. For example, Morfit served on the board of
24 directors of Advanced Medical Optics, Inc. (“AMO”) from 2007 through 2009,
25 concurrently with James V. Mazzo (“Mazzo”), who served as AMO’s chairman
26 from 2006 until AMO was acquired through a tender offer by Abbott Laboratories,
27 Inc. in 2009. In 2012, Mazzo was charged by the SEC for violations of Section
28 14(e) and Rule 14e-3 for tipping material, nonpublic information concerning
Abbott’s plan to launch a tender offer for AMO prior to the announcement of the
deal, and later indicted by the U.S. Department of Justice. *See Securities and*
Exchange Commission v. Mazzo, Case No. CV 12-01237-DOC (C.D. Cal.).

1 84. The fact that Pershing was to play no role in the combined company is
2 not surprising given that neither Ackman nor Pershing had any prior experience
3 investing in a pharmaceutical company, let alone running one. Indeed, Ackman
4 told investors during an April 22, 2014 conference that “*we [had] never looked in*
5 *pharmaceuticals before,*” explaining that “*I [had] not actually looked at a*
6 *pharmaceutical company of any consequence*” before meeting with Pearson at the
7 beginning of the year.

8 85. Instead, Ackman only became interested in pharmaceutical companies
9 after Pearson offered him the opportunity to trade on inside information concerning
10 one of the largest attempted tender offers in the history of the pharmaceutical
11 industry. Because the trades were based on inside information – and would be
12 profitable no matter what – and because Pershing would play no role in the
13 combined company if the deal closed, Ackman’s lack of expertise or experience
14 with pharmaceutical companies was irrelevant.

15 86. Two days later, on February 6, 2014, Ackman and Pearson had a
16 second telephone call during which they further discussed Valeant’s acquisition
17 plans. As a result of those discussions, Valeant and Pershing agreed to enter into
18 the Confidentiality Agreement in which Valeant would disclose a specific
19 acquisition target to Pershing, and Pershing could then decide whether it would
20 support the contemplated transaction, i.e., it would assess how serious Valeant was
21 about following through with a bid.

22 87. Also on February 6, Valeant engaged Sullivan & Cromwell LLP
23 (“Sullivan & Cromwell”) as counsel in connection with a potential Allergan
24 transaction. It soon after retained Skadden Arps Slate Meagher & Flom LLP and
25 Osler Hoskins & Harcourt LLP (“Osler”) to counsel it in connection with its
26 takeover bid later that month.

27 88. On February 7, 2014, the Finance and Transactions Committee of
28 Valeant’s Board held a conference call to discuss a potential combination of

1 Valeant and Allergan. The presentation used at that meeting, which summarized
2 Valeant’s “actions to date,” noted that Sullivan & Cromwell was “[p]ulling together
3 key diligence items” and “[w]orking on structure and *key actions to launch offer.*”
4 Of course, friendly merger proposals are presented, while hostile tender offers are
5 “launched.” The presentation also stated that, at Valeant’s request, bankers at Bank
6 of America Merrill Lynch (“BAML”) and Goldman Sachs were “clearing conflicts”
7 so that, as Valeant CFO Howard Schiller explained, Valeant could begin to “line up
8 financing” for a deal. Valeant’s Board and its committees subsequently met *five*
9 more times over the next two weeks to discuss Valeant’s takeover plans.

10 89. Between February 7 and February 9, 2014, Sullivan & Cromwell
11 negotiated with Pershing’s counsel, Kirkland & Ellis, the terms of the
12 Confidentiality Agreement that Pearson and Ackman had discussed. On February
13 9, 2014, Valeant and Pershing executed the Confidentiality Agreement.
14 Immediately thereafter, Pearson informed Ackman that Allergan was Valeant’s
15 acquisition target. The Confidentiality Agreement required that the identity of
16 Valeant’s takeover target and interest in Allergan be kept strictly confidential, and
17 included a provision acknowledging that the parties had been advised that “the
18 United States securities laws prohibit any person who has material non-public
19 information about a company from purchasing or selling securities of such
20 company on the basis of such information or from communicating such information
21 to any other person under circumstances in which it is reasonably foreseeable that
22 such person may purchase or sell such securities.”

23 90. Later that same day, Valeant’s Board held a conference call to discuss
24 the Confidentiality Agreement, Pearson and Ackman’s discussions, and Valeant’s
25 unsolicited pursuit of Allergan.
26
27
28

1 3. Allergan Publicly Opposes a Valeant Deal and Pershing Forms
2 a Funding Vehicle to Secretly Acquire Allergan Shares

3 91. With its inside knowledge of Valeant’s impending takeover of
4 Allergan, Pershing formed a new limited liability company, “PS Fund 1,” on
5 February 11, 2014. PS Fund 1 was formed pursuant to a Limited Liability
6 Company Agreement between six Pershing entities (discussed above), and its
7 express purpose was to secretly acquire a near 10% toehold in Allergan, front-run
8 the disclosure of Valeant’s bid and subsequently support Valeant’s hostile takeover
9 plan.

10 92. While taking these substantial steps in preparation for a tender offer
11 and hostile takeover, Valeant made a perfunctory overture to Allergan’s
12 management, which was immediately (and predictably) rejected. Given Allergan’s
13 express and unequivocal rejections of Valeant’s prior advances, Valeant knew that
14 Allergan had no interest in a negotiated deal, and that a successful takeover would
15 require coercive tactics facilitated by the voting power of Pershing’s near 10%
16 stake in Allergan.

17 93. On February 6, 2014, Pearson contacted Allergan and asked to set up a
18 meeting with Pyott, Allergan’s CEO, to discuss a business combination. Although
19 both parties knew that Allergan would likely reject any proposed takeover (as it had
20 in the past), Allergan indulged Valeant, and a meeting between the CEOs was
21 scheduled for February 15, 2014.

22 94. Before the meeting could occur, however, Allergan vocally and
23 publicly expressed its opinion that a combination between the companies was a
24 non-starter. For example, on February 10, 2014, analysts from Sanford B.
25 Bernstein & Co. (“Bernstein”) published a report on their meetings with Allergan’s
26 senior management, which had informed Bernstein that the companies had “very
27 different business models,” were “[n]ot a good fit,” and that “shareholders w[ould]
28 hesitate to take Valeant paper.” These comments “poisoned the well” for any

1 friendly deal. That same day, BAML analysts published a similar note indicating
2 Allergan would be opposed to a Valeant transaction.

3 95. Expecting Allergan’s opposition, Pearson and other senior managers at
4 Valeant received and reviewed both of these reports when published, understood
5 the not-so-subtle message and cancelled the scheduled meeting with Pyott. Valeant
6 CFO Schiller testified that, although Valeant had discussed the possibility of
7 confidentially approaching Allergan to negotiate a friendly transaction in February
8 2014, that option was not pursued because, “based on all the data points we had,
9 was that Mr. Pyott was – was, again, unlikely to be receptive.”

10 96. Indeed, as Ackman later testified, Pearson cancelled the planned
11 meeting with Pyott on February 14, 2014 specifically because “Pyott very
12 assertively made clear [through the Bernstein and BAML analyst reports] that he
13 had no interest in a transaction publicly.” Ackman explained that he was in favor
14 of Pearson canceling the meeting with Pyott because he feared that if the meeting
15 took place, there was a higher risk of a “leak” to the market of Valeant’s interest in
16 Allergan. Ackman’s ability to front-run Valeant’s takeover bid and purchase
17 Allergan shares from unwitting investors depended on the market remaining
18 ignorant of Valeant’s intentions, which only Ackman knew and appreciated.
19 According to Ackman:

20 I thought there was a real risk – the biggest risk when you are going to
21 be building a stake in a company is that leaks, and that the stock price
22 goes up and your opportunity to acquire shares becomes much more
23 difficult.

24 97. Allergan’s known enmity towards a transaction with Valeant was also
25 clearly set forth in Valeant’s own internal documents, which confirm that
26 Defendants always knew hostile tactics – including a tender offer – would be
27 necessary. For example, an internal Valeant document dated February 16, 2014
28 reflects that Valeant expected Allergan to adopt a shareholder rights plan or “poison

1 pill” – a mechanism used by boards to defend against hostile takeovers – when
2 Valeant approached Allergan with an offer.⁵ To remove the “pill,” Valeant would
3 need to replace a majority of Allergan’s directors with new directors beholden to
4 Valeant who could remove the pill to allow a tender or exchange offer to close.
5 Under Allergan’s bylaws, however, a special meeting to replace incumbent
6 directors can only be called by holders of 25% of the outstanding common stock.
7 Thus, Defendants knew that Pershing’s nearly 10% stake would go a long way to
8 capturing enough votes to hold a special meeting.

9 98. In fact, Defendants have uniformly admitted that Valeant enlisted
10 Pershing – and provided it with the opportunity to front-run Valeant’s bid and make
11 billions in largely risk-free profits based on inside information – so it could use its
12 toehold as a jumping off point to call a special meeting to remove the expected
13 poison pill and thus allow the tender offer to close. Valeant knew that obtaining the
14 near 10% toehold stake would be critical to calling a special meeting and electing
15 directors that would support Valeant’s takeover plan.

16 99. As Pearson later explained: “Getting to 10 percent was – or close to
17 10 percent without triggering any pill was important because *in the end, we knew it*
18 *would come down to, you know, voting the board off or not.*” Valeant also knew
19 that Ackman had expertise in waging the kind of hostile proxy contest that would
20 be required to replace the Allergan Board – and would willingly support Valeant’s
21 bid because doing so would only increase Ackman’s insider-trading profits.
22 Similarly, Valeant’s CFO Schiller testified that “one factor” Valeant and Pershing
23 discussed in their plans for Allergan in February 2014 was “Ackman’s ability to

24
25 ⁵ Specifically, a poison pill is designed to dilute the ownership stake (and thereby
26 its voting power) of a hostile potential acquirer (*i.e.*, Valeant) once the acquirer
27 crosses a certain percentage ownership threshold, often by issuing *pro rata* shares
28 to the other stockholders or giving them the option to buy shares at below market
prices. *See, e.g., Selectica, Inc. v. Versata Enters., Inc.*, 2010 WL 703062, at *12
(Del. Ch. Feb. 26, 2010).

1 purchase 10% of Allergan stock, which would go a long way toward the 25%
2 needed to call a special meeting.”

3 100. Ackman also admitted that, in February 2014, the parties expected that
4 they would need to call a special meeting to elect directors who would remove the
5 poison pill that would otherwise block completion of the anticipated tender offer:
6 “We were going to call a special meeting. The plan was to call a special meeting
7 and replace the Board.”

8 101. Pershing’s “special advisor” Doyle testified that the very fact that
9 Pershing had been recruited by Valeant meant that the parties recognized that the
10 transaction would be hostile, as there would be no need for Pershing’s expertise if
11 Valeant did not expect opposition. As Doyle explained, “The very fact that
12 [Valeant was] contemplating working with us, with Pershing Square, means that the
13 probability – again, *if they were going to negotiate a board to board merger that*
14 *was solicited or quietly negotiated, they – there wouldn’t be any need for*
15 *Pershing to be in the mix.*”

16 102. Defendants also knew from the beginning that their proxy contest
17 would go hand-in-hand with a tender offer because taking over a company simply
18 through a proxy contest is virtually impossible without the commitment and
19 credibility of having a firm and financially attractive offer on the table. Proxy
20 contests for control, without an accompanying tender offer, are seldom successful.
21 Indeed, nearly every contested takeover attempt during the past 10 years has
22 involved a tender offer.

23 4. Valeant Formulates Its Takeover Plans and Its Internal
24 Documents Confirm that Valeant Contemplated a “Hostile”
25 Tender Offer

26 103. In addition to the evidence and admissions described above, and the
27 fact that launching a tender offer would be the most logical means of pursuing a
28 deal, Valeant’s own internal communications confirm that, from the very

1 beginning, Defendants knew that the transaction likely would proceed as a hostile
2 tender offer.

3 104. For example, Valeant Board meeting materials prepared the week of
4 February 14, 2014 specifically noted that the transaction would likely proceed as a
5 “[h]ostile cash and stock merger.” Likewise, on February 15, 2014, Andrew Davis,
6 Vice President of Business Development at Valeant, emailed Pearson with an
7 attachment of a document stating that the “Allergan Opportunity” would be realized
8 by pursuing a “[h]ostile cash and stock merger.”

9 105. Similarly, a February 16, 2014 Valeant presentation titled “Plan of
10 Action” showed that Valeant expected Allergan to resist Valeant’s plan to “make an
11 unsolicited cash and stock offer,” but given the “Pershing stake,” the “expectation
12 [was] that we would have support to call special meeting.”

13 106. On February 16, 2014, the Valeant Board held a telephonic meeting to
14 further discuss its plan to describe Pershing Square as a “co-bidder entity,” thus
15 clearly contemplating a tender offer, as the term “bidder” logically implies a direct
16 offer to shareholders. Similarly, on February 18, 2014, Olser, Valeant’s Canadian
17 counsel, emailed Pershing’s counsel a document providing “Background Facts for
18 Proposed Acquisition Plan” that stated that “[i]f the transaction proceeds by way of
19 tender offer,” Pershing would be identified as a “co-bidder.”

20 107. Thus, Valeant’s own documents clearly demonstrate that it understood
21 that: (i) any transaction would have to be hostile; (ii) the steps it had taken that
22 month would likely lead to a tender offer; and (iii) it (and Pershing) were violating
23 insider-trading laws but sought to characterize Pershing as a “co-bidder” in order to
24 try to later convince regulators, and the court, of that fiction.

25 108. On February 19, 2014, Morfit, members of Valeant’s senior
26 management and its audit and risk committee discussed the structure of the
27 contemplated Allergan acquisition with their lawyers from Sullivan & Cromwell
28 and Olser, and formally decided to move forward. The next day, February 20,

1 Valeant and Pershing amended the February 9, 2014 Confidentiality Agreement.
2 Over the next five days, between February 20, 2014 and February 25, 2014,
3 Valeant, Pershing and their respective counsel negotiated the letter agreement and
4 the terms pursuant to which Ackman would acquire the nearly 10% toehold in
5 Allergan common stock.

6 109. As Valeant's and Pershing's lawyers exchanged drafts, Valeant's
7 Board continued to finalize the company's acquisition plans. On February 21,
8 2014, Valeant's Board met in Toronto to discuss the Allergan transaction, and also
9 met with Ackman and Doyle, who attended a portion of the meeting and discussed
10 Pershing's role in the transaction.

11 110. Defendants' discussions and negotiations ultimately resulted in the
12 February 25, 2014 Relationship Agreement, which provided the formal "structure"
13 that governed and facilitated Valeant's and Pershing's insider-trading scheme. The
14 very drafting and negotiation of that document was itself a substantial step toward
15 the tender offer. Moreover, drafts of the Relationship Agreement circulated
16 between Defendants' counsel demonstrate that the parties were clearly anticipating
17 a tender offer. Specifically, numerous drafts of the Relationship Agreement
18 expressly identified a "tender offer" as the form of the transaction that the parties
19 contemplated, and described the role of the parties in the event the acquisition
20 proceeded as a tender offer. For example:

21 (a) on February 17, 2014, Defendants' counsel circulated an email
22 attaching a draft of the Relationship Agreement, stating that "If
23 the transaction proceeds by way of *tender offer*, [Pershing] will
24 be identified as a co-bidder and, if by way of merger, [Pershing]
25 will be identified as soliciting person;"

26 (b) on February 18, 2014, Valeant's counsel emailed Pershing's
27 counsel a draft that similarly stated that if the "transaction
28

1 proceeds *by way of tender offer*, [Pershing] will be identified as
2 a co-bidder;”

3 (c) on February 20, 2014, Ackman sent Pearson a draft of the
4 Relationship Agreement that Ackman described as his attempt
5 “to put something together that attempted to contemplate issues
6 that would be important to you.” One such “important” issue
7 was that if “a Company Transaction is being pursued by
8 [Valeant] *through a tender offer* . . . [Pershing] and the Co-
9 Bidder Entity will be identified as co-bidders;”

10 (d) a February 23, 2014 draft of the Relationship Agreement
11 circulated among Ackman and Valeant general counsel Robert
12 Chai-Onn likewise states that if “a Company Transaction is
13 being pursued by [Valeant] *through a tender offer* . . . each of
14 the Company, [Pershing] and the Co-Bidder Entity will be
15 identified as co-bidders;” and

16 (e) a February 24, 2015 draft of the Relationship Agreement noted
17 that the “consent of both [Pershing] and the [Valeant] shall be
18 required for either party to launch *a tender offer or an*
19 *exchange offer*” and if the “Transaction is being pursued by
20 [Valeant] *through a tender offer* . . . each of [Valeant], [Pershing]
21 and the Co-Bidder Entity will be identified as co-bidders or
22 soliciting persons, respectively.”

23 111. Thus, drafts of the very document establishing the mechanism through
24 which Ackman would acquire Allergan shares, on their face, evidence that Valeant
25 was contemplating a hostile tender offer all along. In fact, it was only very late in
26 the drafting process, on February 24, that Defendants inserted a self-serving and
27 misleading disclaimer into the Relationship Agreement stating that the parties
28

1 “acknowledge that no steps have been taken towards a tender or exchange offer for
2 securities of Allergan.”

3 112. The fact that this language was inserted at the last minute – and that
4 prior drafts which explicitly cite to a “tender offer” as the contemplated form of the
5 transaction and the specific roles that each party would play if the transaction
6 proceeded as a tender offer – establish that substantial steps had been taken by the
7 time the parties signed the February 25 Relationship Agreement. As reflected in a
8 February 16, 2014 email among Valeant General Counsel Robert Chai-Onn and
9 Valeant’s counsel, Defendants’ attempt to affix the “co-bidder” label to their
10 relationship appears to have been motivated by their lawyers’ concern that
11 regulators might be “offended by a party other than a bidder benefitting from a
12 toehold.”

13 113. Regardless of the “co-bidder” misnomer, and consistent with the
14 parties’ actual roles in the transaction, the Relationship Agreement made clear that
15 Valeant was the “offering person” and PS Fund 1, at Pershing Square’s direction,
16 was an “other person” that was prohibited from trading under Rule 14e-3. As set
17 forth more fully below, under the Relationship Agreement, Valeant retained
18 unilateral control over the terms, timing and conditions of the offer – including the
19 unilateral discretion to terminate the bid altogether or whether it would even be
20 made in the first place. Specifically, under the Relationship Agreement, Valeant
21 was able to terminate the contract upon notice to Pershing that “it is not interested
22 in consummating” a transaction with Allergan – a right it later exercised.

23 114. Pershing, by contrast, had the sole authority over the management of
24 PS Fund 1, including the manner in which Pershing would acquire PS Fund 1’s
25 Allergan stake. Moreover, Pershing retained the authority to act on behalf of its
26 own self-interest, as the Relationship Agreement specifically provided that it would
27 terminate if a “Third Party Transaction Proposal” – a public proposal for Allergan
28 by a bidder other than Valeant – was made and Valeant failed to match or exceed

1 that proposal within 45 days. In fact, if Valeant was outbid, Pershing's only
2 obligation was to kick back 15% of its insider trading profits to Valeant.

3 **B. Front-Running Valeant's Tender Offer, Ackman**

4 **Secretly Acquires Billions of Dollars In Allergan Stock**

5 115. The very same day Valeant and Allergan signed the February 25, 2014
6 Relationship Agreement, Ackman initiated his covert campaign to acquire nearly
7 10% of Allergan's stock from unwitting Allergan investors while in possession of
8 material non-public information regarding Valeant's anticipated hostile tender
9 offer. Pershing's secret accumulation through its PS Fund 1 entity was carefully
10 designed to conceal Pershing's identity and avoid triggering regulatory disclosure
11 requirements that would alert investors to Valeant's takeover plans.

12 116. Pershing began acquiring its stake in Allergan at a time when it
13 indisputably had material nonpublic information relating to Valeant's forthcoming
14 tender offer, in violation of Rule 14e-3's insider trading prohibition. Rule 14e-3
15 provides that, whenever any person who has taken "a substantial step or steps" (the
16 "offering person") to commence a tender offer of a target company, any "other
17 person" who is in possession of material nonpublic information relating to that
18 tender offer is prohibited from purchasing or selling any securities of the target
19 company, unless the information is publicly disclosed within a reasonable time
20 prior to the purchase or sale. The rule applies regardless of whether the trader owes
21 or breaches any duty to respect the confidentiality of the nonpublic information.

22 117. Here, there is no question – and Defendants have admitted as much –
23 that Ackman and Pershing traded while in possession of material, nonpublic
24 information relating to Valeant's bid and contemplated tender offer. Indeed,
25 Ackman and Pearson admitted in an April 24, 2014 *Bloomberg* interview that
26 Ackman possessed material, non-public information concerning Valeant's takeover
27 plans that the rest of the market did not:

28

1 *Bloomberg*: But people who sold you Allergan in the last week could say
2 you knew something that we didn't.

3 Ackman: *And we did. Absolutely.* We partnered with Valeant for the
4 purpose of helping catalyze the combination between the two
5 businesses.

6 118. In fact, Defendants went to extraordinary lengths to keep Valeant's
7 takeover plans hidden from investors, as reflected in numerous internal documents.
8 For example, a document titled "Background Facts for Proposed Acquisition Plan"
9 circulated among Pershing and Valeant's counsel the week of February 17, 2014
10 made clear the acquisition strategy was deliberately designed to avoid triggering
11 regulatory disclosure rules and to enable Pershing to acquire its Allergan stake in
12 secret.

13 119. The plan provided that Valeant and Pershing Square would seek to
14 avoid triggering reporting obligations to the Federal Trade Commission ("FTC") by
15 initially acquiring call options instead of shares.⁶ Under the HSR, a party that

16
17 ⁶ A call option is a contract between a seller and a purchaser, pursuant to which the
18 option purchaser has the right to exercise the option, and thereby purchase the
19 underlying security (in this case, Allergan common stock), by a pre-set expiration
20 date.

21 Conversely, a put option is a contract between a seller and a purchaser under
22 which the option purchaser has the right to exercise the option, and thereby sell the
23 underlying security for an agreed-on price.

24 An equity forward, also a derivative instrument, is a contract between two parties,
25 pursuant to which the forward seller is obligated to sell the underlying equity (in
26 this case, Allergan common stock) at a specified date at an agreed-upon price. As
27 in the cases of a call option seller and put option purchaser discussed above,
28 generally an equity forward seller loses value on its position when the market price
of the underlying security rises.

Although Defendants purchased primarily call options, put options
purchasers and equity forward contract sellers were also adversely affected by the
artificial deflation of Allergan common stock to a similar extent as a call option
seller.

1 acquires more than \$75.9 million of a competitor's *stock* must report certain
2 information to the FTC sufficient to evaluate whether any proposed merger violates
3 federal antitrust laws, and must wait 30 days from that public report before
4 acquiring more stock. As that document reflects, the parties agreed that Valeant
5 would contribute only \$75.9 million to PS Fund 1 once Pershing reached a certain
6 threshold percentage of Allergan shares, precisely because that "would keep
7 [Valeant's] interest below the [HSR] filing threshold." 15 U.S.C. § 18(a); Revised
8 Jurisdictional Thresholds for Section 7A of the Clayton Act, 79 Fed. Reg. 3,814
9 (Jan. 23, 2014). However, purchases of *call options* are exempt from HSR filing
10 requirements because options do not confer voting rights, until exercised. 15
11 U.S.C. § 18(a). Not triggering HSR reporting requirements was critical to
12 Defendants' plan, as this would have required Defendants to provide notice to both
13 the FTC and Allergan itself. In addition to avoiding HSR disclosure, the plan
14 attempted to circumvent the Rule 14e-3 disclose-or-abstain requirement.

15 120. Further, PS Fund 1 was intentionally designed so that it could be
16 characterized as the "ultimate parent entity" for [HSR] purposes, meaning that
17 neither [Valeant] nor any [Pershing] fund with an interest in [PS Fund 1] would be
18 required to obtain HSR clearance for acquisitions of shares by [PS Fund 1]."
19 Defendants specifically sought to avoid HSR disclosure requirements by requiring
20 that five separate Pershing entities "own" the vehicle through which Pershing
21 acquired its near 10% Allergan stake – another means Defendants used to conceal
22 Pershing's insider trading.

23 121. In addition, "[p]rior to the public announcement of the transaction," PS
24 Fund 1's acquisition of Allergan shares was to be conducted "consistent with HSR
25 filing exemptions" so that Pershing would not be required to disclose its position to
26 the market before Valeant announced its hostile bid. Indeed, to further minimize
27 the risk of a leak that Ackman's growing Allergan position (if discovered) was
28 connected to a Valeant bid, neither Pearson, Valeant nor any other Valeant entity or

1 employee became a party to the PS Fund 1, LLC Agreement on February 11, 2014
2 – and did not contribute any actual funds to the entity until April 3, 2014, after
3 Ackman had already obtained a nearly \$2 billion stake.

4 122. Under Pershing’s direction and with Valeant’s approval, on February
5 25 and 26, 2014, PS Fund 1 acquired 597,431 shares of Allergan stock, an amount
6 just short of the \$75.9 million in stock that would have required HSR disclosure by
7 Valeant – which, unlike Pershing, was an Allergan competitor.

8 123. Between March 3 and April 8, 2014, PS Fund 1 bought more than **14**
9 **million options**, stopping just short of a total of 5% of Allergan’s stock to avoid
10 having to disclose its purchase under the Williams Act. The Williams Act requires
11 an investor to disclose its acquisitions and intentions ten days after acquiring 5% of
12 a public company, by filing a Schedule 13D. 17 C.F.R. § 240.13d-1(a). As of
13 April 8, 2014, PS Fund 1’s shares and options together amounted to more than
14 4.9% of Allergan’s stock. Buying options instead of shares allowed Defendants to
15 acquire well over the HSR threshold by its third day of purchasing and still delay
16 FTC notification until after public announcement of the takeover plans on April 21,
17 2014.

18 124. While Pershing deliberately employed options trades to avoid
19 detection of the huge position it was amassing – as HSR only requires disclosure of
20 ownership of stock with voting rights – the options gave PS Fund 1 effective
21 ownership of Allergan stock. PS Fund 1’s options trades had strike prices of less
22 than \$1.35 per share, or roughly 100 times less than the actual price of Allergan
23 stock on the day the transactions were executed. Because these options had
24 extraordinarily low strike prices, PS Fund 1 effectively paid the full value of the
25 shares to acquire them – posting billions of dollars in collateral to Nomura – and
26 paid less than \$1.35 per share to convert the options into shares of Allergan stock.
27 Moreover, unlike a traditional option – which enables a trader to walk away from
28 the trade without incurring the full out-of-pocket cost of, and the potential full loss

1 that would come from, acquiring the shares directly – Pershing was fully exposed to
2 any decline in Allergan’s stock price.

3 125. As Ackman admitted during an April 22, 2014 investor call, “what we
4 do here is we are buying a very deep-in-the-money call option. We are buying
5 options with a strike price of \$1.20. On a stock trading for \$125 there are 1% strike
6 options. They act economically, identically, to shares.”

7 126. Ackman acknowledged the options PS Fund 1 acquired were no
8 different than purchasing the actual underlying Allergan shares, explaining that the
9 only reason that PS Fund 1 did not acquire Allergan shares outright was to avoid
10 detection by the marketplace. As Ackman explained during an April 24, 2014
11 *Bloomberg* interview, PS Fund 1’s options were “the exact same exposure
12 economically as if we owned the stock,” where “every dollar the stock goes up we
13 benefit by one dollar.” Ackman explained that PS Fund 1 acquired options that
14 behaved “just like the common stock” because “we weren’t look[ing] for
15 optionality. We were looking for a way to be exempt from the requirement, be
16 allowed to get economic exposure without having to file first with the FTC, which
17 would give the company notice that we were interested in the stock.” Indeed, as
18 later disclosed in Pershing’s Schedule 13D filing, the cost basis for PS Fund 1’s
19 option contracts were \$3.14 billion – meaning that Pershing expended an amount
20 that was just shy of the actual value of the underlying shares PS Fund 1 acquired.

21 127. As with every other step in the plan, Pershing’s decision to stop just
22 short of the 5% threshold provided a strategic benefit to both Ackman and Valeant
23 (by allowing Valeant alone to control when and how it could announce its Allergan
24 offer so as to create maximum pressure on Allergan’s Board and management).

25 128. Once PS Fund 1 had acquired a stake just shy of the 5% threshold,
26 Pershing halted trading for two days (on April 9 and 10) to let Allergan’s stock
27 price settle back down after having been driven upward through the high volume of
28 Pershing’s trades. Knowing the 10-day clock to file a Schedule 13D would

1 immediately begin to run upon the next significant trade, on April 11, PS Fund 1
2 began what Pershing itself termed its “rapid accumulation program.” Between
3 April 11 and 21, PS Fund 1 bought nearly *14 million more options*, increasing its
4 stake from just under 5% to 9.7% of Allergan’s shares. The reason for the rapid
5 accumulation program was the Williams Act’s 10-day window, allowing an
6 investor to wait ten days after crossing the 5% threshold before disclosing its
7 purchases to the market. 17 C.F.R. § 240.13d-1(a).

8 129. By April 21, 2014, PS Fund 1 had acquired shares representing nearly
9 10% of Allergan’s outstanding common stock through deep in-the-money OTC call
10 options and OTC equity forwards. Like the OTC call options, the equity forward
11 contract PS Fund 1 entered into with Nomura enabled PS Fund 1 to purchase 3.45
12 million Allergan shares, providing the functional equivalent of actual ownership.
13 As Ackman admitted, Nomura acted just like a broker, and in fact acquired the
14 common shares correlating to its contracts requiring the delivery of those shares to
15 Pershing. In other words, every time Pershing bought an option to acquire Allergan
16 stock, Nomura actually acquired those shares so as not to expose itself to losses if
17 the stock price at a later date did not track the contract price with Pershing.

18 130. In fact, when PS Fund 1’s options were actually exercised on May 1,
19 2014 and PS Fund 1 formally “converted” its options into 24.8 million shares of
20 Allergan, the daily trading volume for Allergan common stock on that day was only
21 3.7 million total shares. The fact that the entire NYSE trading volume for Allergan
22 stock on the conversion date was far below the actual amount of stock that PS Fund
23 1 “converted” on May 1, 2014 further corroborates Defendants’ admissions, and
24 demonstrates that Nomura had already covered the options trades during the Class
25 Period, long before Allergan exercised them – confirming that PS Fund 1’s options
26 contracts were, in substance, actual ownership of Allergan shares. Indeed, both
27 Ackman and Pearson repeatedly claimed during the April 22, 2014 investor
28 conference call announcing Valeant’s takeover bid for Allergan that Ackman was

1 “Allergan’s largest shareholder,” even though PS Fund 1’s options had not been
2 exercised and would not be exercised for another 10 days.

3 **C. Pershing Discloses Its 9.7% Stake In Allergan and Defendants**
4 **Launch Their Hostile Takeover**

5 131. After the close of trading on April 21, 2014, the last possible day that
6 PS Fund 1 could file a Schedule 13D and report its interest in Allergan, Pershing
7 shocked investors by disclosing that it had secretly acquired 24,831,107 shares of
8 common-stock-underlying American-style call options and 3,450,000 shares of
9 common-stock-underlying forward purchase contracts, representing 9.7% of
10 Allergan common stock, for a total investment of over \$3.2 billion.

11 132. The next day, on April 22, 2014, Valeant delivered to Allergan a
12 formal, unsolicited proposal offering to acquire Allergan for \$48.30 in cash and .83
13 of Valeant stock per Allergan share – representing a price per share of
14 approximately \$160 per share and a value of over \$46 billion based on Valeant’s
15 then-stock price. In the April 22, 2014 “bear hug” proposal, Pearson described the
16 purported benefits of Valeant’s offer, specifically touting that Pershing, as
17 “Allergan’s largest shareholder,” was “strongly in favor of the combination.”
18 Pearson likewise explained that the Defendants knew the transaction would be
19 hostile “given that Allergan has not been receptive to our overtures for over
20 eighteen months and has made it clear both privately and publicly that it is not
21 interested in a deal” with Valeant.

22 133. In an investor presentation announcing the offer and Pershing’s 10%
23 position, Ackman made clear that Valeant and Pershing expected the transaction to
24 be hostile, and that a tender offer was quite possible, if not imminent. Specifically,
25 when asked about the “commitment to the process of getting the hostile deal
26 effective” and whether there was “an exchange offer to be launched,” Ackman did
27 not deny that such an offer had been planned all along given Allergan’s prior
28 rejections of Valeant’s “friendly” overtures. To the contrary, Ackman explained:

1 So we're committed. We're contractually committed, again, after we
2 did our due diligence and decided we wanted this deal, we are
3 contractually committed to take it unless and until there's a superior
4 offer that Valeant chooses not to respond to. So as long as this deal
5 happens, you know, we're in. You know, the best evidence that we're
6 in is the scale of our commitment as a percentage of our capital and the
7 scale of our commitment on an absolute basis You know, in
8 terms of what we'll do from here, *I think that anyone in the room who*
9 *talks to a good M&A attorney will understand, you read the documents*
10 *on the company, there are opportunities to call special meetings, there*
11 *are opportunities for investors to launch various kinds of offers. You*
12 *should assume that we're familiar with all these various techniques.*

13 134. Ackman's admission that an exchange offer was on the horizon was no
14 accident or off-the-cuff response to an unexpected question. Indeed, Valeant's own
15 press materials that had been prepared in advance of the April 22, 2014
16 announcement similarly demonstrate Valeant was contemplating a tender offer, and
17 that Valeant would pursue a hostile deal in whatever form it might take.
18 Specifically, a draft "Q&A" emailed by Valeant's public relations consultant to
19 Valeant's head of Investor Relations, Laurie Little, on April 17, 2014, asked:

20 Question: *Are you willing to launch a tender offer to get this deal done?*

21 Answer: We would prefer to negotiate with [Allergan] on a friendly
22 basis. However, we are firmly committed to completing this
23 transaction.

24 135. Nobody else from Valeant or Pershing suggested that the transaction
25 would proceed as a "friendly" negotiation during the April 22, 2014 investor
26 presentation. For example, Valeant CFO Schiller explained that although "we're
27 happy to sit down . . . and talk to Allergan," he admitted that he "personally" was
28

1 “not a big fan” of the Company, and neither Pearson nor Ackman disagreed with an
2 investors’ characterization of Valeant’s offer as a “hostile deal.”

3 136. Following the filing of the Schedule 13D disclosing Pershing’s 9.7%
4 stake and Valeant’s hostile takeover plans, Allergan shares shot up nearly 20% —
5 delivering nearly **\$1 billion** in illicit insider trading profits to Ackman in a single
6 day. In fact, from the time Ackman initiated PS Fund 1’s hidden buying spree,
7 Allergan’s stock price went from \$125.54 per share on February 25, 2014, and
8 \$116.63 per share prior to Ackman’s “rapid accumulation program,” to close at
9 \$163.65 per share on April 22, 2014, the day Valeant’s acquisition proposal was
10 announced. While the share price increase on April 22 alone delivered a \$1 billion
11 paper profit to Ackman, the unlawful gains reaped from Defendants’ insider trading
12 only continued to grow as Valeant’s announcement predictably put the target,
13 Allergan, into play, ultimately resulting in an historic bidding war benefitting
14 Pershing, but damaging Class members who sold call options, purchased put
15 options and sold equity forward contracts when Ackman acquired his 10% stake.

16 137. As expected, on April 22, 2014 – the same day Valeant issued its “bear
17 hug” proposal – Allergan’s Board adopted a “poison pill” with a 10% trigger,
18 effectively blocking Pershing and Valeant from acquiring more shares of Allergan’s
19 common stock.⁷

20 138. Once Defendants filed their Schedule 13Ds, Valeant announced its
21 hostile proposal and Allergan adopted the poison pill, Defendants continued to
22 behave as if a tender offer was what Valeant intended all along.

23
24
25 ⁷ Under Allergan’s poison pill, or “Rights Agreement,” stockholders received one
26 preferred share purchase right for each outstanding share of the Company’s stock
27 that they owned, which would be become exercisable once any unapproved person
28 or group – *i.e.*, Pershing and/or Valeant – acquired a beneficial ownership of 10%
or more of Allergan’s common stock.

1 139. Indeed, Valeant knew that its “friendly” offer to “negotiate” its
2 unsolicited proposal was just the first step of building pressure, leading to the
3 inevitable tender offer. M&A professionals recognize, and history makes clear, that
4 unsolicited and public “bear hug” proposals like the one Valeant made on April 22
5 are merely the opening salvo in a hostile bidder’s takeover campaign.

6 140. To further support the impending tender offer, Defendants conducted
7 an aggressive media blitz, including pre-packaged investor presentations trumpeting
8 the “synergies” of a deal and Allergan’s shortcomings as a stand-alone company, as
9 well as direct outreach to Allergan stockholders, employees and customers. For
10 example, on April 28, 2014, Valeant tried to create a sense of urgency in the market
11 by telling analysts that the likelihood of another bidder emerging was low, that
12 “[t]ime [was] of the essence” and that Allergan should not “take more than about 30
13 days” to evaluate Valeant’s proposal.

14 141. Along similar lines, during Valeant’s May 8, 2014 first quarter 2014
15 earnings call, Valeant’s CFO Schiller, told investors that he had been traveling
16 across the country to meet with Allergan’s top stockholders and claimed that “[s]o
17 far, all of the feedback has been overwhelmingly positive.” Irrespective of whether
18 this claim was true, the intent was clearly to garner Allergan stockholders’ support
19 for the imminent tender offer. In fact, during that same earnings call, Schiller
20 confirmed that more aggressive measures were forthcoming, explaining that
21 Valeant and Pershing would request a stockholder list from Allergan in order to
22 “commence a shareholder referendum that will determine that the Allergan
23 shareholders are supportive of Allergan’s Board engaging in negotiations with us.”
24 Schiller also made clear that Valeant and Pershing were willing to bypass the
25 Allergan Board entirely, stating that “if necessary, we will also pursue holding a
26 special meeting to remove some or all of the Allergan board members.”

27 142. Throughout April and May 2014, Valeant also communicated directly
28 with Allergan’s customers and employees – another tactic employed to facilitate the

1 tender offer. Among other things, Valeant: (i) represented to Allergan’s customers
2 that Valeant’s takeover was a “done deal” and Valeant “own[ed]” Allergan; (ii)
3 offered rebates on Allergan products; (iii) contacted Allergan sales representatives
4 to “welcome” them to Valeant; (iv) had Valeant sales representatives contact
5 Allergan customers and announce that they were taking over for Allergan’s sales
6 representatives; (v) told Allergan customers that certain product lines would be
7 divested; and (vi) wrote to Valeant customers to outline plans for the joint company
8 going forward.

9 143. These were the same tactics Valeant employed just three years earlier
10 in its unsuccessful takeover of Cephalon, Inc. (“Cephalon”), another
11 biopharmaceutical company, in which Valeant threatened to launch a tender offer
12 after Cephalon’s board had invoked a poison pill. In Valeant’s pursuit of Cephalon,
13 Valeant used the same hostile playbook and was represented by the same lawyers
14 that served as counsel in its takeover of Allergan. After Valeant’s offer was
15 rejected by Cephalon’s board, Valeant sought to appeal “directly to shareholders”
16 by electing a new slate of directors who would “remove [the] Poison Pill and other
17 impediments to a possible tender offer” – which, like here, would enable Valeant to
18 “commence [a] Tender Offer” when “negotiations” failed.

19 **D. Valeant Alone was the Bidder, While Pershing was Only a Seller**
20 **and “Other Person” Under Rule 14e-3**

21 144. The legal effect of Defendants’ economic bargain was clear: Valeant
22 was the sole “offering person” seeking to acquire Allergan, and Ackman and
23 Pershing were “other persons” who were prohibited from trading on material
24 nonpublic knowledge of Valeant’s tender offer plans. The parties’ arrangement
25 here is virtually identical in substance to the forbidden practice of “warehousing” –
26 i.e., the “practice by which bidders leak advance information of a tender offer to
27 allies and encourage them to purchase the target company’s stock before the bid is
28

1 [publicly] announced” – that was squarely targeted by the SEC in its adoption of
2 Rule 14e-3. *See United States v. O’Hagan*, 521 U.S. 642, 672 n.17 (1997).

3 145. Here, Valeant was the only person publicly offering to buy Allergan
4 shares, the *only* person seeking to acquire or control Allergan, and would be the
5 *only* party that would maintain that control if the offer had been successful.

6 146. Pershing, by contrast, was expressly denied any sort of control or
7 management over Allergan by Valeant and expressly had no control over the terms
8 under which Valeant offered to buy Allergan’s shares. Rather, Pershing acted in a
9 classic “warehousing” role – a large, friendly institutional investor that is provided
10 a “tip” of an upcoming tender offer and acquires options to purchase shares of the
11 target company from its unsuspecting shareholders (cheaply and without having to
12 pay a control premium) in exchange for the agreement to support the bid proposed
13 by the “offering person” once the tender offer is announced. Pershing enjoyed
14 inside trading profits at the expense of the Class members herein, and Valeant
15 enjoyed a near 10% “head-start” in acquiring Allergan, but without the burden of a
16 significant out-of-pocket cost.

17 147. Pershing contractually agreed to provide Valeant voting support, and
18 had no say whatsoever regarding the terms of the tender offer – including the form,
19 timing or amount of consideration, or whether it would even occur at all. While the
20 Relationship Agreement required Valeant to consider “in good faith” Pershing’s
21 “comments” on any proposed terms of the offer or the manner in which it was
22 carried out, Valeant, as the sole “offeror,” retained final and complete discretion on
23 whether to make a bid and to set its terms.

24 148. In fact, Pearson highlighted during the April 24, 2014 *Bloomberg*
25 interview that Ackman had no control over the terms of the offer, but rather acted
26 solely as a “warehouse” and a cheap way for Valeant to obtain a friendly toehold.
27 Specifically, in response to a *Bloomberg* reporter who pointedly asked about
28 Ackman purchasing Allergan shares “at a price much lower than where Allergan

1 stock is today,” Pearson explained that Valeant needed Pershing to acquire the
2 toehold because Valeant “did not have \$4 billion sitting at the bank.” Moreover,
3 Pearson said, Valeant retained complete control over the bid and whether it would
4 even occur, explaining that even after Ackman had acquired a near 10% stake,
5 Valeant “could have chosen not to” go through with the bid and, in any event, “the
6 price we would have set for – paid for Allergan is the same with or without Bill.”
7 Pearson explained that while it could have paid an investment bank like Goldman
8 Sachs to help it run a tender offer and proxy contest for Allergan instead of
9 “partnering” with Ackman, the problem was that “[w]e would have to pay for it.”
10 Of course, Valeant could not have compensated a bank with a tip regarding its plans
11 and an opportunity to make trading profits based on that inside information, and the
12 economic reality of what Pershing did here is no different, and similarly prohibited.

13 149. Consistent with Pershing’s role as a separate and distinct “other
14 person” prohibited from trading on its inside knowledge of Valeant’s tender offer
15 plans, Pershing retained unilateral control over the PS Fund 1 purchasing entity and
16 how the nearly 10% toehold in Allergan stock was acquired. Under the
17 Relationship Agreement, Pershing was to “direct the management” of PS Fund 1.
18 In fact, Valeant was not even a party to PS Fund 1 until April 3, 2014, and did not
19 contribute any capital to PS Fund 1 until April 10, 2014. By that time, PS Fund 1
20 had already acquired 11 million Allergan shares worth over \$1.2 billion.

21 150. Further, and as eventually happened, Pershing retained the right to
22 accept a higher bid for its shares by another offeror – with the parties’ agreement
23 specifically permitting Pershing to act on behalf of its own independent interests
24 (even if they conflicted with Valeant’s). In fact, the parties’ agreement dissolved –
25 with 15% of PS Fund 1’s profits distributed to Valeant and the rest to Pershing – if
26 a competing bidder other than Valeant came along with a public proposal to acquire
27 Allergan, and Valeant did not match or exceed the competing proposal within 45
28 days. Consistent with Defendants’ understanding that trading on nonpublic

1 information concerning Valeant’s bid would deliver Ackman virtually risk-free
2 profits, the Relationship Agreement provided for the division of “Net Transaction
3 Profits” – but not losses – if there was a successful competing bid. Valeant, by
4 contrast, retained virtually unilateral and complete control over the offer, and would
5 retain complete control of Allergan if the tender offer were successful and the
6 merger closed.

7 151. Indeed, Defendants’ public statements confirm that the parties viewed
8 themselves, in both form and substance, as wholly separate “persons” with distinct
9 roles in Valeant’s takeover bid. For example, Valeant’s April 22, 2014 unsolicited
10 proposal described Pershing as “Allergan’s largest shareholder” and a “co-
11 proponent of the transaction,” but, critically, not a merger counterparty for or
12 acquirer of Allergan. During an investor conference call discussing the proposal
13 that same day, Ackman similarly described Pershing as “the largest shareholder of
14 Allergan,” but not an offering person seeking to acquire any more Allergan shares.

15 152. In fact, during the April 22, 2014 conference call announcing
16 Valeant’s bid, Ackman specified that “I am not the one making the offer,” and
17 confirmed that he had little control over Valeant’s proposal, stating that “we bought
18 a big stake in this Company[, but] had no assurance that [Valeant] would come and
19 make an offer for the business.” Ackman also confirmed that “Valeant was giving
20 [Pershing] inside information on Valeant” before Pershing’s secret purchasing
21 program regarding Valeant’s plans concerning Allergan.

22 153. For his part, Pearson confirmed that, in exchange for Valeant’s
23 disclosure of inside information to Pershing, all Pershing had to do was acquire its
24 own toehold and pledge to vote those shares in favor of Valeant’s tender offer.
25 During the April 22, 2014 analyst call, Pearson explained that Pershing was
26 Allergan’s “largest shareholder with 9.7%” and that Pershing was “*going to*
27 *support the transaction,*” never suggesting that Pershing was anything but a
28 shareholder and willing seller.

1 154. After Valeant publicly announced its bid on April 22, 2014, Valeant
2 and Pershing continued to make repeated public statements confirming that Valeant
3 was the “offering person” that had unilateral control over its own bid, while
4 Pershing was just an ordinary, self-interested Allergan stockholder looking to
5 maximize value. Indeed, during a May 28, 2014 investor conference, Pearson made
6 clear that Pershing had absolutely no influence over Valeant’s bid, telling investors
7 unequivocally that “Pershing Square is – *they have no control of what we do.*”
8 Likewise, during a June 17, 2014 investor call, Valeant did not otherwise have any
9 “voting control over his shares or any economic control” over Pershing’s stake.

10 155. Similarly, Pershing did not describe itself as a potential acquirer of
11 Allergan, and corrected others if they inaccurately suggested it was. For example,
12 in a May 5, 2014 letter from Ackman to Michael Gallagher, Allergan’s Lead
13 Independent Director, Ackman wrote: (i) “As Allergan’s largest shareholder with
14 9.7% of the common stock, we look forward to working with you and the rest of the
15 board to maximize value for all Allergan’s shareholders,” and (ii) “As Allergan’s
16 largest shareholder, we are supportive of Allergan making the best possible deal
17 with Valeant or identifying a superior transaction with another company.” If
18 Pershing were a true co-bidder, it would want its bid to prevail, not to simply see
19 Allergan sold to the highest bidder, whoever that may be.

20 156. Similarly, Ackman’s May 12, 2014 letter to Matthew Maletta,
21 Allergan’s Associate General Counsel and Secretary, which demanded the
22 inspection of Allergan’s books and records under Delaware General Corporation
23 Law Section 220 stated: “The purpose of this demand is to enable the Requesting
24 Stockholder to communicate with fellow stockholders of the Company on matters
25 relating to their mutual interest as stockholders . . . including, without limitation,
26 the solicitation of views regarding Valeant Pharmaceuticals International Inc.’s
27 proposal to acquire the Company.” A true co-bidder would not share a “mutual
28

1 interest” with other Allergan stockholders concerning Valeant’s bid nor solicit their
2 views in the abstract; it would be soliciting affirmative support for the bid.

3 157. On May 19, 2014 Ackman wrote Gallagher again and continued to
4 describe Pershing as just another concerned stockholder, with no interest other than
5 maximizing Allergan share value, regardless of who the bidder was. Ackman wrote
6 that “[b]ased on conversations [Pershing] had with other Allergan shareholders . . .
7 [Pershing] believe[d] that the majority of Allergan shareholders [we]re interested in
8 a potential business combination with Valeant.” Referring to Pershing, Ackman
9 complained that he “f[ou]nd it inappropriate that Allergan’s lead independent
10 director was unwilling to speak to a shareholder without management present,” and
11 claimed that “it is rare that a shareholder is willing to candidly share its views with
12 a Chairman/CEO who will likely lose his job as a result of a proposed transaction.”
13 Ackman also took steps to distance Pershing from Valeant, noting that “Mr. Pyott
14 has also apparently criticized Pershing Square, explain that [its] views should not
15 be considered, as . . . conflicted because of [its] relationship with Valeant. To set
16 the record straight, Pershing Square is Allergan’s largest shareholder with nearly
17 10% of the common stock of the company. *We own no shares of Valeant stock,
18 nor do we have any undisclosed arrangements with Valeant. We are interested
19 only in maximizing the value of our investment in Allergan.*”

20 158. Even after the tender offer was “officially” launched, Pershing
21 continued to position itself publicly as a stockholder looking to maximize its
22 investment in a strategic transaction, not as a transaction counterparty. For
23 example, on July 16, 2014, Ackman wrote to Allergan’s Board that, if the Board’s
24 allegations of Valeant “malfeasance” are true, “then as Allergan’s largest
25 shareholder with a \$5 billion investment we would of course strongly oppose a
26 Valeant transaction.” A true co-bidder, of course, would not “strongly oppose” its
27 own bid; nor could it “bid” for its own shares.

28

1 159. Ackman’s own characterizations are significant: he consistently,
2 correctly identified *Valeant* – not Pershing – as the party proposing a transaction,
3 i.e., the “offering person.” Pershing repeatedly represented that his role was simply
4 an activist stockholder, pressuring Allergan’s Board to either pursue in Valeant’s
5 hostile takeover bid or find a higher bid. By trading while in possession of the
6 material nonpublic information regarding the tender offer and then pursuing hostile
7 measures to pressure Allergan, Pershing ensured that its illegal insider trading
8 profits would continue to grow.

9 **E. As Anticipated, Valeant Launches Its Tender Offer**

10 160. As expected, on May 12, 2014, Allergan’s Board officially rejected
11 Valeant’s April 22 proposal, “unanimously determin[ing] that Valeant’s unsolicited
12 proposal substantially undervalue[d] Allergan.”

13 161. In response, and as Defendants had indicated a week before, Pershing
14 filed a proxy statement for a nonbinding “shareholder referendum” to consolidate
15 investor support for Valeant’s takeover. If passed, the referendum would have
16 directed the Allergan Board to “promptly engage in good faith discussions with
17 Valeant regarding Valeant’s offer to merge with the Company.” Because the
18 referendum was nonbinding, however, it could not in fact cause the Allergan Board
19 to do anything. Rather, it was simply another means to build support for Valeant’s
20 premediated tender offer. Consistent with Pershing’s true role, the referendum
21 proxy statement defined Pershing as the **Requesting Shareholder**, and not the
22 potential acquirer or an “offering person.”

23 162. On May 28, 2014, Valeant increased the pressure by announcing a
24 revised offer of \$58.30 in cash and 0.83 shares of Valeant stock per Allergan share,
25 a total value of approximately \$153.67 per share based on Valeant’s then-stock
26 price. Two days later, on May 30, Valeant made a second revised offer of \$72.00
27 in cash and 0.83 shares of Valeant stock per Allergan share, valued at
28 approximately \$181 per Allergan share (the “Second Revised Proposal”).

1 163. Similar to Valeant’s initial offer, however, Defendants already knew
2 that Allergan’s Board would summarily reject it. Indeed, Allergan immediately
3 confirmed receipt of the Second Revised Proposal and indicated that Allergan
4 would likely not be willing to negotiate with Valeant. From May 29 through June
5 2, Allergan’s stock price increased approximately 10%, from \$156.12 to \$172.25.

6 164. On June 2, 2014 – six weeks after the conclusion of Pershing’s illegal
7 front-running scheme and accumulation of nearly 10% of Allergan’s stock –
8 Valeant abandoned the pretense of negotiations with the Allergan Board and
9 publicly announced what it had privately planned all along: Valeant was “**taking**
10 **steps to launch a tender offer**,” which Valeant “intend[ed] to commence . . . within
11 the next two to three weeks.”

12 165. Valeant and Pershing conducted a joint conference call that morning to
13 describe the purported genesis of the Second Revised Proposal. According to
14 Ackman, he heard from Allergan stockholders that they wanted Valeant to increase
15 the aggregate deal consideration to approximately \$180 per share. Ackman then
16 reportedly took this information to Valeant and negotiated with Valeant to obtain
17 that additional consideration to be paid by Valeant to Pershing and other Allergan
18 stockholders.

19 166. During the June 2 conference call, Pershing disclosed it was
20 abandoning its nonbinding stockholder referendum and instead commencing a
21 proxy solicitation to call a special meeting to remove six of the nine-member
22 Allergan Board (the “Special Meeting”). Ackman acknowledged during the June 2
23 call that the Special Meeting solicitation was not an alternative to the tender offer,
24 but rather a hostile means of achieving it. Specifically, the Special Meeting could
25 result in the removal of Allergan’s poison pill – a condition to the tender offer. But
26 Ackman made sure to note that, even if the Special Meeting were successful, it
27 would result in the **tender offer** being consummated, and not some negotiated deal:
28

1 [T]he simplest mechanism here, if you've got a special meeting that is
2 going to be done sometime in November. [The Pershing-nominated]
3 Board is going to be elected, *and the board could simply [lift the pill]*
4 *and allow the exchange offer to close, and that would . . . really be*
5 *the fastest way this transaction could get done.* So, I just think it's
6 either negotiate now or close this [exchange offer] transaction,
7 hopefully by year-end.⁸

8 167. As Defendants anticipated, on June 10, 2014, Allergan disclosed its
9 Board's unanimous rejection of the Second Revised Proposal, based on its
10 conclusion that Valeant's proposal "substantially undervalue[d] Allergan,
11 created[d] risks and uncertainties for Allergan's stockholders and d[id] not reflect
12 the Company's financial strength, future revenue and earnings growth or industry-
13 leading R&D."

14 168. Accordingly, and as Valeant had telegraphed a week before, on June
15 11, Valeant formed AGMS, a wholly-owned subsidiary, to buy and hold Allergan
16 shares acquired through the tender offer.

17 169. On June 18, 2014, Valeant formally announced the launch of the
18 tender offer with the filing of a Schedule TO with the SEC. In connection with that
19 announcement, Pearson confirmed the inaccuracy of Valeant's self-serving claims
20 that it had not previously taken "substantial steps" towards the tender offer.
21 Specifically, Pearson reflected back on the April announcement, and said that: "On
22 April 22, we announced our offer for Allergan. *We suspected at the time it would*
23 *ultimately have to go directly to Allergan shareholders. We were correct.*"

24
25
26 ⁸ On July 11, 2014, Pershing filed the definitive proxy statement soliciting proxies
27 to call the special stockholders meeting, and filed amended proxy statements on
28 September 24 and November 14, 2014. Pershing withdrew the proxy statement and
abandoned the proxy contest on November 18, 2014.

1 170. The fact that Valeant’s own CEO admitted Valeant’s intention to
2 launch a tender offer from the beginning undermines Defendants’ transparent
3 attempt to dodge securities liability through semantics. Defendants realized that the
4 core premise of their scheme, *i.e.*, trading a profitable takeover tip in exchange for
5 votes in support of that takeover, violated the securities laws.

6 **F. The S-4 and Schedule TO Confirm that Pershing was not an**
7 **“Offering Person” in the Tender Offer**

8 171. On June 18, 2014, Valeant filed a Registration Statement on S-4 and
9 Valeant and AGMS filed a Schedule TO with the SEC, thus formally commencing
10 the tender offer that it had been contemplating for several months. AGMS was
11 consistently defined as the “Purchaser” throughout the S-4 and other relevant SEC
12 filings.

13 172. The S-4 and Schedule TO made clear that it was Valeant – not
14 Pershing – that was making the offer to acquire Allergan shares, and that Pershing
15 had no control or say over the terms of the transaction or the resulting combined
16 company. Among other things, the S-4 outlined Valeant’s “offer to Exchange Each
17 Outstanding Share of Common Stock of Allergan, Inc. for \$72.00 in cash and 0.83
18 Common Shares *of Valeant . . . by AGMS Inc.*, a wholly owned subsidiary of
19 Valeant.” In other words, the tender offer consideration consisted of cash (provided
20 by Valeant) and Valeant stock, and Valeant, though AGMS, was the “purchaser” of
21 Allergan shares.

22 173. Pursuant to the S-4, “*none of Pershing Square, PS Fund 1 or any of*
23 *Pershing Square’s affiliates [were] offering to acquire any shares of Allergan*
24 *common stock in the [tender offer].” No Pershing entity would acquire a single*
25 *Allergan Share in the tender offer, nor provide Allergan stockholders with a single*
26 *dollar or unit of Pershing equity. Indeed, in a crucial section of the S-4 for Allergan*
27 *investors entitled “questions and Answers About the Offer,” Defendants were*
28

1 unequivocal concerning each party's role in the tender offer – that Valeant was the
2 “offering person” in the transaction, and Pershing was not:

3 Q: Who is Offering to Acquire My Shares of Allergan Common Stock?

4 A: *The offer is being made by Valeant through Purchaser, a wholly*
5 *owned subsidiary of Valeant.*

6 Q: What does it mean that Pershing Square and PS Fund 1, a Pershing
7 Square affiliate, are co-bidders?

8 A: [N]one of Pershing Square, PS Fund 1 or any of Pershing Square's
9 affiliates is offering to acquire any shares of Allergan common stock in
10 the offer.

11 174. Valeant's answer to the self-imposed question about the purpose of
12 calling Pershing a “co-bidder” is telling. The label does not mean what it says, as
13 Pershing was not actually a bidder or an acquirer. The only purpose of attaching
14 the label was to manufacture a falsified defense for Defendants' violation of the
15 federal securities laws.

16 175. The S-4 also disclosed that Allergan stockholders would receive a mix
17 of cash (provided by Valeant) and **Valeant** stock in the tender offer and that the
18 purpose of the tender offer was to give Valeant control so it could complete a
19 merger of Allergan into **Valeant**. Specifically, the S-4 explained that the “purpose
20 of the [tender o]ffer [wa]s for **Valeant** to acquire control of, and promptly
21 thereafter, the entire equity interest in Allergan. **Valeant** [then] intend[ed . . . to
22 cause Allergan to merge with Purchaser [i.e., wholly owned AGMS], . . . after
23 which Allergan would be a . . .wholly owned subsidiary of **Valeant**.” In this regard,
24 the S-4 registered the over 240 million Valeant shares that were offered to Allergan
25 stockholders as part of the tender offer consideration.

26 176. The S-4 also made clear that the over 28 million shares that Pershing
27 unlawfully purchased after Valeant tipped it off regarding its impending tender
28 offer in exchange for voting support would *not* remain in Pershing's hands

1 following the closing of the transaction. Instead, Valeant would compensate
2 Pershing in the tender offer for its shares – amounting to the 9.7% stake – in
3 Allergan. To this end, the S-4 registered a pool of Valeant shares that would be
4 used to buy Pershing out of the Allergan stake that it built by front-running the
5 tender offer.

6 177. Given that Pershing’s Allergan shares were being bought out by
7 Valeant in the proposed tender offer, it is not surprising that the S-4 did not disclose
8 any “purpose” for the tender offer that in any way concerned Pershing. In fact,
9 according to the S-4, the only role Pershing played in connection with the tender
10 offer was its prior agreement with Valeant pursuant to which Valeant could cause
11 Pershing to buy \$400 million of *Valeant’s* common stock (at a 15% discount). This
12 agreement to provide Valeant with an additional source of financing for the tender
13 offer was not a “bid” to provide anything to *Allergan* stockholders in connection
14 with either the tender offer or close-out merger.

15 178. Moreover, in the S-4, Valeant imposed a number of conditions on
16 consummating the tender offer, including the tender of, at a minimum, a majority of
17 Allergan’s fully diluted shares, certain regulatory approvals, and the approval of
18 Valeant’s stockholders. Not one of these conditions was imposed by Pershing, and
19 in fact none of the conditions had anything to do with Pershing at all – a fact that
20 underscores the lack of any influence whatsoever by Pershing over the transaction
21 or resulting business combination.

22 179. In fact, Valeant even amended the S-4 on July 23, 2014 to further
23 clarify *Pershing was not an “offering person.”* Under Article 15 of Allergan’s
24 certificate of incorporation, an affirmative vote of at least two-thirds of
25 “disinterested shares” was required for the approval of a transaction between
26 Allergan and any other corporation or its affiliates that individually or in the
27 aggregate directly or indirectly beneficially owned 5% or more of the outstanding
28 voting shares of Allergan. Because it was critical that Valeant avoid the two-thirds

1 voting requirement, Valeant disclaimed any affiliation with Pershing in the
2 amended S-4. Specifically, Valeant asserted that, because Valeant itself owned
3 only 100 shares, and because Valeant was not the “owner” of the shares of Allergan
4 common stock held by PS Fund 1, a merger between Valeant and Allergan would
5 not be a “Business combination” with an “Interested Stockholder” subject to Article
6 15. Thus, Valeant itself acknowledged that Valeant is and always was the offering
7 person, while PS Fund 1 was a separate, unaffiliated entity.

8 180. The Schedule TO was similarly careful to distinguish Valeant from the
9 Pershing entities. The Schedule TO listed Valeant and AGMS as “offerors” and PS
10 Fund 1 as an “*other person*” on the cover page. The Schedule TO also described
11 AGMS – and not any Pershing entity - as the “Purchaser” in “the third-party tender
12 offer.”

13 181. Despite Valeant’s admission that neither Pershing nor PS Fund 1 was
14 acquiring any shares of Allergan in the tender offer, Defendants continued to
15 describe PS Fund 1 “as a person that is considered a co-bidder for *SEC purposes*,”
16 while at the same time stating that “*none* of Pershing Square, PS Fund 1 or any of
17 Pershing Square’s affiliates is offering to acquire any shares of Allergan stock in
18 the offer.” Again, the Allergan stockholders (and Pershing as its largest
19 shareholder) were receiving an offer of Valeant cash and Valeant stock from a
20 singular offeror-*Valeant*-through AGMS, a wholly owned Valeant subsidiary.
21 Pershing was not offering anything to, or purchasing anything from, Allergan’s
22 stockholders, and did not provide any consideration in the tender offer. In fact, as
23 Allergan’s largest shareholder, Pershing itself was being “offered” consideration by
24 Valeant in the tender offer. Accordingly, the amended Schedule TO (and
25 subsequent versions of the Schedule TO) continued to describe the tender offer as a
26 “third-party tender offer by Purchaser,” Valeant, through it AGMS subsidiary.

27
28

1 **G. Defendants Profit from the Illegal Warehousing Scheme when**
2 **Actavis Acquires Allergan for \$7 Billion More than Valeant**
3 **Offered**

4 182. Following Allergan's continued resistance to Valeant's hostile tender
5 offer proposal, on October 27, 2014, Valeant informed investors in a letter to
6 Allergan's Board that it was "prepared to raise its offer to at least \$200 per share,"
7 over 70% higher than the "unaffected" price at which Allergan shares were trading
8 during the Class Period.

9 183. On November 17, 2014, Allergan announced that it had entered a
10 merger agreement with Actavis, subject to certain closing conditions, including a
11 vote by Allergan's stockholders to approve the transaction. The merger agreement
12 provided Allergan's then-current stockholders with consideration amounting to
13 \$219 per share.

14 184. On November 18, 2014, following Allergan's announcement of the
15 Actavis agreement, Pershing announced that it had "discontinue[d] its proxy
16 solicitation." A day later, on November 19, 2014, Valeant filed amendment
17 number 6 to the Schedule TO, withdrawing the tender offer. All parties then agreed
18 to cancel the Special Meeting.

19 185. On November 19 and 20, 2014, consistent with the terms of the
20 Relationship Agreement and Defendants' warehousing scheme, which required
21 Pershing to pay 15% of its profits to Valeant if an acquirer other than Valeant
22 agreed to acquire Allergan, PS Fund 1 sold 2,242,560 shares of Allergan for
23 \$212.80 and \$210.36 per share, respectively. Valeant made almost \$400 million in
24 profits on its \$75 million investment – approximately \$350 million of which was a
25 pure gain resulting from Defendants' unlawful insider trading scheme. Considering
26 that, from 2009 through 2013, Valeant *lost* an average of about \$171 million
27 annually, this windfall derived from Pershing's insider trading had a significant
28 impact on Valeant's bottom line.

1 186. On November 21, 2014, Pershing made certain amendments to its
 2 Schedule 13D to disclose PS Fund 1's November 19 and 20 sales of Allergan stock
 3 and the effective termination of the Relationship Agreement. Defendants attached
 4 an amendment to the Relationship Agreement, which provided that Valeant was no
 5 longer a member of PS Fund 1 after it received its 15% share of Pershing's trading
 6 profits.

7 187. The Actavis/Allergan merger was completed on March 17, 2015. As
 8 of that date, Pershing owned nearly 9% of Allergan's common stock – valued at
 9 over \$6 billion dollars – but quickly cashed in by selling most its shares after the
 10 Actavis transaction closed. All told, Pershing made well over \$2.5 billion in profits
 11 from Defendants' modern-day illegal warehousing scheme.

12 188. Based on Plaintiff's analysis to date, as a result of PS Fund 1's
 13 purchases conducted during the Class Period, Defendants gained profits in Allergan
 14 securities as follows:

Pershing Transactions in Allergan, Inc. Securities And Estimate of Profit Allocation by Transaction				
Transaction Date	Quantity Purchased	Security	Profit Based on Valeant Offer Price of \$200.00	Profit Based on Actavis Offer Price of \$219.00
2/25/2014	174,636	Common Stock	\$ 13,069,758.24	\$ 16,387,842.24
2/26/2014	422,795	Common Stock	\$ 30,513,115.15	\$ 38,546,220.15
3/3/2014	1,239,000	OTC Call Option	\$ 88,030,950.00	\$ 111,571,950.00
3/6/2014	863,000	OTC Call Option	\$ 60,107,950.00	\$ 76,504,950.00
3/11/2014	779,000	OTC Call Option	\$ 54,639,060.00	\$ 69,440,060.00
3/14/2014	1,416,000	OTC Call Option	\$ 98,865,120.00	\$ 125,769,120.00
3/19/2014	1,353,000	OTC Call Option	\$ 91,016,310.00	\$ 116,723,310.00
3/24/2014	2,130,000	OTC Call Option	\$ 149,334,300.00	\$ 189,804,300.00
3/27/2014	2,578,000	OTC Call Option	\$ 193,788,260.00	\$ 242,770,260.00
4/1/2014	1,733,000	OTC Call Option	\$ 130,356,260.00	\$ 163,283,260.00
4/4/2014	1,046,000	OTC Call Option	\$ 76,556,740.00	\$ 96,430,740.00
4/8/2014	1,191,107	OTC Call Option	\$ 91,536,572.95	\$ 114,167,605.95
4/11/2014	2,523,000	OTC Call Option	\$ 197,147,220.00	\$ 245,084,220.00
4/14/2014	2,184,000	OTC Call Option	\$ 164,062,080.00	\$ 205,558,080.00

4/15/2014	1,843,000	OTC Call Option	\$ 134,022,960.00	\$ 169,039,960.00
4/16/2014	2,233,000	OTC Call Option	\$ 152,402,250.00	\$ 194,829,250.00
4/17/2014	1,720,000	OTC Call Option	\$ 111,215,200.00	\$ 143,895,200.00
4/21/2014	3,450,000	OTC Equity Forward	\$ 205,723,500.00	\$ 271,273,500.00

	Security	Profit Based on Valeant Offer Price of \$200.00	Profit Based on Actavis Offer Price of \$219.00
Total	Common Stock	\$ 43,582,873.39	\$ 54,934,062.39
Total	OTC Call Option	\$ 1,793,081,232.95	\$ 2,264,872,265.95
Total	OTC Equity Forward	\$ 205,723,500.00	\$ 271,273,500.00
	Grand Total	\$ 2,042,387,606.34	\$ 2,591,079,828.34

H. Related Litigation

1. Allergan Sues Defendants and the Court Finds that Defendants' Alleged Misconduct Raises "Serious Questions" and Likely Violates the Federal Securities Laws

189. On August 1, 2014, Allergan and Allergan employee Karah H. Parschauer filed an action against some of the Defendants seeking to prevent them from enjoying the fruits of their securities violations in connection with Pershing's proposed scheduled Special Meeting and proxy contest. The case, captioned *Allergan, Inc. v. Valeant Pharmaceuticals International, Inc.*, Case No. CV-14-1214-DOC (C.D. Cal.) ("*Allergan v. Valeant*") alleged all of the Defendants in that action violated Section 14(e) of the Exchange Act and Rule 14e-3 promulgated thereunder, and that the Pershing Defendants violated Section 13(d) of the Exchange Act and Schedule 13D promulgated thereunder. Plaintiff Parschauer further alleged the Pershing Defendants violated Section 20A of the Exchange Act. Following limited expedited discovery, on October 7, 2104, Allergan and Parschauer filed their motion seeking a preliminary injunction that would enjoin Pershing from: (i) exercising beneficial rights of ownership in the shares PS Fund 1 acquired while in possession of nonpublic material information regarding Valeant's

1 anticipated tender offer; and (ii) voting proxies it solicited for the Special Meeting
2 on the basis of misleading disclosures regarding the overlapping Defendants'
3 securities violations, unless or until those misstatements were corrected.

4 190. In its November 4, 2014 Order, the Court found that Allergan and
5 Parschauer had raised “at least” and “at minimum” “serious questions” regarding:
6 (i) whether Valeant had taken substantial steps towards the tender offer prior to PS
7 Fund 1’s purchases; and (ii) whether Pershing was an “other person” as described in
8 Rule 14-e3 and, therefore, was required to abstain from trading or disclose the
9 nonpublic information it possessed relating to Valeant’s tender offer. Thus, the
10 Court found that the plaintiffs “raised serious questions going to the merits of their
11 Rule 14-e3 claim.”

12 191. The Court ultimately declined to enjoin Pershing from exercising
13 beneficial ownership rights over the 9.7% of Allergan shares it owned, in part
14 because Parschauer, as a contemporaneous seller of shares to Pershing “ha[d] a
15 private right of action under Rule 14e-3” that “c[ould] be remedied through
16 damages.”

17 192. The Court also ruled that the overlapping Defendants’ proxy
18 disclosures contained false or misleading statements or omitted to state material
19 facts, including because they failed to disclose the machinations in the Relationship
20 Agreement designed to end-run Rule 14e-3 and that the overlapping Defendants’
21 faced meaningful liability for insider trading. The Court accordingly ordered such
22 Defendants to make corrective disclosures that highlighted the appreciable risks of
23 liability Defendants assumed based on their course of conduct.

24 193. On November 14, 2014, the Court ordered those Defendants to file
25 disclosures with the SEC stating that Defendants faced significant “risks and
26 exposures” “[s]hould Valeant and Pershing Square ultimately be found to have
27 violated Section 14(e) and Rule 14e-3,” including “private stockholder class
28

1 actions, which could result in significant damages awards or disgorgement of
2 profits.”

3 2. Allergan Investors Sue Defendants and the Court Certifies a
4 Class of Common Stock Sellers

5 194. On the heels of the Court’s November 4, 2014 Order in the *Allergan v.*
6 *Valeant* action, certain Allergan investors brought suit on December 16, 2014,
7 alleging certain Defendants violated Section 14(e) of the Exchange Act, Rule 14e-3
8 promulgated thereunder, and Section 20A of the Exchange Act, in addition to
9 alleging that Pershing Square, PS Management, Ackman and Pearson violated
10 Section 20(a) of the Exchange Act based on a control person theory of liability (the
11 Common Stock Class Action).⁹

12 195. On November 9, 2015, the Court denied the Defendants’ motion to
13 dismiss in its entirety, finding that the plaintiffs adequately alleged claims under
14 Rule 14e-3 and Section 20A against Defendants William Ackman, PS Fund 1,
15 Pershing Square Capital Management, L.P. and PS Management GP, LLC.

16 196. Notably, the Court found that Valeant had taken “substantial steps” to
17 commence a tender offer before PS Fund 1 began purchasing Allergan securities,
18 triggering Rule 14e-3’s “disclose or abstain” requirement. Quoting their prior
19 ruling in *Allergan v. Valeant*, the Court noted:

20 Before February 25, Valeant’s board of directors met multiple times
21 and discussed a potential combination with Allergan. Board meeting
22

23 ⁹ The Defendants originally named in the Common Stock Class Action were:
24 Valeant Pharmaceuticals International, Inc., Valeant Pharmaceuticals International,
25 AGMS, Inc., Pershing Square Capital Management, L.P., PS Fund 1, LLC, William
26 A. Ackman and Does 1-10.

27 On April 21, 2016, plaintiffs in the Common Stock Class Action filed their
28 Second Amended Complaint which added five new Pershing Defendants: Pershing
Square, L.P., Pershing Square II, L.P., Pershing Square International Ltd., Pershing
Square Holdings, Ltd. and Pershing Square GP, LLC.

1 materials reflect that Valeant knew there was a high likelihood that a
2 transaction with Allergan would involve a “[h]ostile cash and stock
3 merger.” Valeant hired three law firms and reached out to bankers to
4 begin doing due diligence and lining up financing for the potential
5 Allergan transaction. Valeant representatives met with Mr. Ackman
6 and others from Pershing Square, who were known for their
7 experience in handling unsolicited bids, and signed a confidentiality
8 agreement with Pershing Square in order for Valeant to reveal the
9 name of its proposed target to Pershing Square.

10 Valeant and Pershing Square also negotiated and ultimately agreed on
11 a plan pursuant to which Pershing Square would purchase Allergan
12 stock, would commit to voting in favor of any bid for Allergan stock
13 by Valeant, and would accept shares for cash if the Allergan-Valeant
14 transaction was consummated in a way that gave Allergan
15 shareholders the option to choose stock or cash. Feb 25 Relationship
16 Agreement §2(b). The February 25 Relationship Agreement
17 specifically provided that Valeant and Pershing Square would form a
18 “Co-Bidder Entity” and would be named as “co-bidders” if a tender
19 offer was launched for Allergan’s shares. *Id.* § 1(a), 1(d).

20 ECF No. 102 at 18-19. Moreover, the Court held that the plaintiffs had adequately
21 alleged that Pershing Square was not properly considered an “Offering Person” or
22 “co-offering person” exempt from Rule 14e-3’s disclose-or abstain requirement.
23 *Id.* at 21.

24 197. The Court then found that the plaintiffs adequately alleged the scienter
25 requirements under § 14(e) and Rule 14e-3:

26 Plaintiffs repeatedly allege that Defendants received material
27 nonpublic information from Valeant concerning Allergan [and]
28 Plaintiffs have also alleged that Defendants acted with the requisite

1 knowledge to deceive. Specifically, Plaintiffs alleged that Defendants,
2 inter alia, purposefully used Nomura to avoid detection, intentionally
3 designed PS Fund 1 to avoid disclosure requirements, and ‘went to
4 extraordinary lengths to keep Valeant’s takeover plans hidden from
5 investors.’ Viewed holistically, these detailed allegations are more
6 than sufficient to raise a ‘strong inference of scienter.’

7 ECF No. 102 at 20-22. Finally, the Court sustained the plaintiffs’ Section 20(a)
8 control person claims because “the viability of Plaintiffs’ § 20(a) claims depend on
9 the underlying §14(e)/Rule 14e-3 claims,” which the plaintiffs had adequately
10 alleged.

11 198. On March 15, 2017, the Court issued an Order certifying the Common
12 Stock Class. That Order contained the following Class definition:

13 All persons who sold Allergan common stock contemporaneously with
14 purchases of Allergan common stock made or caused by Defendants
15 during the period February 25, 2014 through April 21, 2014, inclusive
16 and were damaged thereby.

17 199. In certifying the Common Stock Class, the Court also denied
18 Defendants’ separate Motion to Dismiss for failure to join necessary parties under
19 Federal Rule of Civil Procedure 19(a)(1)(B)(i). In the Class Certification Order, the
20 Court stated: “Plaintiffs have conceded that recovery by anyone against the
21 Defendants is capped at the Defendants’ gains—meaning that if Plaintiffs here
22 succeed in recovering all of Defendants’ gains, there will be nothing left for other
23 parties who were also harmed by the Defendants’ actions.” The Court further noted
24 that “Plaintiffs have also shown that other courts have certified 20A classes that
25 exclude options traders.” In this regard, the Court found: “Plaintiffs at oral
26 argument made the point that derivative sellers can also be given notice the same
27 time the Class members are given notice of this lawsuit meaning they will have
28 notice and opportunity to intervene or bring their own claims before the case is

1 resolves. This procedure is proper, because not every party need be joined under
2 Rule 19 before a class action can properly be certified.”

3 200. On April 28, 2017, the plaintiffs in the Common Stock Class Action
4 filed a motion seeking approval of Notice and Summary Notice of Pendency of
5 Class Action.

6 201. On June 5, 2017, the Court issued an Order denying Plaintiffs’ Motion
7 for Order of Approval of Notice, recognizing that “[t]he derivatives traders’
8 potential interests seem more analogous to those of dropped class members, who
9 may have valid claims, but whose claims will not be pursued through this
10 litigation.” The Court further noted that “the derivatives traders may have a
11 stronger interest than absent class members, as their hypothetical claims may be
12 essentially precluded if Plaintiffs prevail here.” In this regard, the Court also held
13 that if the plaintiffs “recover all of Defendants’ gains or losses avoided that there
14 will be nothing left for others to recover who were allegedly harmed by Defendants
15 conduct.”

16 202. On June 12, 2017, the plaintiffs in the Common Stock Class Action
17 filed a motion seeking the Court’s approval of a modified Notice and Summary
18 Notice of Pendency of Class Action. On June 14, 2017, the Court issued an Order
19 approving Plaintiffs’ modified Notice and Summary Notice, finding that the notices
20 “satisfactorily incorporate reference to the likelihood of a damages cap” pursuant to
21 the Court’s June 5, 2017 Order.

22 **V. APPLICABILITY OF THE *AFFILIATED UTE* PRESUMPTION OF**
23 **RELIANCE**

24 203. Plaintiff and other members of the putative Class are entitled to the
25 *Affiliated Ute* presumption of reliance due to Defendants’ failure to disclose
26 nonpublic material information relating to a tender offer for Allergan in violation of
27 federal securities laws. Defendants had a duty to disclose that information and its
28 source within a reasonable time prior to PS Fund 1’s transactions in Allergan

1 securities, but made no such disclosure. Had Plaintiff and other Class members
 2 known of the material undisclosed information, they could have avoided selling and
 3 buying Allergan derivative securities at the unfair prices they did, or at all, during
 4 the Class Period.

5 **VI. CONTEMPORANEOUS TRADING**

6 204. During the Class Period, Plaintiff relied on the integrity of the market
 7 for Allergan securities which was presumed to be determined by ordinary supply
 8 and demand and free from manipulation, distortion and insider trading on the basis
 9 of material, nonpublic information. The Williams Act required Pershing to disclose
 10 all material public information pertaining to Valeant’s anticipated tender offer or to
 11 abstain from trading under the federal securities laws. During the Class Period, PS
 12 Fund 1 entered into eighteen separate purchase transactions while in possession of
 13 material nonpublic information relating to Valeant’s plans to launch a hostile
 14 takeover and tender offer for Allergan, in violation of the federal securities laws.
 15 PS Fund 1’s purchases, along with a summary of Plaintiff’s relevant transactions on
 16 the exact dates of those purchases, is set forth below:

PS FUND 1 PURCHASES			PURCHASES/ SALES	
DATE	SECURITY	QUANTITY	SECURITY/ TYPE	QUANTITY
2/25/2014	Common Stock	174,636	Call Option/ Sales	20
			Put Option/ Purchases	67
2/26/2014	Common Stock	422,795	Call Option/ Sales	269
			Put Option/ Purchases	19
3/3/2014	OTC Call Option	1,239,000	Call Option/ Sales	30
			Put Option/ Purchases	73
3/6/2014	OTC Call Option	863,000	Call Option/ Sales	22
			Put Option/ Purchases	35
3/11/2014	OTC Call Option	779,000	Call Option/ Sales	203
			Put Option/ Purchases	149
3/14/2014	OTC Call Option	1,416,000	Call Option/ Sales	5
3/19/2014	OTC Call Option	1,353,000	Call Option/ Sales	54
			Put Option/ Purchases	5

1	3/24/2014	OTC Call Option	2,130,000	Call Option/ Sales	31
				Put Option/ Purchases	49
2	3/27/2014	OTC Call Option	2,578,000	Call Option/ Sales	1
3				Put Option/ Purchases	138
4	4/1/2014	OTC Call Option	1,733,000	Call Option/ Sales	56
				Put Option/ Purchases	363
5	4/4/2014	OTC Call Option	1,046,000	Call Option/ Sales	35
6				Put Option/ Purchases	9
7	4/8/2014	OTC Call Option	1,191,107	Call Option/ Sales	207
				Put Option/ Purchases	21
8	4/11/2014	OTC Call Option	2,523,000	Call Option/ Sales	599
				Put Option/ Purchases	11
9	4/14/2014	OTC Call Option	2,184,000	Call Option/ Sales	331
10				Put Option/ Purchases	11
11	4/15/2014	OTC Call Option	1,843,000	Call Option/ Sales	247
				Put Option/ Purchases	763
12	4/16/2014	OTC Call Option	2,233,000	Call Option/ Sales	105
				Put Option/ Purchases	8
13	4/17/2014	OTC Call Option	1,720,000	Call Option/ Sales	84
14				Put Option/ Purchases	24
15	4/21/2014	OTC Equity Forward	3,450,000	Call Option/ Sales	527
				Put Option/ Purchases	322

16
17 205. A more detailed list of Plaintiff's derivatives transactions, executed
18 contemporaneously with PS Fund 1's purchases, is included in Exhibit 1, hereto.

19 **VII. CLASS ACTION ALLEGATIONS**

20 206. Plaintiff brings this action as a class action pursuant to Rule 23 of the
21 Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of itself and all other
22 persons or entities that sold Allergan call options, purchased Allergan put options
23 and/or sold Allergan equity forward contracts from February 25, 2014 through
24 April 21, 2014, inclusive. Excluded from the Class are Defendants, their officers
25 and directors, members of the immediate family of such officers and directors, any
26 entities in which Defendants have or had controlling interests, and all of the legal
27 representatives, heirs, successors or assigns of each of the foregoing. The members
28 of the Class are so numerous that joinder of all members is impracticable. While

1 the exact number of Class members is unknown to Plaintiff at this time and can
2 only be ascertained through appropriate discovery, Plaintiff believes that there are
3 hundreds or thousands of members of the Class.

4 207. Plaintiff's claims are typical of the claims of the members of the Class,
5 as all members of the Class are similarly affected by Defendants' wrongful conduct
6 in violation of federal law, as complained of herein.

7 208. Plaintiff will fairly and adequately protect the interests of the members
8 of the proposed class and has retained counsel competent and experienced in class
9 and securities litigation.

10 209. There are numerous questions of law and fact common to all members
11 of the Class that predominate over any questions which may affect individual Class
12 members, including but not limited to:

- 13 (a) whether Defendants violated federal securities laws;
- 14 (b) whether Pershing unlawfully purchased Allergan securities while in
15 possession of material, nonpublic information relating to a tender
16 offer;
- 17 (c) whether Valeant unlawfully communicated material, nonpublic
18 information relating to a tender offer to Pershing;
- 19 (d) whether Defendants engaged in fraudulent, deceptive or manipulative
20 practices in violation of Section 14(e) and Rule 14e-3 of the Exchange
21 Act;
- 22 (e) the extent of damages sustained by Class members and the appropriate
23 measure of damages.

24 210. A class action is superior to other available methods for the fair and
25 efficient adjudication of this controversy since joinder of all members is
26 impracticable. Furthermore, as the damages suffered by individual Class members
27 may be relatively small, the expense and burden of individual litigation make it
28

1 impossible for members of the Class to individually redress the wrongs done to
2 them. There will be no difficulty in the management of this action as a class action.

3 **VIII. THE EFFICIENCY OF THE MARKET FOR THE SUBJECT**

4 **DERIVATIVES**

5 211. At all relevant times, the market for the subject Allergan derivatives
6 was efficient. Plaintiff's demonstration of the market efficiency of the underlying
7 security – Allergan common stock – is sufficient to entitle it to rely on the fraud-on-
8 the market theory here. The market for the underlying security was efficient for the
9 following reasons, among others:

- 10 a. Allergan's common stock met the requirements for listing, and was
11 listed and actively traded on the NYSE (symbol AGN), a highly
12 efficient and automated market;
- 13 b. as a regulated issuer, Allergan filed regular reports with the SEC;
- 14 c. during the Class Period, thousands of shares of Allergan common
15 stock were traded on a daily basis, demonstrating a very active and
16 broad market for Allergan permitting a strong presumption of an
17 efficient market;
- 18 d. Allergan regularly communicated with public investors via established
19 market communication mechanisms, including through regular
20 disseminations of press releases on the national circuits of major
21 newswire services and through other wide-ranging public disclosures,
22 such as communications with the financial press and other similar
23 reporting services;
- 24 e. Allergan was regularly followed by several securities analysts
25 employed by major brokerage firms who wrote reports that were
26 distributed to the sales force and certain customers of their respective
27 brokerage firms during the Class Period. Each of these reports was
28 publicly available and entered the public marketplace; and

1 f. unexpected material news about Allergan was rapidly reflected and
2 incorporated into the Company's stock price during the Class Period.

3 212. As a result of the foregoing, the market for Allergan's securities
4 promptly reacted to current information regarding Allergan from all publicly
5 available sources and reflected such information in the trading prices of Allergan
6 securities. Under these circumstances, all sellers of call options, purchasers of put
7 options and sellers of equity forward contracts suffered similar injury through their
8 trades in securities, the price of which did not reflect the material nonpublic
9 information in Defendants' possession. Plaintiff is thus entitled to a presumption of
10 reliance.

11 **IX. CLAIMS FOR RELIEF**

12 **FIRST CLAIM FOR RELIEF**

13 **(For Violations of Section 14(e) of the Exchange Act**

14 **And Rule 14e-3 Promulgated Thereunder Against All Defendants)**

15 213. Plaintiff incorporates by reference and re-alleges each and every
16 allegation contained above, as though fully set forth herein.

17 214. Section 14 (e) provides: "it shall be unlawful for any person to make
18 any untrue statement of a material fact or omit to state any material fact necessary
19 in order to make the statements made, in the light of the circumstances under which
20 they are made, not misleading, or to engage in any fraudulent, deceptive, or
21 manipulative acts or practices, in connection with any tender offer."

22 215. Defendants' conduct violated their respective obligations under
23 Section 14(e) of the Williams Act and the rules promulgated thereunder, including
24 Rule 14e-3(a) (prohibiting Pershing from trading while in possession of nonpublic
25 material information relating to a tender offer) and Rule 14e-3(d) (prohibiting
26 Valeant from communicating nonpublic material information relating to tender
27 offer).

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1 216. Rule 14e-3(a) provides that once an offering person has “taken a
2 substantial step or steps to commence a tender offer,” then “it shall constitute a
3 fraudulent, deceptive or manipulative act or practice” for any “other person who is
4 in possession of material nonpublic information relating to the tender offer which
5 information he knows or has reasons to know is nonpublic and which he knows or
6 has reason to know has been acquired directly or indirectly from the offering
7 person” (or nay of the offering person’s officer, director, partner or employee or
8 any other person acting on behalf of the offering person) to “purchase or sell or
9 cause to be purchased or sold” any securities in the target or “any securities
10 convertible into or exchangeable for any such securities or any option or right to
11 obtain or to dispose” of such securities unless the nonpublic information is
12 disclosed within a reasonable time prior to trading.

13 217. Rule 14e-3(d) provides that, under such circumstances, it shall be
14 unlawful for an offering person “to communicate material, nonpublic information
15 relating to a tender offer to any other person under circumstances in which it is
16 reasonably foreseeable that such communication is likely to result in a violation of
17 this section.”

18 218. The purpose of Rule 14e-3 is to prevent parties with nonpublic
19 information relating to a tender offer as to which substantial steps have been taken
20 from transacting with investors who do not have such information, unless they
21 disclose that information first and within a reasonable time prior to trading the
22 relevant securities. Rule 14e-3 seeks to curb “warehousing”- the practice of a
23 tender offeror intentionally leaking information to institutional investors to allow
24 those entities to make early trades with other market participants before the latter
25 learns of the tender offer.

26 219. After taking substantial steps to commence a tender offer for Allergan
27 shares, Valeant unlawfully communicated material, nonpublic information relating
28 to that tender offer to Pershing. Those communications were made under

1 circumstances in which it was reasonably foreseeable that those communications
2 were likely to result in a violation of Rule 14e-3.

3 220. As a result of Valeant’s communications, and without disclosing the
4 material, nonpublic information, Pershing purchased or caused to be purchased over
5 28 million shares of Allergan stock while in possession of material, nonpublic
6 information obtained from Valeant. Pershing knew or had reason to know the
7 information was nonpublic, material and had been acquired directly or indirectly
8 from Valeant, the offering person.

9 221. Defendants intentionally or recklessly engaged in acts, practices and a
10 course of conduct that was fraudulent, deceptive or manipulative in violation of
11 Section 14(e) and Rule 14e-3 of the Exchange Act.

12 222. As set forth in Section VI, *supra*, Plaintiff engaged in transactions in
13 Allergan options contemporaneously with PS Fund 1’s purchases during the Class
14 Period.

15 223. Defendants’ violations of Section 14(e) of the Williams Act, and the
16 rules adopted thereunder, have caused Plaintiffs and other members of the Class
17 damages. The Class did not have the information required to be disclosed under
18 Section 14(e) and the Rule 14e-3 and therefore engaged in transactions in the
19 subject Allergan derivatives at unfair prices. Defendants’ misconduct allowed them
20 to unlawfully enrich themselves by acquiring Allergan securities at unfair and
21 artificially low prices.

22 224. Defendants sought to hide themselves and their improper insider
23 trading activities in various ways (as detailed above), including through the use of
24 multiple corporate entities. However, as the Court has recognized, “individuals and
25 entities should not be permitted to use third parties in order to avoid liability under
26 the insider trading laws.” This principle is even more compelling where, as here,
27 “the parties” being used to avoid liability are controlled corporate entities that were
28 knowingly set up and used expressly for the purpose of improper insider trading

1 and were directly involved in Defendants’ plan. Just as Ackman, Pershing Square,
2 PS Management and PS Fund 1 are primarily liable for this Claim, each of
3 Defendants PSLP, PS II, PS International, PS Holdings and PSGP are likewise
4 primarily liable. The fact that Defendants PSLP, PS II, PS International, PS
5 Holdings and PSGP conducted their trading through PS Fund 1 is of no moment
6 because they directly participated in Defendants’ insider trading plan and/or
7 conducted their unlawful insider trading through or by means of another person, *i.e.*,
8 PS Fund 1, which is equally unlawful under the federal securities laws.

9 **SECOND CLAIM FOR RELIEF**

10 **(For Violations of Section 20A Of The Exchange Act Against All Defendants)**

11 225. Plaintiff incorporates by reference and re-alleges each and every
12 allegation contained above, as though fully set forth herein.

13 226. This Claim is brought against all Defendants under Section 20A of the
14 Exchange Act, 15 U.S.C. § 78t-1.

15 227. Section 20A(a) of the Exchange Act provides that “[a]ny person who
16 violates any provision of [the Exchange Act] or the rules or regulations thereunder
17 by purchasing or selling a security while in possession of material, nonpublic
18 information shall be liable...to any person who, contemporaneously with the
19 purchase or sale of securities that is the subject of such violation, has purchased . . .
20 securities of the same class.”

21 228. As set forth herein, Pershing violated Section 14(e) and Rule 14e-3 by
22 engaging in fraudulent, deceptive or manipulative practices and trading in Allergan
23 securities while in possession of material, nonpublic information relating to a tender
24 offer. Pershing is therefore liable under Section 20A(a).

25 229. Section 20A(c) of the Exchange Act provides that “[a]ny person who
26 violates any provision of [the Exchange Act] or the rules or regulations thereunder
27 by communicating material, nonpublic information shall be jointly and severally
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1 liable under subsection (a) with, and to the same extent as, any person or persons
2 liable under subsection (a) to whom the communication was directed.”

3 230. As set forth herein, Valeant violated this provision by communicating
4 material, nonpublic information relating to a tender offer to Pershing under
5 circumstances in which it was reasonably foreseeable that those communications
6 were likely to result in violation of Rule 14e-3.

7 231. As detailed in Section VI, *supra*, Plaintiff contemporaneously
8 purchased and sold securities of the same class as those purchased by Pershing.

9 232. Under Section 20A of the Exchange Act, 15 U.S.C. § 78t-1,
10 Defendants are jointly and severally liable to Plaintiff and other members of the
11 Class for all profits gains and losses avoided by them as a result of their insider
12 trading.

13 233. Defendants sought to hide themselves and their improper insider
14 trading activities in various ways (as detailed above), including through the use of
15 multiple corporate entities. However, as the Court had recognized, “individuals and
16 entities should not be permitted to use third parties in order to avoid liability under
17 the insider trading laws.” This principle is even more compelling where, as here,
18 the “parties” being used to avoid liability are controlled corporate entities that were
19 knowingly set up and used expressly for the purpose of improper insider trading
20 and were directly involved in Defendants’ plan. Just as Ackman, Pershing Square,
21 PS Management and PS Fund 1 are primarily liable for this Claim, each of
22 Defendants PSLP, PS II, PS International, PS Holdings and PSGP are likewise
23 primarily liable. The fact that Defendants PSLP, PS II, PS International, PS
24 Holdings and PSGP conducted their trading through PS Fund 1 is of no moment
25 because they directly participated in Defendants’ insider trading plan and/or
26 conducted their unlawful insider trading through or by means of another person,
27 *i.e.*, PS Fund 1, which is equally unlawful under the federal securities laws.

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THIRD CLAIM FOR RELIEF
(For Liability Under Section 20(a) Of The Exchange Act Against Pershing Square, PS Management, PSGP, and Pearson)

234. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

235. Section 20A(b)(3) of the Exchange Act provides that the “liability of a controlling person under [Section 20A of the Exchange Act] shall be subject to [Section 20(a) of the Exchange Act].”

236. Defendants Pershing Square, PS Management, PSGP and Ackman (collectively, the “Pershing Control Defendants”) acted as controlling persons of PS Fund 1, PSLP, PS II, PS International and PS Holdings within the meaning of Section 20(a) of the Exchange Act, as alleged herein.

237. Ackman, by reason of his position of control and authority as the CEO of Pershing Square and as the “managing member” of the Pershing entities that were parties to the February 11, 2014 LLC Agreement and April 3, 2014 Amended LLC Agreement, had the power and authority to influence and control, and did influence and control, the activities of PS Fund 1, PSLP, PS II, PS International and/or PS holdings, including the manner and timing of their or PS Fund 1’s purchases of Allergan securities. In his capacity as the most senior corporate officer of Pershing Square and other Pershing entities, and as more fully described above, Ackman caused PS Fund 1 to enter into the transactions to acquire Allergan securities without disclosing information that was required to be disclosed under Section 14(e) and Rule 14e-3 of the Exchange Act. Ackman, as the managing member of PSGP, also caused PSLP, PS II, PS International, and PS Holdings to enter into the February 11, 2104 LLC Agreement and the Amended LLC Agreement, contribute funding to PS Fund 1, and undertake all of the obligations required by the Confidentiality Agreement, the Relationship Agreement and the

1 Guarantee for the express purpose of participating in and providing the capital for
2 the unlawful insider-trading scheme alleged above.

3 238. Pershing Square, as the non-member manager of PS Fund 1, had “full,
4 exclusive and complete discretion in the management and control of the business
5 and affairs” of PS Fund 1 under the February 11, 2014 LLC Agreement and the
6 April 3, 2014 Amended LLC Agreement, including the manner and timing of PS
7 Fund 1’s purchases of Allergan securities, except as subject to the terms of the
8 Relationship Agreement. The members of PS Fund 1 consented to this authority
9 “subject to the Relationship Agreement,” and PSLP, PS II, PS International and
10 Pershing Holdings agreed only that they would not take part in management or
11 control of PS Fund 1 “in their capacities” as members. Pershing Square caused PS
12 Fund 1 to enter into transactions to acquire Allergan securities without disclosing
13 information that was required to be disclosed under section 14(e) and Rule 14e-3 of
14 the Exchange Act as alleged herein. Pershing Square, as the investment manager of
15 PS International and PS Holdings, had the power and authority to influence and
16 control these entities and caused them to participate in the insider trading scheme
17 alleged herein through the Confidentiality Agreement, the Relationship Agreement
18 and the Guarantee.

19 239. PS Management, as the sole general partner of Pershing Square, had
20 the power and authority to influence and control, and did influence and control, the
21 business activities and decisions of Pershing Square, and thus PS Fund 1, and in
22 that capacity caused PS Fund 1 to enter into transactions to acquire Allergan
23 securities without disclosing information that was required to be disclosed under
24 Section 14(e) and Rule 14e-3 of the Exchange Act. PS Management, as the sole
25 general partner of PS International and PS Holdings, had the power and authority to
26 influence and control, and did influence and control, these entities and caused them
27 to participate in the insider trading scheme alleged herein through the
28 Confidentiality Agreement, the Relationship Agreement and the Guarantee, and by

1 causing them to contribute capital to PS Fund 1 through the February 11, 2014 LLC
2 Agreement and the April 3, 2014 Amended LLC Agreement.

3 240. PSGP, as the sole general partner of PSLP and PS II, had the power
4 and authority to influence and control, and did influence and control, the business
5 activities and decisions of PSLP and PS II, and in that capacity caused PSLP and
6 PS II to contribute capital to PS Fund 1 and to enter into the February 11, 2014
7 LLC Agreement and the April 3, 2014 Amended LLC Agreement for the express
8 purpose of participating in and providing the capital for the unlawful insider-trading
9 scheme alleged above. PSGP, as the sole general partner of PSLP and PS II, had
10 the power and authority to influence and control, and did influence and control,
11 these entities and caused them to participate in the insider trading scheme alleged
12 herein through the Confidentiality Agreement, the Relationship Agreement and the
13 Guarantee.

14 241. Each of the Pershing Control Defendants culpably participated in some
15 meaningful sense in the violations of federal securities laws as alleged herein.

16 242. By virtue of their positions as controlling persons of PS Fund 1, PSLP,
17 PS II, PS International and/or PS Holdings, and as a result of their own
18 aforementioned conduct, the Pershing Control Defendants together and
19 individually, are liable pursuant to Section 20(a) of the Exchange Act, jointly and
20 severally with, and to the same extent as PS Fund 1, PSLP, PS II, PS International,
21 and/or PS Holdings are liable under Section 14(e) and Rule 14e-3 and Section 20A
22 of the Exchange Act.

23 243. Pearson, by reason of his position of control and authority as the CEO
24 of Valeant, had the power and authority to influence and control, and did influence
25 and control, the activities of Valeant, including the substantial steps Valeant took
26 toward a tender offer and Valeant's communication of material, nonpublic
27 information relating to that tender offer to Pershing, as alleged herein. Pearson
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1 culpably participated in some meaningful sense in violations of federal securities
2 laws as alleged herein.

3 244. By virtue of his position as a controlling person of Valeant and as a
4 result of his own aforementioned conduct, Pearson is liable pursuant to Section
5 20(a) of the Exchange Act, jointly and severally with, and to the same extent as
6 Valeant is liable under Section 14(e) and Rule 14e-3 and Section 20A of the
7 Exchange Act.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief as follows:

- 10 A. Declaring this action to be a proper class action pursuant to Fed. R.
11 Civ. P. 23;
- 12 B. Awarding Plaintiff and the other members of the Class damages and
13 restitutionary relief, including prejudgment interest;
- 14 C. Awarding Plaintiff reasonable costs and attorneys' fees; and
- 15 D. Awarding such other relief as the Court may deem just and proper.

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17 Dated: June 28, 2017

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all issues so triable.

Dated: June 28, 2017