

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CLAYLAND BOYDEN GRAY
and ADAM R. WALDMAN,

Plaintiffs,

V.

C.A. No. _____

PATRICK SOON-SHIONG, FRED
MIDDLETOWN, HING C. WONG,
ALTOR BIOSCIENCE, CORP., a
Delaware corporation, and NANTCELL,
INC., a Delaware Corporation,

Defendants.

VERIFIED COMPLAINT

Plaintiffs The Honorable Clayland Boyden Gray and Adam R. Waldman (collectively, “Plaintiffs”), by and through their undersigned counsel, for their Verified Complaint against Defendants Patrick Soon-Shiong, Fred Middleton, Hing C. Wong, Altor Bioscience, Corp. (“Altor”), and NantCell, Inc. (“NantCell”), allege as follows:

NATURE OF THE ACTION

1. Plaintiffs, minority stockholders of Altor, bring this action for breaches of fiduciary duty against Altor’s Board of Directors (the “Board”) including Altor’s controlling stockholder and Chairman, Patrick Soon-Shiong (“Soon-Shiong”), and the Board’s only two other members, Hing. C. Wong (“Wong”) and Fred Middleton

(“Middleton”), to enjoin a proposed insider transaction (the “Merger”) disclosed on June 8, 2017, pursuant to which stock of Altor will be acquired by NantCell, Inc. (“NantCell”), a company owned and controlled by Defendant Soon-Shiong through his network of biotech-related companies under his umbrella company and current Altor stockholder, NantWorks, LLC.

2. On May 19, 2017, Altor’s Board, orchestrated by its controlling stockholder and Chairman, Soon-Shiong, caused Altor to enter into a definitive agreement and plan of merger (the “Merger Agreement”) pursuant to which NantCell will acquire all of the outstanding shares of Altor’s common and preferred stock that it does not already own for a combination of cash and stock in the new combined entity at an exercise price notionally the equivalent of \$2.00 per share.

3. An exercise price of \$2.00 per share translates into a valuation of an outrageously low \$290 million (after taking into account Altor’s own cash being used to fund much or all of the cash portion of the transaction) for Altor, a value that is inexplicably and substantially lower even than the Company’s last valuation (\$309 million) in December 2016, in an equity financing round directed and dominated by Soon-Shiong. Defendants have further designed their egregiously low ball offer to provide minority shareholders half of their consideration, or \$1.00 per share, in exchange for illiquid shares that, upon information and belief, are grossly inflated in ascribed value in the unknown acquiring entity, NantCell, which is also majority-

owned and controlled by Defendant Soon-Shiong. The notional value and structure Defendants are attempting to foist on Altor in this proposed transaction is also multiple times lower than the value, based on a litany of industry comparables, of an immuno-oncology biotech company which (i) is entering two Phase 3 human clinical trials for its two star compounds expected to lead to relatively swift approval to sell the drugs as treatments for cancer into the anticipated \$200 billion annual market for immunotherapy drugs; (ii) has at least twelve ongoing clinical trials in Phase 1 and Phase 2 for patients with solid or hematological tumors and in HIV infected individuals; (iii) has an additional 12 imminent phase 1/2 human clinical “Cancer Vaccine” trials announced on June 5, 2017 by Soon-Shiong; (iv) received on May 2, 2017 “Fast Track” Designation from the US Food and Drug Administration; and, (v) has a licensing deal with a Chinese company that by itself prescribes up to \$200 million in milestone payments just for Altor’s compounds in the Chinese market. Comparable and lesser staged immuno-oncology companies that have **not** yet advanced to any Phase 3 clinical trials, and indeed comparable companies that are merely at the pre-clinical stage of development, all trade as described herein for many times the grossly undervalued notional price of \$290 million (half the value of which comes in exchange for illiquid stock in the grossly overvalued and entirely undisclosed Soon-Shiong entity, NantCell) at which Soon-Shiong, with the complicity of the other two non-independent board members of Altor, is trying to

steal the value of the company from its minority stockholders.

4. Soon-Shiong currently owns in his name or beneficially through one or more of his affiliated companies approximately 52% of Altor in outstanding stockholdings and other securities. Upon information and belief, Defendants Wong and Middleton (individually and beneficially through Middleton's stockholding Sanderling affiliates) also will benefit personally from the Merger Agreement. They are each expected to receive cash and considerable additional equity interests (in addition to those significant equity interests they have already granted to themselves since jettisoning two whistleblowing independent directors, namely the Plaintiffs, and replacing them with Soon-Shiong) in the newly combined entity as well as lucrative employment opportunities they have been offered with the combined entity. For example, the Information Statement mentions the reservation of 24,000,000 shares for issuance to directors and officers to buy their fealty to the undervalued transaction and to convert the value of minority shareholders in Altor, some of whom have been invested in the company for two decades, to Patrick Soon-Shiong. (Ex. A).

5. The Merger is the product of an unfair process, transaction structure and valuation that deprives Altor's minority stockholders, including Plaintiffs, of the ability to realize value and participate in Altor's long-term prospects. The Information Statement, provided in the evening on June 8, 2017, with a drop-dead

date to sign of June 15, 2017, is also virtually devoid of disclosures regarding every material facet of both the Company and Patrick Soon-Shiong's unknown Company NantCell in which Altor shareholders are being offered stock on unknown terms. Tellingly, after Defendants' recognized the near total absence of any disclosures as just one egregious infirmity of their offer, the following business day, Monday, June 12, 2017, Altor's legal counsel notified all Altor shareholders that Altor is planning to send shareholders a Supplemental Information Statement and that, as such, shareholders would *not* be required to return executed documents concerning the Merger until 20 days from the date the Supplemental Information Statement is mailed. (Ex. B).

6. One disclosure that Soon-Shiong has made about NantCell, to the public rather than to Altor shareholders, appeared in the press during the week of May 29th, when he announced he intends to take NantCell public in 2018, thereby achieving the billions in value for himself and the other two complicit Altor directors that he presumes he will successfully take from Altor's minority shareholders. Ironically, Soon-Shiong touted the number of clinical trials the combined entity would be undertaking ("two drugs in Phase 3 with the Food and Drug Administration, 21 in Phase 2....."), the most advanced of which are clinical trials of Altor's compound that Soon-Shiong intends to convert from minority shareholders to himself. On information and belief, both drugs entering Phase 3

testing that Soon-Shiong touts to warrant a value “more than \$8 billion” in his plan of “taking the company public” are Altor’s compounds ALT-801 and ALT-803, both of which have or nearly have completed Phase 2 testing, and more than half, although perhaps all of the 21 Phase 2 clinical trials he touts are Altor’s existing Phase 2 clinical trials or announced trials based primarily on Altor’s compound ALT-803.

7. The most crucial undisclosed information, which Altor has been hiding from its minority shareholders and even independent directors for years, is the crucial and presumably stunning clinical successes of the Company’s multitude of clinical trials, which are known only to Defendants Soon-Shiong, Wong, Middleton and presumably NantCell. In approving the Merger Agreement, Defendants Soon-Shiong, Wong, and Middleton breached their fiduciary duties to Plaintiffs, which breaches Defendant Soon-Shiong’s company NantCell aided and abetted.

8. The Information Statement purports to give stockholders the option of choosing between accepting the merger consideration or demanding appraisal without disclosing the most basic and fundamental material financial information necessary for the stockholders to make such an election, including but not limited to information regarding the status of clinical trials that would show Altor to be dramatically more valuable than the low-ball price being forced on the minority stockholders by the trio of Defendants Soon-Shiong, Wong and Middleton. Whether

the forthcoming Supplemental Information Statement remedies the glaring deficiencies in the Information Statement remains to be seen.

9. Given Soon-Shiong's controlling stake in Altor and role as the Company's Chairman, the Board's apparent refusal to appoint a special committee of disinterested members to evaluate the Merger (and indeed the impossibility of doing so as all three Board Members personally and uniquely benefit from the Merger and there are therefore no disinterested members of the Board regarding their proposed Merger), failure to appoint any disinterested, independent directors to the Company's Board, failure to recuse any of the interested members of Altor's three-member Board, refusal to require a majority of the minority shareholder vote to approve the Merger, and the Board's consideration and astonishing rejection of the necessity to obtain an objective "fairness opinion" on the insider Merger, the Merger is not entitled to the safe harbor of the Business Judgment Rule and is instead subject to "entire fairness" review.

10. The tremendous value of Altor has already become embedded in the valuation of Soon-Shiong's NantKwest. On Monday, June 5, 2017, Soon-Shiong announced at the Association American Society of Clinical Oncologists (ASCO) conference 12 new "Cancer Vaccine" clinical trials that NantKwest would be launching based upon Altor's compound. NantKwest stock on the day of the announcement sat at \$3.99 per share, reflecting a market capitalization of

\$327,978,000. In the two weeks since the announcement, NantKwest stock rose 86% to \$7.72 per share, for a market capitalization of \$610 million that reflects a rise in NantKwest value of nearly \$300 million.

11. The unfair process that Soon-Shiong, Wong and Middleton employed in negotiating and evaluating the Merger Agreement culminated in the Board's approval of the Merger with an insider at an unfair, notional stock price of \$2.00 per share, is a transparent attempt to convert the value of Altor from minority stockholders to themselves.

12. Plaintiffs therefore seek damages in the event Defendants are able to complete the Merger. Plaintiffs also reserve their right to seek to enjoin the Merger temporarily and preliminarily until Altor has provided Plaintiffs and the other minority stockholders long-concealed disclosures regarding Altor's financial status, clinical trial data and other material matters sufficient to determine whether they should approve or disapprove of the Merger with the single insider buyer at the \$290 million notional price set by the insider buyer with the complicity of the two other interested and conflicted directors.

JURISDICTION

13. This Court has equitable and statutory jurisdiction over this action pursuant to 10 *Del. C.* § 341 and 8 *Del. C.* § 111. It also has personal jurisdiction over Defendants as Delaware corporations and their directors and officers.

PARTIES

14. Plaintiffs are, and have been continuously throughout all times relevant hereto, owners of Altor common or preferred stock.

15. Plaintiff Clayland Boyden Gray, a resident of Washington, D.C., is a minority shareholder in Defendant Altor and a former founding member of its Board of Directors. Ambassador Gray presently owns approximately two (2) million shares of Altor common and preferred stock.

16. Plaintiff Adam R. Waldman, a resident of Washington, D.C., is a minority shareholder in Defendant Altor and a former member of its Board of Directors. He presently owns approximately one (1) million shares of Altor common stock.

17. Defendant Patrick Soon-Shiong is the Chief Executive Officer, Chairman of the Board and 85% stockholder of Defendant NantCell, the proposed acquirer in the Merger. Soon-Shiong is also the current Chairman of Altor's Board of Directors as well as the majority shareholder of Altor, owning 51.4% of Altor's outstanding common and preferred stock individually and beneficially through

several different entities he controls.

18. Defendant Fred Middleton is the Vice-Chairman of Altor's Board and the corporation's Chief Business Officer. Middleton also is a substantial holder of Altor common and preferred stock individually and beneficially through his wholly-owned and/or controlled affiliate Sanderling Ventures, and is beholden to Defendant Soon-Shiong who has offered to Defendant Middleton employment and equity in the post-merger entity.

19. Defendant Hing C. Wong, residing at 3534 San Pasqual Street, Pasadena, California 91107, is Altor's co-founder, a member of Altor's Board, and Altor's Chief Executive Officer. He also is a shareholder of Altor and is beholden to Defendant Soon-Shiong, who has offered to Defendant Wong employment and equity in the post-merger entity. Altor Chief Financial Officer Rick Green informed Plaintiffs that Defendant Wong would specifically not be opting for the egregiously low cash payment in the proposed deal, but would instead be taking only stock in the new entity, topped up by massive grants of equity in the new entity.

20. Defendant Altor is a privately-held Delaware corporation with its principal place of business located at 2810 North Commerce Parkway, Miramar, Florida 33025. Altor is a clinical-stage biopharmaceutical company developing novel immunotherapies for the treatment of cancer and infectious diseases, based on engineered cytokine technology platforms. Altor was formed in 2002 by Bee Huang

and her husband Defendant Wong; Defendants Wong and Middleton later locked Ms. Huang out of the Company and terminated her following a dispute. Altor was created as a spin-off of a predecessor company in which Plaintiff Gray also was a significant shareholder. Altor has two proprietary technology platforms, the STAR™ platform and the IL-15 Superagonist platform, which are the bases of its immunotherapies for the treatment of cancer and viral infections. Altor has deployed both technologies in Phase 1 and Phase 2 clinical trials, and is preparing to begin Phase 3 clinical trials for both compounds imminently, although Defendants Wong and Middleton—and now, the full Board including Defendant Soon-Shiong—for years has actively concealed progress in and the results of crucial clinical trials from Plaintiffs and other minority stockholders. Upon information and belief, the trials continue to show enormous clinical success, resulting in a recent manufacturing agreement between Altor and CMC Biologics for the manufacture of its ALT-803 molecule (a novel immunotherapy) for use in Phase 3 clinical trials that either have already begun or will begin this year. Notably, on or about May 2, 2017, Altor received “Fast Track” designation for ALT-803 from the FDA for the treatment of patients with non-muscle invasive bladder cancer. To obtain such designation, Altor had to provide the FDA the very information regarding the successful current results of Altor’s clinical trials that it has hidden and continues to hide from Plaintiffs and other minority stockholders.

21. Defendant NantCell, Inc. is a Delaware corporation with its principal place of business located at 9920 Jefferson Blvd., Culver City, California 90230. Upon information and belief, NantCell is a subsidiary of Altor stockholder NantWorks, LLC, which in turn is wholly-owned and controlled by Defendant Soon-Shiong. Through the Merger, NantCell would acquire all of Altor's outstanding common and preferred stock.

STATEMENT OF RELEVANT FACTS

I. Defendant Soon-Shiong Rapidly Acquires a Controlling Interest in Altor

22. From late 2015 through the end of 2016, Defendant Soon-Shiong, either himself or through his affiliated companies, acquired a controlling interest in Altor.

23. By the beginning of June 2016, Soon-Shiong and his affiliates had acquired approximately 23.2% of the issued and outstanding shares of Altor on an as-converted basis.

24. On or about June 27, 2016, Soon-Shiong (by this time Chairman of the Board of Altor), through an Action by Written Consent of the Stockholders (of whom Soon-Shiong, Wong, Middleton and their affiliates were now in the majority), gave himself in "consideration" for his services as Chairman a warrant to purchase an additional 5 million shares of Altor common stock, plus an additional warrant to purchase 7,666,667 shares of common stock "for his service on a committee of the Board that will advise the Corporation on potential financing transactions, as well as

on clinical trials and related matters.” (Ex. C). Conversely, Plaintiffs Waldman and Gray were never compensated, nor did they ask to be, for “service” on the Board or any of its Committees during the course of two decades, despite giving and bringing in over 10 million dollars of crucial third party investment in the Company’s early stages, and despite advising Altor on a wide range of legal matters and financing transactions and making introductions to investment banks, pharmaceutical companies and other financial institutions and high net worth investors including but not limited to Paulson & Co, Soros Fund Management, TPG, Carlyle Group, William Blair & Co, the entertainer Will Smith’s management company and the singer/actress Cher. Nevertheless, following a playbook and modus operandi he deploys frequently, upon information and belief, Soon-Shiong exercised those warrants and acquired those shares. The Information Statement supporting the Merger (Ex. A), however, states that “Soon-Shiong and his affiliates hold Company Warrants for 22,666,667 shares....” Plaintiffs do not know when and how Soon-Shiong obtained this massive number of additional warrants.

25. By November 2016, Soon-Shiong and his affiliates had acquired approximately 45.3% of Altor on a fully diluted basis, most of which he managed to obtain at the low-ball valuation of \$150 million, despite the Company being in the final stages of multiple Phase 2 clinical trials. On or about November 28, 2016, the Board of Soon-Shiong, Wong and Middleton announced the issuance of a new series

of preferred stock designated as Series H Preferred, representing approximately 13% of Altor on a fully diluted basis post-financing, based upon a pre-money valuation of Altor of approximately \$309 million. The Board proposed that 75% (approx. \$30 million) of the Series H Stock would be purchased by a Soon-Shiong affiliate, with that affiliate purchasing the remaining \$10 million of Series H Preferred Stock provided other eligible stockholders chose not to participate. (Ex. D).

26. On or about December 16, 2016, Soon-Shiong, Wong and Middleton, through Action by Written Consent of the Stockholders (the majority of whom consisted of Soon-Shiong, Wong, Middleton and their affiliates), approved Soon-Shiong's wholly-owned and controlled affiliate, California Capital Equity, LLC, to initially purchase not less than 18,181,819 shares of Series H Preferred Stock, followed by an additional tranche of Series H Preferred Stock equal to the aggregate number of shares of Series H Preferred Stock purchased by other stockholders pursuant to their pro rata rights under the Seventh Amended and Restated Investors' Rights Agreement, and the right of first offer as to any further shares of Series H Stock that Altor may offer for sale. (Ex. E). On or about the same time, Altor issued a rare but non substantive letter to shareholders, which said they "remained optimistic" about the Company's clinical trials (without providing any details whatsoever regarding their status), and expressed pretextually that the Company's plan was to "go public" some time in "late 2017." On information and belief, from

the moment of Defendant Soon-Shiong's involvement with Altor, the Company had no intention of going public, which would provide market-based value to the minority shareholders, and the Series H transaction was for the sole purpose of allowing Soon-Shiong to cross the threshold and become the majority shareholder.

27. The Board disclosed that the Series H Preferred Stock purchase would increase the aggregate percentage ownership of shares and other securities of Altor held by Soon-Shiong and his affiliates to approximately 51.4% on an as-converted basis. Upon information and belief, Soon-Shiong and/or his affiliate California Capital Equity, LLC, purchased the Series H Preferred Stock, increasing his ownership stake in Altor to approximately 51.4%.

28. Just before Soon-Shiong's purchase of Series H Preferred Stock, Altor's Chief Financial Officer (CFO), Rick Greene, informed Plaintiffs that Altor's Board had approved a series of contracts with Soon-Shiong and/or Soon-Shiong owned and controlled entities, including the lease of buildings owned by Soon-Shiong in El Segundo, California, allegedly for Phase I and Phase II clinical pilot and commercial manufacturing facilities.

III. Defendant Soon-Shiong's Pattern and Practice of Self-Dealing

29. Defendant Soon-Shiong falsely projects the persona of a great philanthropist and world leader in emerging cancer treatments, but in reality Soon-Shiong is a notorious and ruthless corporate raider and opportunist who has long

engaged in a pattern of self-dealing transactions, including using and abusing the non-profit status of his foundation to financially benefit himself, his family, and his network of for-profit companies (which for-profit companies' drug compounds Fierce Biotech recently described as having "no discernible clinical progress") at the expense of his business partners, the minority stockholders of his target companies, and the American taxpayer.

30. According to an April 10, 2017 article published in *POLITICO*, appearing at <http://www.politico.com/story/2017/04/patrick-soon-shiong-taxes-nanthealth-foundation-236728>, Soon-Shiong has engaged in a series of transactions on behalf of his allegedly non-profit research foundation called the "Chan Soon-Shiong NantHealth Foundation," which actually are for-profit business deals thinly disguised as non-profit charitable activities:

- Of the nearly \$59.6 million in foundation expenditures between its founding in 2010 and 2015, the most recent year for which records are available, over 70 percent have gone to Soon-Shiong-affiliated not-for-profits and for-profits, along with entities that do business with his for-profit firms.
- The foundation sold a prime office building to Soon-Shiong's for-profit firm for \$6 million, just six years after it had been sold for \$13.3 million and later deeded to the foundation, according to tax records. At the time of the \$6 million sale, it was assessed for tax purposes at \$10.7 million.¹

¹ Defendant Soon-Shiong has refuted this particular allegation in the *POLITICO* article, but not the others: <http://www.healthcareitnews.com/news/nanthealths-soon-shiong-doubles-down-fake-news-claims>.

- Six employees of Soon-Shiong's for-profit companies were also paid by the foundation, which raises questions of whether the foundation is covering overhead for his for-profit firms, according to tax specialists.
- The foundation contributed \$3 million out of a total of \$12 million donated by Soon-Shiong-controlled entities to a University of Utah program to map the genomes of 1,000 state residents. University officials say they let Soon-Shiong's entities write the grant specifications. The specifications gave a major advantage to his for-profit firms, which got the \$10 million gene-mapping contract. The transaction is currently under investigation by Utah's legislative audit or general, and multiple investors have filed class action lawsuits alleging Soon-Shiong's companies violated securities laws. See <https://www.statnews.com/2017/05/03/utah-investigation-soon-shiong/>
- Soon-Shiong-controlled charities gave a total of \$15 million — including \$10 million from the NantHealth Foundation — to a fund that benefited Phoenix Children's Hospital, which concluded a pair of deals with Soon-Shiong's for-profit companies for many millions of dollars.

31. In addition to these sham non-profit transactions, Soon-Shiong allegedly pressured a financially-distressed media company called “Tronc,” the owner of the LA Times among other properties, to make an investment in his IPO for NantHealth, another one of Soon-Shiong's wholly-owned and controlled companies, as *quid pro quo* for his investment in Tronc. After Tronc declined to invest in NantHealth because it had “no logical connection to its business operations in the publishing industry,” Soon-Shiong demanded that Tronc's CEO invest in NantHealth either personally or through his investment company, or Soon-Shiong would withhold his investment funds in Tronc. See <https://www.sec.gov/Archives/edgar/data/1593195/000110465917020842/a17->

[10311_1ex99d1.htm](#) and <https://www.statnews.com/2017/04/03/soon-shiong-tronc-investment/>.

32. While serving as a member of Tronc’s board of directors, Soon-Shiong also caused Tronc to enter into a technology licensing term sheet with NantHealth, and then claimed that Tronc must pay NantHealth the consideration contemplated under the term sheet even though the technology to be licensed turned out to be of no use to Tronc’s online media business. *Id.*

33. In transactions with eerie parallels to Soon-Shiong’s attempt to steal Altor from its minority stockholders, *Forbes* catalogued some of Soon-Shiong’s past dealings, including his previous folding of a successful drug compound platform company into his own privately-held company once he could see the compound was working in clinical trials. *Forbes* reported: “But once again Soon-Shiong became the center of controversy when, a few months later, he merged APP with a private vehicle he owned. Brian Laegeler, an analyst at Morningstar, called it a ‘raw deal for minority stockholders as it serves only to line the pockets of Patrick Soon-Shiong.’”

34. As the above examples demonstrate, Soon-Shiong’s *modus operandi* is to appear as a “white knight” and buy into a controlling position, only to then misuse his ownership and control to redirect the resources of that company to improperly benefit his network of for-profit enterprises, whether or not those transactions were

in the best interests of the company or entity he sought to exploit or any of its shareholders other than himself.

35. This is precisely what Soon-Shiong has done by steering major Altor business dealings to various Soon-Shiong-controlled entities including those relating to the build-out of a Phase I and II clinical pilot facility (estimated to cost \$15 to \$20 million) and commercial manufacturing facility (estimated to cost \$75 to \$100 million), and buying up huge percentages of Altor's shares at artificially low, insider-round pricing while continuing Altor's practice of providing little or no meaningful material information to minority stockholders.

36. Indeed, the lack of transparency and information is a hallmark of Soon-Shiong's business practices. As has been widely observed in the media, it is never clear what phase of clinical development Soon-Shiong's companies' drugs are in, since unlike any other biotechnology company, public or private, Soon-Shiong's company websites fail to provide such information in a standard section called "pipeline." This is another reason Soon-Shiong covets Altor's real compounds in real Phase 1, Phase 2 and imminently Phase 3 clinical trials, with a real FDA Fast Track Designation.

37. On June 5, 2017, at the American Society of Clinical Oncologists (ASCO) conference, the key healthcare conference in the world, Soon-Shiong announced 11 new clinical trials for his "Nant Cancer Vaccine" (in addition to his

previously-announced Phase 1a/2 clinical trials for pancreatic cancer) that he will undertake using Altor's compound as the primary immunotherapeutic molecule. Presuming that his insider-Merger of Altor was a *fait accompli*, Soon-Shiong failed even to mention Altor by name in his press release: "In addition to the previously announced Pancreatic Cancer Vaccine, we are now actively working to initiate multiple clinical trials across a wide range of cancer types which include: Lung, breast, head and neck cancer, colon, melanoma, ovarian, urothelial, Hodgkins and non-Hodgkins lymphoma, sarcoma, and Merkel cell carcinoma, all based on a similar treatment protocol and designed to more fully harness the power of the immune system and improve cancer patient outcomes." These are, of course, clinical trials based around *Altor's compound*. Shoon-Shiong simply does not want to pay real money for Altor, which he already considers "his," to minority stockholders, and is counting on their being lulled to refrain from asserting their rights through a strategy of nondisclosure and malfeasance. Yet Soon-Shiong and his company NantKwest have already reaped hundreds of millions of dollars of stock appreciation, an 86% increase in share price, in the two weeks since Soon-Shiong announced 12 upcoming clinical trials using Altor's compound.

IV. The Altor Board Is Pursuing a Squeeze-Out Merger Without Requisite Procedural and Substantive Safeguards

38. After years of informing Plaintiffs that Altor would be preparing for an IPO, Altor made Defendant Soon-Shiong's true intentions apparent in April 2017—

to acquire Altor in its entirety and squeeze out its minority stockholders. Plaintiffs learned this from Altor CFO Rick Greene, who disclosed Soon-Shiong's plans to Plaintiffs only after they confronted him with a one-page FTC / Hart-Scott-Rodino filing they discovered approving Soong-Shiong's proposed acquisition of Altor.

39. Soon-Shiong's move to acquire all of Altor comes at an enormously promising and de-risked time for the Company, which is on the cusp of launching Phase 3 clinical trials for at least its ALT-803 molecule, a novel IL-15 superagonist complex consisting of an IL-15 mutant (IL-15N72D) bound to an IL-15Ra/IgG1 Fc fusion protein. According to an April 13, 2017 press release by an Altor business partner, CMC Biologics, preclinical studies have shown that ALT-803 simultaneously mobilizes both the innate and adaptive arms of the immune system to elicit rapid and durable responses against numerous cancers and virally-infected cells. Due to its robust immunostimulatory capacity for NK and T cells, Altor is developing ALT-803 for oncology and infectious disease indications. The molecule is currently part of an extensive development program, including ongoing clinical trials for the treatment of patients for various solid and hematological malignancies, such as non-muscle invasive bladder cancer, relapsed or refractory indolent B cell non-Hodgkin lymphoma (iNHL) and non-small cell lung cancer.

40. Altor received a major boost on or about May 2, 2017, when the FDA granted Fast Track Designation for ALT-803, in combination with Bacillus

Calmette-Guerin (BCG), for the treatment of patients with non-muscle invasive bladder cancer. The FDA's Fast Track program is designed to expedite the development and review of drugs to treat serious conditions and fill unmet medical needs. In order for a treatment to receive Fast Track approval, it must show superior effectiveness, typically demonstrated through clinical trials. Presumably, ALT-803 demonstrated superior effectiveness in clinical trials for the treatment of non-muscle invasive bladder cancer, though Plaintiffs have been left in the dark as Altor's Board has concealed and continues to conceal ALT-803's clinical trial data from Plaintiffs.

41. What these developments mean for the value of Altor is nothing short of a watershed moment. Historically, FDA Fast Track Designations alone have had an immediate impact upon company valuations, which according to a litany of studies increase stock price by an average of ten percent (10%) or more the day after such announcements by publicly traded biotechs and pharmaceutical companies (which, unlike Altor, were presumably fairly valued by the market prior to the increase in price caused by FDA Fast Track Designation). Soon-Shiong's low-ball offer for the rest of Altor's stock he hadn't already acquired was raised by zero following the achievement of Fast Track designation on May 2, 2017.

42. The skyrocketing value of Altor also should have been apparent to Soon-Shiong. Soon-Shiong's own company, NantKwest, experienced a 35% bounce in stock value within just four trading days of announcing that it had received

FDA authorization to test a new vaccine for the treatment of pancreatic cancer in partnership with Altor's groundbreaking compound, ALT-803. NantKwest's corresponding increase in market capitalization appears to have been more than \$150 million as a result of its October 2016 announcement that it was collaborating with Altor on that ALT-803-based treatment. By comparison, the amount of that four-day bump is more than half the price that NantCell is valuing the *entire* Company with its 11 ongoing clinical trials including two trials about to begin Phase 3. Then again, on Monday, June 5, 2017, after Soon-Shiong's announcement at the ASCO conference of 12 new clinical trials that NantKwest would be launching based upon Altor's compound ALT-803, NantKwest stock rose dramatically by 86% to a market capitalization of \$610 million (increasing by \$283 million).

43. Regardless, with the hidden clinical trial data for ALT-803 and Altor's other promising, cutting-edge treatments (NIH, for example, announced a \$28 million public-private partnership grant in July 2016 to support Altor and George Washington University in clinical development of Altor's HIV/AIDS anti-viral compound after screening and rejecting a reported 250,000 compounds and choosing Altor's around which to build government funded clinical trials), Plaintiffs and other minority stockholders are at a severe disadvantage as they lack the most relevant and critical data needed to properly assess the fairness of the Merger.

44. Moreover, Plaintiffs are without the benefit of an independent

evaluation of the Merger as the Board (currently comprised of three interested members and zero independent directors) failed or refused to appoint a special committee of disinterested members to evaluate the Merger. According to Altor CFO Rick Greene, the Board considered but astonishingly rejected obtaining an independent “fairness opinion” on the Merger, thereby subverting protections for minority stockholders that Delaware courts have termed “*de rigueur*” in an entire fairness analysis, which is of particular necessity in an insider Merger.

45. The overall unfairness of the process the Board used to approve the Merger Agreement is further underscored by the fact that the Board has failed or refused to require a majority of the minority shareholder vote to approve the Merger.

46. Accordingly, it should come as no surprise that Defendant Soon-Shiong and his affiliate NantCell effectively bought the loyalty and votes of the other members of Altor’s Board, Defendants Wong and Middleton, by offering them sweetheart employment, equity positions and options packages totaling tens of millions of shares in the new entity.

V. Altor Has Provided Inadequate Disclosures to Enable Stockholders to Make an Informed Merger Decision

47. The Information Statement (Ex. A) purports to give stockholders the option of choosing between accepting the merger consideration or demanding appraisal without disclosing the most basic material information necessary for the stockholders to make such an election, and the meager disclosures that it does

contain are themselves materially incomplete and misleading.

48. The **entire** “Background of the Merger” section in the Information Statement is set forth in the following two paragraphs:

On February 18, 2017, Parent and the Company entered into a term sheet which included the general terms of the proposed acquisition of the Company by Parent. Between the signing of the term sheet and May 19, 2017, Parent and the Company and their respective representatives negotiated the terms of the Merger Agreement and related documentation and completed their respective due diligence investigations.

On May 19, 2017 the Board, excluding Dr. Soon-Shiong, who is the Chairman of the Board of the Company and the Chief Executive Officer and Chairman of the Board of Parent, discussed the terms of the proposed Merger Agreement and Merger with the management team of the Company and the Company’s outside counsel and reviewed the terms of the Merger Agreement, in substantially the form attached to this Information Statement as **Exhibit A**. Following such discussions, the Board concluded that the Merger and the other transactions contemplated by the Merger Agreement are fair to, advisable and in the best interests of the Company and its Stockholders, and the Board unanimously voted to approve the Merger and the execution of the Merger Agreement and related documents. At the conclusion of this meeting, the Board directed that the Merger Agreement and related documents be submitted to the Stockholders, together with its recommendation that the Stockholders approve and adopt by written consent without a meeting the Merger Agreement and the transactions contemplated thereby, including the Merger. The Merger Agreement was executed by Parent, Merger Sub, the Company and the Stockholder Representative on May 19, 2017.

46. These grossly inadequate disclosures fail to contain some of the most fundamental information regarding the value of Altor that would be necessary for the stockholders to make an informed decision regarding whether to accept the merger consideration or seek appraisal. Most critically:

(a) the Information Statement contains **no financial information whatsoever** regarding Altor, including no historical or current financial statements and no projections of future performance;

(b) the Information Statement contains **no valuation analysis whatsoever** to support the fairness of the merger consideration, or even how price was calculated or determined; indeed there is no financial support at all for the Board's conclusion that the Merger and the other transactions contemplated by the Merger Agreement are fair to, advisable and in the best interests of Altor and its Stockholders," nor does the Information Statement even disclose whether Altor ever retained an investment banker or obtained a "fairness opinion" (which, according to Altor's CFO, Defendants considered and rejected);

(c) the Information Statement contains **no detail regarding the negotiations of the merger price**, including whether there even was any back-and-forth regarding the price, or whether the Board simply accepted the first price that was offered (along with the massive consideration for the Board members personally); nor does the Information Statement disclose whether the Board

appointed an independent special committee to negotiate the merger price on behalf of the stockholders (which, on information and belief, it did not and could not because there were no independent directors – another fact not disclosed); and

(d) the Information Statement fails to disclose any information about Altor’s valuable current or near-term future prospects, including information regarding its multitude of clinical trials, or the status of its license agreement with a Chinese company, which alone was projected to generate as much as \$200 million in revenues.

47. Even the few things that the Information Statement does disclose are materially omissive and misleading. For example:

(a) the Information Statement asserts that “Parent and the Company and their respective representatives negotiated the terms of the Merger Agreement and related documentation and completed their respective due diligence investigations” and that Soon Shiong was “exclud[ed]” from the Board’s discussions regarding the Merger Agreement – as though (i) Altor had separate or independent “representatives” to negotiate the terms – without disclosing whether Altor actually retained its own legal or financial advisors, (ii) there were actual “negotiations” of the terms – without disclosing anything about those negotiations, and (iii) the two parties undertook “due diligence” regarding each other – without disclosing the nature of the due diligence or what it yielded;

(b) in addition to omitting material facts, the foregoing statements were materially misleading, because, among other things, (i) **Altor had no independent directors** – another fact not disclosed -- so it could not have had an independent special committee negotiating on behalf of the stockholders (while certain conflicts of the Board members are disclosed, including that fact that Middleton and Wong will remain employed by the newly combined company, the Information Statement never states that there are no other, non-conflicted Board members), (ii) buried in the Notices section of the Merger Agreement is the revelation that **both NantCell and Altor had the same legal counsel** in connection with the Merger, so there were no separate or independent representatives assisting the Company, and (iii) Soon-Shiong is Altor's controlling stockholder and Chairman of the Board, so he would not have needed to undertake any due diligence regarding Altor; and

(c) as noted above, the Information Statement also conclusively asserts that that Board concluded the Merger is "fair" to Altor and its stockholders, without disclosing any financial basis for that conclusion or any information regarding the process or negotiations that led to the Board's approval of the Merger Agreement, and while omitting Altor's significant current status and future prospects based on the hidden achievements of the human clinical trials.

48. Should Defendants fail to address and rectify these glaring deficiencies

regarding the proposed Merger in their anticipated “Supplemental Information Statement” (Ex. B), the stockholders would be irreparably harmed since they would not be in a position without such information to make a fully informed decision regarding whether to accept the merger consideration or seek appraisal. Plaintiffs therefore reserve their right to seek to enjoin the proposed Merger until all such material and accurate information is disclosed.

VI. The Board’s Notional Valuation of Altor at \$290 Million Is Grossly Unfair

49. Notwithstanding the inadequacy of Altor’s initial disclosure of the Merger, and consistent with Defendants’ choice not to employ any of the well-established procedural safeguards for minority stockholders, it is clear that Altor’s Board members are attempting to cram down on Plaintiffs and other minority stockholders a grossly inadequate market valuation to enrich themselves and use their control position to transfer the value of Altor from minority stockholders to themselves for pennies on the dollar.

50. Irrespective of the quality of Altor’s clinical data, which cannot be adequately assessed by minority stockholders because it has been purposefully hidden from them by Defendants, following a previous long scheme by Defendants Wong and Middleton to hide the results of Altor’s clinical trials from Plaintiffs, a scan of the market valuation of comparable immunotherapy companies objectively

shows that the Board's valuation of \$290 million is grossly below market for an immunotherapy company as far advanced as is Altor into both Phase 2 and (entering) Phase 3 clinical trials, one that has double-digit additional ongoing clinical trials, one that is about to initiate (according to Soon-Shiong's own announcements, an additional 12 Phase Ib/II clinical trials for a cancer vaccine, for a Company with a 200 million dollar milestone payment deal with a Chinese partner for the Chinese market alone, and for a company recently granted FDA Fast Track Designation. In terms of actual, market-based, comparable valuations:

- Juno Therapeutics, founded in 2013, is an immunotherapy company that currently trades at a market value of \$2.8 billion. It has traded at a valuation of \$5.275 billion within the last 52 weeks. Juno currently has 11 clinical trials, with none as far advanced as Phase 3. Nine of Juno's trials are in Phase 1, and two are in Phase 1 or 2. Juno trades at a valuation nearly 1000% higher than the Altor Board's grossly under market "insider valuation" for an immunotherapy company far more advanced along the approval process.
- Kite Pharma, founded in 2009, is an immunotherapy company that currently trades at a market value of \$5.36 billion, its all-time high. Kite Pharma currently has 17 trials, only one of which is as advanced as Phase 2 or Phase 3. Seven of Kite Pharma's trials are in Phase 1. Nine of Kite Pharma's trials are pre-clinical. Yet Kite Pharma trades at a valuation that is more than 1600% higher than that which insiders have agreed with themselves to buy Altor for themselves.
- Five Prime, founded in 2001, is an immunotherapy company that currently trades at a market value of \$906 million. Five Prime has traded at a valuation of over \$1.7 billion within the last 52 weeks. Five Prime currently has nine clinical trials, only one as far advanced as Phase 2. Three of Five Prime's trials are in Phase 1. Five of Five Prime's trials are pre-clinical. Yet Five Prime trades at a valuation that is over 300% higher than that which Altor's insiders have agreed with

themselves to buy Altor for themselves.

- Collectis, founded in 1999, is an immunotherapy company that currently trades at a market value of \$840 million. Collectis has traded at a valuation of over \$1 billion within the last 52 weeks. Collectis currently has five clinical trials, none further advanced than Phase 1. Two of Collectis' clinical trials are Phase 1. Collectis' other two trials are pre-clinical. Despite having no clinical trials in Phase 3, and no clinical trials even in Phase 2, Collectis trades at a valuation that is nearly 300% higher than that which Altor's insiders have agreed with themselves to buy Altor for themselves.
- Aduro, founded in 2000, is an immunotherapy company that currently trades at a market value of \$752 million. Aduro has traded at a valuation of over \$1.14 billion within the last 52 weeks. Aduro currently has five clinical trials underway, none further advanced than Phase 1 or Phase 2. Four of Aduro's trials are in Phase 1. The other trial is in Phase 1 or Phase 2. Yet Aduro trades at a valuation that is more than 150% greater than that which Altor's insiders have agreed with themselves to buy Altor for themselves.
- MacroGenics, Inc., founded in 2000, is an immunotherapy company that currently trades at a market value of \$684 million. MacroGenics has traded at a valuation of over \$1.1 billion within the last 52 weeks. MacroGenics currently has 15 clinical trials underway. Like Altor, MacroGenics has one clinical trial entering Phase 3. Three of MacroGenics' trials are in Phase 2. Seven of MacroGenics' trials are in Phase 1, and three are pre-clinical. Yet MacroGenics trades at a valuation that is more than 125% greater than that which Altor's insiders have agreed with themselves to buy Altor for themselves.
- Inovio Pharmaceutical, founded in 1979, is an immunotherapy company that currently trades at a market value of \$600 million. Inovio has traded at a valuation of over \$866 million within the last 52 weeks. Inovio currently has six clinical trials underway, none further advanced than Phase 2. One of Inovio's trials is in Phase 2. One of Inovio's trials is in Phase 1 or Phase 2. Three of Inovio's trials are in Phase 1. Yet Inovio trades at a valuation that is over 100% greater than that which Altor's insiders have agreed with themselves to buy Altor for themselves.

- Ziopharm Oncology, Inc., founded in 1998, is an immunotherapy company that currently trades at a market value of \$1.01 billion. Ziopharm has traded at a valuation of over \$1.3 billion within the last 52 weeks. Ziopharm currently has ten clinical trials underway, none further advanced than Phase 2. Apart from the one trial in Phase 2, the other nine trials are Phase 1 or pre-clinical. Yet Ziopharm trades at a valuation that is nearly 400% greater than that which Altor's insiders have agreed with themselves to buy Altor for themselves.
- Jounce Therapeutics, founded in 2013, is an immune-oncology company that currently trades at a market value of \$641 million. Jounce has traded at a valuation of over \$850 million within the last 52 weeks. Jounce currently has five clinical trials underway, with the most advanced of the five in a Phase 1 clinical trial. The other four trials are pre-clinical. Yet Jounce trades at a valuation that is over 200% greater than that which Altor's insiders have agreed with themselves to buy Altor for themselves.
- Private company Flexus, an immune-oncology company whose compounds were **no further advanced than pre-clinical development**, was acquired at a value of \$800 million in cash and was provided an additional \$450 million in possible milestone payments by pharmaceutical company Bristol-Myers Squibb.
- Soon-Shiong's own NantHealth went public in June 2016 and was offered to the market at a valuation of \$1.65 billion on its first day of trading, rising to over \$2 billion in market-based valuation on its first day of trading, notwithstanding the fact that NantHealth seems to have had no drugs further than Phase 1 on the date of its public listing.

51. Currently, according to its website, Altor (founded in 2000) has 11 clinical trials ongoing, and one additional trial in collaboration with Soon-Shiong's NantWorks. According to Soon-Shiong's presentation at the ASCO conference on June 5, 2017, NantWorks is preparing to launch at least 11 more trials using Altor's compound, an announcement that caused Soon-Shiong's NantKwest stock to

appreciate 86% and \$283 million in market capitalization in just 2 weeks. At least one of Altor's compounds (ALT-803) is about to begin Phase 3 clinical trials with FDA Fast Track Designation, and could be available for worldwide marketing as a cancer treatment before 2020, when the market for bladder cancer therapeutics alone has been projected to reach over \$20 billion. The overall market for immunotherapies, which the ASCO conference termed the "medical advance of the year" for the last two years, is projected to reach over \$200 billion by 2020. Altor also has completed a Phase 2 study for another immunotherapy compound, ALT-801, and is positioned to begin a Phase 3 trial on that compound. Altor's other Phase 1 and Phase 2 studies appear to be showing great promise, safety, tolerability, and even limited efficacy based upon Altor's scanty publicly disclosed data for its immunotherapy approach to a variety of cancer indications, as well as showing great promise for the treatment of HIV/AIDS as indicated by the \$28 million US federal government grant to support the clinical development of Altor's anti-viral compound. According to media reports, the NIH-funded team spent 18 months and tested approximately 250,000 compounds before finding the one and only compound—Altor's ALT-803—that appears to stop HIV from hiding itself from the immune system and then kills the HIV cells.

52. Additionally, in 2014, Altor entered into a licensing deal with a Chinese company that prescribes up to \$200 million in milestone payments just for the

Chinese market.

53. In light of Altor's achievements and advancement in the development of its ground-breaking compounds, and as compared with the earlier-stage comparable immunotherapy companies listed above (which could be supplemented by over a dozen additional company valuations that are hundreds of millions and even billions of dollars higher than the insider price set by Defendants), it is inconceivable that Altor's valuation would be notionally calculated at \$290 million—an amount that appears to be several multiples lower than the market valuation for comparable, yet less advanced by stage of clinical development, immunotherapy companies. \$290 million is indeed even a lower valuation than the last non-market-based insider-funding round dominated by Defendant Soon-Shiong. The only apparent explanation for such a grossly under-market valuation (and lack of procedural safeguards in setting a fair price for the Merger) is that Altor's insiders—the Defendant Board members—led by majority shareholder Soon-Shiong, have conspired to set for themselves a fire-sale price for the Company, the detailed clinical trial results of which are hidden and known only to them, in which they will reap all the benefits at the expense of Plaintiffs and Altor's other minority stockholders in violation of their fiduciary duties. Defendants have the temerity to use Altor's own cash, the proceeds of Soon-Shiong's own dilutive financings into Altor, to fund much or all of the cash portion of the Merger, and pretend the deal is actually valued at \$360 million. Even that insider price grossly undervalued Altor

and reflects Soon-Shiong' attempt, with the complicity of Altor's other Board members who are being rewarded with tens of millions of stock options, employment in the new entity and other consideration for such complicity, to convert minority shareholders' value in a near term promising cures for a variety of cancers and HIV/AIDS, to themselves.

54. In 2013, the Director of the National Cancer Institute-funded Cancer Immunotherapy Trials Network ranked Altor's lead compound ALT-803 the "#1 Immunotherapeutic Agent for Cancer." Despite his repeatedly concealing clinical trial data from Plaintiffs and other minority stockholders, Defendant Wong has touted this #1 ranking in written and oral materials to potential investors, including in Jeffries & Co. investment banking materials in June 2016. Comparable immunotherapy companies with compounds that are per se ranked lower than #1—very few of which are as advanced in clinical trials as Altor's imminent pair of Phase 3 clinical trials—are fairly valued by the market with market capitalizations that run into the billions. In stark contrast to those market-based valuations, insider Defendants Soon-Shiong, Wong and Middleton think they can hoodwink Plaintiffs and pilfer Altor for a paltry notional valuation of \$290 million, while rejecting bedrock safeguards rooted in Delaware law to ensure fairness to Plaintiffs and other minority stockholders. Defendants' self-dealing, wrongful and tortious misconduct cannot and should not be permitted to continue.

55. Plaintiffs’ counsel provided Soon-Shiong’s counsel with a draft complaint containing the substance of the allegations contained herein on June 9, 2017, and indicated their intention to seek a TRO against the consummation of the Merger. On June 11, counsel for Soon-Shiong advised that Defendants intended to issue supplemental disclosures and asked Plaintiffs to refrain from seeking a temporary restraining order. On June 12, the law firm Mintz Levin, which curiously serves as legalcounsel on the Merger for both Altor *and* its purported acquirer, NantCell, sent an announcement to shareholders that Altor would be sending additional information in the form of a “Supplemental Information Statement” and that, as such, shareholders would not be required to return executed documents by June 15, 2017, as originally announced in the Information Statement. (Ex. B). However, because Defendants have stated that there will not be any changes to the material terms of the proposed Merger—specifically with respect to structure or the grossly-undervalued exercise price equivalent to \$2.00 per share, and only \$1.00 in cash per share, —Plaintiffs are therefore filing this action now and will promptly file a motion for a temporary restraining order should the many serious deficiencies in the Information Statement fail to be remedied.

COUNT I

(Breach of Fiduciary Duty against Defendants Soon-Shiong, Wong, and Middleton)

56. Plaintiffs repeat and reallege the preceding allegations as if fully set

forth herein.

57. As members of Altor's Board, Defendants Soon-Shiong, Wong, and Middleton have fiduciary obligations to: (a) undertake an appropriate evaluation of Altor's net worth as a merger/acquisition candidate; (b) take all appropriate steps to enhance Altor's value and attraction as a merger/acquisition candidate; (c) act independently to protect the interests of Altor's stockholders; (d) adequately ensure that no conflicts of interest exist between the Board members' own interests and their fiduciary obligations and, if such conflicts exist, to ensure that all conflicts are resolved in the best interests of Altor's stockholders; (e) actively evaluate the Merger and potentially engage in a meaningful auction with third parties in an attempt to obtain the best value on any sale of Altor; and (f) disclose all material information to Altor's stockholders.

58. Defendants Soon-Shiong, Wong and Middleton have breached their fiduciary duties to Plaintiffs and to the other minority stockholders of Altor.

59. As alleged herein, Defendants Soon-Shiong, Wong, and Middleton have initiated a process to sell Altor that grossly undervalues the Company. Defendants' failure or refusal to appoint a special committee of disinterested members to evaluate the Merger, their refusal to require a majority of the minority shareholder vote to approve the Merger, and their failure or refusal to obtain a fairness opinion on the Merger renders the Merger subject to entire fairness review.

60. In addition, by agreeing to the Merger, Defendants Soon-Shiong, Wong and Middleton have agreed to a stock price that does not adequately or fairly reflect the Company's true present or future value. Soon-Shiong, Wong and Middleton also purposefully failed to take any of the standard steps to sufficiently inform themselves of Altor's value, allowing them to disregard the true value of the Company.

COUNT II

(Breach of Fiduciary Duty against Defendant Soon-Shiong)

61. Plaintiffs repeat and reallege the preceding allegations as if fully set forth herein.

62. As set forth above, Defendant Soon-Shiong is a controlling stockholder of Altor and owes and owed fiduciary duties to Altor's other stockholders.

63. As a product of the negotiated Merger Agreement between Altor and NantCell, a company wholly-owned and controlled by Altor's controlling stockholder, Soon-Shiong, the Merger is subject to entire fairness review. None of the standard procedural safeguards were employed by Defendant Soon-Shiong or the Board to ensure fairness, including the failure or refusal to appoint a special committee of disinterested members to evaluate the Merger, the refusal to require a majority of the minority shareholder vote to approve the Merger, and the failure or refusal to obtain a "fairness opinion" on the Merger. The Merger also provides grossly inadequate consideration to Altor's minority stockholders for their Company

stock. As such, the Merger is unfair as to process and price.

COUNT III

(Aiding and Abetting Breach of Fiduciary Duty against Defendant NantCell, Inc.)

64. Plaintiffs repeat and reallege the preceding allegations as if fully set forth herein.

65. Defendant NantCell, by reason of its status as party to the Merger Agreement in possession of nonpublic information regarding Altor, and as an instrumentality of Defendant Soon-Shiong, has knowingly aided and abetted Defendants Soon-Shiong, Wong and Middleton in the breaches of their fiduciary duties.

66. Such breaches of fiduciary duties could not and would not have occurred but for the conduct of Defendant NantCell which, therefore, has aided and abetted such breaches in Soon-Shiong's attempted acquisition of the portion of Altor that he and NantCell do not already own.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

- A. Damages to Plaintiffs in an amount to be determined at trial;
- B. Directing Defendants to account to Plaintiffs for their damages sustained because of the wrongs complained of herein;
- C. Awarding Plaintiffs the costs of this action, including reasonable

allowance for Plaintiffs' attorneys' and experts' fees; and

D. Granting such other and further relief as the Court may deem just and proper.

HEYMAN ENERIO
GATTUSO & HIRZEL LLP

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