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

LEON MARTIN, derivatively on behalf of ABBOTT LABORATORIES,	
Plaintiff,	No. 22 CV 5513
v.	Judge Manish S. Shah
ROBERT B. FORD, et al.,	
Defendants.	

ORDER

The Teamsters Local No. 710 Pension Fund and SEPTA's motion to consolidate cases and for appointment of lead plaintiffs and counsel [72] is granted. The Pension Fund and SEPTA are appointed co-lead plaintiffs and their counsel are appointed lead plaintiffs' counsel. The competing motions from other plaintiffs and counsel [66] [67] [68] are denied. Case numbers 23 CV 266, 23 CV 850, 23 CV 2648, 23 CV 4142, and 23 CV 4143, are consolidated into case number 22 CV 5513. Lead plaintiffs shall file a consolidated amended complaint in case number 22 CV 5513 by October 16, 2023. Lead plaintiffs may file a consolidated amended complaint under seal, but must also file a public redacted complaint. The Clerk shall re-caption 22 CV 5513 to *In re Abbott Laboratories Infant Formula Shareholder Derivative Litigation*, and terminate case numbers 23 CV 266, 23 CV 850, 23 CV 2648, 23 CV 4142, and 23 CV 4143. The parties shall file a joint status report by October 23, 2023, with a proposed case schedule.

STATEMENT

Several plaintiffs—all ably represented by competent counsel—filed shareholder derivative complaints against the officers and directors of Abbott Laboratories in connection with claims related to Abbott's production and sale of infant formula products. All of the plaintiffs agree that the cases should be consolidated into a single shareholder derivative complaint. *See* Fed. R. Civ. P. 42(a)(2). The plaintiffs also agree that I have the authority to appoint the leadership of the consolidated case as part of the prerequisite that a plaintiff in a derivative action fairly and adequately represent the interests of shareholders. *See* Fed. R. Civ. P. 23.1. The plaintiffs disagree about who should be the lead plaintiff and counsel.

In direct securities fraud actions, institutional investors and those with the largest financial interest in the case are the preferred lead plaintiffs. Those factors are usually good proxies for a party's incentive to litigate in the shareholders' collective interest. In this case, however, even the large-volume institutional plaintiffs' Abbott holdings are a drop in the bucket given Abbott's market capitalization. The institutional investors may also have a disadvantage in pursuing an action if they are not "shareholders of record." But the lead plaintiff need not be the sole plaintiff, and an institutional investor with a strong incentive to litigate and sophisticated counsel could easily find a shareholder of record to join a case as a co-plaintiff and craft a complaint that adequately anticipates the issues flagged by plaintiff Steele. Moreover, the "shareholder of record" requirement is not inflexible, and I am not persuaded that it meaningfully distinguishes plaintiffs. Although the individuals, Steele and Hamilton, have demonstrated a commitment to litigating the case, the institutional investors, the New York State Common Retirement Fund, the International Brotherhood of Teamsters Local No. 710 Pension Fund, and the Southeastern Pennsylvania Transportation Authority, have an advantage in their access to resources and (for NYSCRF) a recent history of leading shareholder derivative litigation.

Those plaintiffs who pursued a books-and-records demand before filing complaints have an edge in their ability to prepare detailed complaints, and in demonstrating that they were not merely racing to the courthouse. That said, all of the complaints are detailed, and all of the plaintiffs marshaled information to use in their complaints in anticipation of demand-futility arguments from the defense. The Teamsters Pension Fund and SEPTA may have included more allegations and theories than relevant for the initial stages of a derivative action, but thinking early and broadly about avenues of potential relief is also a sign of vigorous prosecution.

All of the attorneys are capable of pursuing this litigation and the distinctions drawn among the plaintiffs and counsel are thin. The Teamsters Pension Fund and SEPTA are represented by counsel with a Chicago office; they have no need for a liaison counsel and their proposal avoids the unnecessary and inefficient bureaucracy of an added firm to serve as nonsubstantive local counsel. Counsel for the Teamsters Pension Fund and SEPTA have also demonstrated a commitment to monitoring related litigation and coordinating with others.

I've considered appointing co-leads across the movants, but that would be unwieldy. Ultimately, I'm persuaded that the Teamsters Pension Fund and SEPTA, together with their chosen counsel, will—by just a hair—best represent the interests of the shareholders in this derivative action.

ENTER:

Date: September 18, 2023

Manish S. Shah
U.S. District Judge