UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **ADAM C. DERBYSHIRE,** **Defendant.**	**Case No. 1:18-cv-08891**

COMPLAINT

Plaintiff Securities and Exchange Commission ("SEC" or "Commission"), for its Complaint against Adam C. Derbyshire, alleges as follows:

SUMMARY OF ALLEGATIONS

1. Adam C. Derbyshire was the Chief Financial Officer of Salix Pharmaceuticals, Ltd. ("Salix"), a publicly-traded company that specializes in branded prescription drugs that treat gastrointestinal diseases. (On April 1, 2015, Salix was acquired by Valeant Pharmaceuticals International, Inc. ("Valeant"). In July 2018, Valeant changed its name to Bausch Health Companies Inc. ("Bausch"). Salix now exists as a wholly-owned subsidiary of Bausch.) Salix's flagship products are Xifaxan and Apriso, and its primary customers are pharmaceutical wholesalers. Derbyshire reported directly to Salix's Chief Executive Officer ("CEO").

2. Salix's quarterly revenue targets drove its sales efforts each quarter. To help meet revenue targets, Salix engaged in overselling of demand – a practice whereby a company floods distribution channels using incentives to induce customers into purchasing more of its products,

creating a short-term bump in revenue for the seller but excess supply in the distribution chain that limits the seller's ability to sell product to customers in the future.

3. As Salix engaged in overselling of demand, wholesaler inventory levels grew so high that wholesalers did not need to purchase product each quarter to keep up with prescription or retail demand. By the start of 2013, Salix's sales practices left wholesalers with inventory levels well in excess of two to three months on hand for Salix's key products, Xifaxan and Apriso, and Salix's overselling in the first quarter pushed those levels to nine months. Salix's continued overselling of demand throughout 2013 led wholesalers to cut back significantly on purchases of Xifaxan and Apriso in the first quarter of 2014, resulting in the company failing to meet its earnings target for the quarter.

4. On quarterly earnings calls in 2013 and 2014, Derbyshire routinely responded to securities analysts' inquiries about the levels of Salix products at wholesalers by stating that wholesalers' inventories were in a range of ten to twelve weeks, or approximately two to three months.

5. Derbyshire's statements were false because, as a result of Salix's overselling of demand, wholesalers' inventories had grown to much higher levels. This was significant because, with high inventories on hand, wholesalers were much less likely to purchase as much product from Salix in the future, and, therefore, Salix's future revenues and earnings were likely to be depressed. Derbyshire knew or recklessly disregarded the falsity of his statements: in fact, he had personally tracked total distribution channel inventory levels, and he was apprised by the Salix team about wholesalers' resistance to Salix's sales promotion efforts given their already high inventory levels.

6. Derbyshire reviewed, approved, and signed Salix's quarterly Reports on Form 10-Q for the first and second quarters of 2014. In these filings, Derbyshire knowingly or recklessly failed to disclose, and aided and abetted Salix in not disclosing – in the Risk Factors and Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") sections – Salix's known trend of regularly overselling demand, that the trend had created high wholesaler inventory levels that could not be sustained, that it had already impacted the company's income from continuing operations and could reasonably be expected to have a material unfavorable impact on the company's net sales and income from continuing operations, and thus that it presented a risk to Salix investors. The failure to include this information made those 2014 quarterly filings misleading.

7. Salix's sales collapsed in the third quarter of 2014 when confidential due diligence efforts by a company interested in acquiring Salix raised questions about the true level of Salix's products being held by its wholesaler customers. After an internal investigation, Derbyshire resigned, and Salix revealed in its Form 10-Q for the third quarter of 2014 that wholesaler inventory levels of Xifaxan and Apriso had been at roughly nine months during the first three quarters of 2014 and reported its expectation that it would take at least one to two years to drop to three months, during which time Salix's sales and revenue would be negatively impacted. Following these disclosures, Salix's stock price dropped roughly 34 percent.

VIOLATIONS AND RELIEF SOUGHT

8. By virtue of the conduct alleged herein, Derbyshire violated (1) Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b); (2) Section 17(a)(2) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a)(2); and (3) aided and abetted Salix's violations of Section

13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rule 13a-13 thereunder, 17 C.F.R. § 240.13a-13, as alleged below.

9. This Court should permanently enjoin Derbyshire from violating the securities laws alleged herein, bar him from serving as an officer or director of a public company, order him to disgorge any ill-gotten gains with prejudgment interest, impose a civil monetary penalty, and order any other relief the Court may deem just and appropriate.

JURISDICTION AND VENUE

10. The Court possesses jurisdiction over this action pursuant to Sections 20(b), 20(d), and Section 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d), and 77v(a), and Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

11. Venue lies in this District pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a), because certain of the transactions, acts, practices, and courses of conduct constituting the violations alleged herein occurred in this District. Among other things, Salix's common stock traded on the NASDAQ Stock Market, LLC ("NASDAQ"), which has its headquarters located in this District, and the misrepresentations at issue were communicated to analysts located in this District.

12. In connection with the conduct alleged in this Complaint, Derbyshire directly or indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce and made use of the means or instruments of transportation or communication in interstate commerce and of the mails and of the facilities of a national securities exchange to carry out the unlawful conduct alleged in this Complaint. Among other things, Salix was listed on the NASDAQ, and Derbyshire used the telephone, email, and fax in connection with the unlawful conduct alleged herein.

DEFENDANT

13. **Adam C. Derbyshire,** of Raleigh, North Carolina, was Salix's Chief Financial Officer ("CFO") and Executive Vice President for Finance and Administration from 2000 until he resigned on November 5, 2014.

FACTUAL ALLEGATIONS

I. Overview of Salix's Business

14. Salix was a publicly-traded Delaware pharmaceutical company that was headquartered in Raleigh, North Carolina, from 2001 to 2015.

15. At all times relevant, Salix's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, 15 U.S.C. § 78*l*(b), and traded on the NASDAQ under the symbol "SLXP." Accordingly, Salix filed periodic reports with the Commission in accordance with Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a).

16. Salix developed, acquired, and commercialized branded prescription drugs that treat a variety of gastrointestinal diseases. Salix's most profitable product was Xifaxan, which it began selling in July 2004 in 200 milligram form. Later, Salix began selling a 550 milligram form of Xifaxan ("Xifaxan 550"). From 2010 to 2013, Xifaxan sales accounted for approximately 70 percent of Salix's net revenue. Salix's other key product was Apriso, which it began selling in 2009 and which, by 2013, accounted for approximately 10 percent of Salix's net revenue.

17. Salix's primary customers were large pharmaceutical wholesalers, which sold Salix's products to retail pharmacies. Sales to Salix's three major customers – Wholesaler A, Wholesaler B, and Wholesaler C (collectively, "the Big Three") – together represented the vast majority of Salix's total revenues in 2013 and 2014.

18. As Salix struggled to meet its quarterly revenue targets, particularly starting around 2013, Salix increasingly relied upon Wholesaler D, a smaller regional wholesaler that competed with the Big Three. Salix came to view Wholesaler D as its customer of "last resort" and at times induced it to buy large quantities of product via unprecedented discounts and high-dollar marketing agreements in an effort to boost Salix's quarterly revenue.

19. Unlike the vast majority of branded pharmaceutical companies, Salix did not sell to wholesalers through Inventory Management Agreements ("IMAs") or Distribution Services Agreements ("DSAs"). These agreements typically require a wholesaler to maintain a certain inventory level or range of products and provide the pharmaceutical company with data concerning the customer's existing inventory levels, in exchange for favorable terms and conditions for all sales, including a set percentage discount off the pharmaceutical company's wholesale acquisition cost ("WAC").

20. Because Salix did not use IMAs or DSAs, it sold to wholesalers in whatever amount and at whatever price the wholesalers agreed to. Typically, Salix made sales to the Big Three through negotiated *ad hoc* deals during the second half of each quarter, which Salix often referred to as quarterly "promotional buys." Salix based its quarterly promotional buys almost exclusively on the quarterly revenue guidance it disclosed to the public, but also considered its earnings-per-share ("EPS") guidance when setting its sales promotion strategy.

21. Salix's Finance group, which reported to Derbyshire, set Salix's revenue guidance. Toward the end of each fiscal year, the Marketing group would estimate projected retail patient prescription demand for each product during the next fiscal year, and the Finance group would monetize this demand using the existing WAC prices plus any planned price increases over the year. The resulting annual revenue targets were then broken down by quarter

based on historical sales patterns. In short, Salix based revenue targets on anticipated retail patient demand during the year, with little regard to how much product wholesalers already had in inventory.

22. Salix's Trade Relations group managed Salix's sales relationships with its wholesalers and other customers and worked to generate the sales needed to hit Salix's revenue targets. The group consisted of two individuals, the Director of Trade Relations ("Trade Relations Director"), and his supervisor, the Executive Vice President of Business Development ("EVP"), who reported directly to the CEO.

23. Each quarter, Trade Relations typically consulted with Salix's Finance group to decide which products to pitch to wholesalers so that Salix would hit its revenue target. Over the course of a quarter, Trade Relations typically provided sales updates to Salix's Finance group, as well as to Derbyshire and the CEO directly.

24. When offering a promotional buy, Salix typically asked wholesalers to purchase a certain dollar amount of product and offered various price discounts and other incentives if the wholesalers purchased that amount. Wholesalers' appetite to purchase Salix product hinged primarily on the amount of product already in inventory. As a result, Trade Relations regularly discussed inventory levels with each wholesaler when negotiating quarterly promotional buys.

25. Upon request, wholesalers would send their internal inventory data for Salix products to the Trade Relations Director to facilitate the parties' negotiations for the next quarterly promotional buy. The Trade Relations Director typically discussed with, or even forwarded this data to, the EVP, and they occasionally discussed it with Derbyshire.

26. Because Salix's sales practices were tied almost exclusively to achieving its quarterly revenue goals without much regard to wholesaler inventory levels, wholesaler

inventory levels grew steadily over time. As early as 2013 wholesalers had such a significant supply of Salix's major products that they rarely "needed" to purchase much of Salix's products each quarter to keep up with retail demand, and as a consequence resisted making the large purchases that Salix needed to meet its revenue targets.

27. In response, Salix began to offer to wholesalers greater incentives to purchase more product, to ensure Salix generated enough revenue to meet its quarterly revenue targets. Before offering incentives such as new discounts or extended payment terms, the Trade Relations Director was required to obtain Salix's Finance group's approval including, at times, from Derbyshire directly.

II. Derbyshire Misled Analysts and Investors When He Discussed Wholesaler Inventory Levels on Salix Earnings Calls

A. Derbyshire Routinely Discussed Wholesaler Inventory on Earnings Calls

28. Derbyshire and the CEO would conduct quarterly earnings calls that were open to stock analysts and investors. On these earnings calls, the CEO primarily discussed physician feedback about the efficacy of Salix products based on reports from Salix's sales force, and Derbyshire responded to analyst questions regarding financial and inventory issues. Before the earnings calls, Derbyshire and the CEO would meet in the CEO's office to discuss the calls generally, and Derbyshire and the CEO would separately review their own materials for their respective portions of the calls.

29. While preparing Salix's public financial statements and disclosures, and in preparation for related earnings calls, Derbyshire and the Finance group monitored the amount of Salix products in the total distribution channel. Until 2004, Salix used a third-party pharmaceutical industry service to track wholesaler inventory levels. After 2004, the third-party

service no longer published wholesaler data, and Salix was left to obtain this information directly from wholesalers or track wholesaler inventories on its own.

30. Beginning in the early 2000s, securities analysts participating in Salix's earnings calls, including securities analysts located in New York City, regularly asked questions of Derbyshire about wholesaler inventory levels and how they would impact Salix's present and future revenues and profits.

31. Derbyshire routinely responded to securities analysts' questions about inventory levels by indicating that wholesalers had two to three months of inventory on all of Salix's products (sometimes expressed as "eight-to-ten weeks" or "ten-to-twelve weeks").

32. On May 2, 2012, Derbyshire met with Salix's Trade Relations and Finance groups to discuss Salix's revenue forecasting. Because wholesaler inventory levels were critical to Trade Relations' ability to sell product, the Trade Relations Director obtained the Big Three's Salix inventory data in advance of the meeting. That data indicated that the Big Three had around six months or more of most of Salix's major products, including Xifaxan 550 and Apriso. At a meeting that day, Trade Relations discussed with Derbyshire and others the amount of product it could sell going forward in light of existing wholesaler inventory levels.

33. On June 11, 2012, a Salix Finance group representative sent the Trade Relations Director an email, copying Derbyshire and others, asking if Salix was on pace to meet its revenue targets, which he listed in the email. The Trade Relations Director responded, "These are the numbers I have[,] and [I] am working toward them. I am waiting on final buys." In subsequent emails, Derbyshire agreed to the Trade Relations Director's request for an extension of time to provide an update, stating "Demand is in line with the forecast," to which the EVP

responded, "Yep, but days on hand are the issue." "Days on hand" was a reference to wholesaler inventory levels.

34. On or about June 12, 2012, the EVP asked the Trade Relations Director for wholesalers' inventory levels, and the Trade Relations Director told the EVP, among other things, that Wholesaler A and Wholesaler B had up to 300 days of Salix's major products.

35. During 2013, Derbyshire and the Finance group met regularly with Trade Relations to discuss Salix's revenue targets because those targets largely hinged upon what Trade Relations could sell to wholesalers going forward. The Trade Relations group would seek approval from Derbyshire and the Finance group to increase discounts and other incentives and would justify the requests by explaining that wholesalers needed additional incentives given their high inventory levels of Salix's products.

B. Derbyshire Misled Analysts and Investors When He Discussed Wholesaler Inventory Levels on Salix's 2013 Earnings Calls

a. Events Leading up to the Earnings Calls

36. By the beginning of the first quarter 2013, Salix's sales practices had resulted in wholesaler inventory levels well in excess of two to three months' supply.

37. By February, Trade Relations began to develop its plan to meet Salix's quarterly revenue guidance. Salix received wholesaler inventory data from the Big Three that showed six to nine months' supply of Xifaxan and Apriso.

38. Using the Big Three's inventory data, the Trade Relations Director determined that Salix would need to increase inventory levels at each of the Big Three to 10 to 13 months for Salix to meet its quarterly targets. He further projected that, to convince the Big Three to accept such high inventory levels, Salix would have to offer the wholesalers a then-unprecedented 16 percent discount off WAC, as well as extended payment terms. The EVP discussed the Trade

Relations Director's proposed deal with Salix's Finance department, including Derbyshire, on or around February 12, 2013.

39. Salix undertook promotional efforts to sell additional product to wholesalers. Wholesaler A purchased an additional approximately four months' worth of Xifaxan (and other products) at a 15 percent discount off WAC. Wholesaler B agreed to a purchase that included an 18 percent discount off WAC for Xifaxan, which resulted in inventory levels of about 12 months for all of Salix's products. Wholesaler C agreed to buy enough Salix products, including Xifaxan, to increase most of its inventory levels to approximately 10 months, in exchange for a 15 percent discount off WAC. By mid-March 2013, however, the revenue from Salix's sales was still below its quarterly targets.

40. On March 20, 2013, Derbyshire emailed the Trade Relations Director to ask if Salix had met its quarterly revenue targets and the Trade Relations Director responded that Salix was $16 million away from the quarterly goal and awaiting a response from a large retail pharmacy on a proposed direct sale at a substantial discount, but that if that deal did not satisfy Salix's revenue targets then he would "lean on our wholesale customers for the rest."

41. When the retail pharmacy declined Salix's offer, the Trade Relations Director reached an agreement with Wholesaler A to purchase more Xifaxan at a 15 percent discount off WAC, which left Wholesaler A with roughly eight months' supply on hand at the end of the quarter. While Salix was able to meet its first quarter revenue targets with the additional Wholesaler A sale, wholesaler inventory levels rose to an average of nearly nine months of Xifaxan and seven months of Apriso.

b. The Q1 2013 Earnings Call

42. On May 9, 2013, Derbyshire participated in Salix's first quarter 2013 earnings call. As had become routine on these calls, an analyst asked Derbyshire about wholesaler inventory: "[O]n Xifaxan – given the small sequential uptick, could we infer that there was a little bit of an inventory headwind in the quarter? How should we think about inventory in general?" Derbyshire responded, "Yes, inventories are in that 10-to-12 week range that we like to keep them." The analyst then asked, "Okay, so inventory has not changed significantly over the past quarter?" Derbyshire replied, "No."

43. As Derbyshire knew or was reckless in not knowing, his statements regarding wholesaler inventory levels were false. Indeed, by the first quarter of 2013, Salix had oversold demand such that wholesalers had approximately 36 weeks (or about nine months) of Salix products in inventory – almost three times the amount that Derbyshire disclosed.

44. By the second quarter of 2013, wholesaler inventory levels were even higher than the prior quarter, and at least one wholesaler, Wholesaler C, threatened not to purchase any Salix products during the quarter. Salix succeeded in meeting its revenue targets for the quarter by selling Xifaxan to wholesalers at unprecedented 18 to 22 percent discounts off WAC.

45. After completing the deal with one wholesaler, the Trade Relations Director emailed the EVP: "I am still completely amazed at these deals and our customers. Back to 12 months for Xifaxan." In all, Salix's overselling of demand in the second quarter increased wholesaler inventory levels, with Xifaxan and Apriso rising to almost 10 months' supply on hand.

c. The Q2 2013 Earnings Call

46. Derbyshire participated in Salix's second quarter 2013 earnings call with the public and analysts on August 8, 2013. A securities analyst, noting a slight decline in Xifaxan revenues from the prior quarter, asked, "was inventory pressure behind that or is there something else we should be thinking about? And also, on APRISO compared to [the first quarter] of this year, pretty big jump, so is inventory also playing a role there as well? Just help us understand that." Derbyshire responded,

> No. Actually, with XIFAXAN, . . . it's come actually in line with demand. So the number that you saw last quarter, as we spoke last quarter, was ahead of demand. The number that was posted in second quarter, which is the $150.6 million number, is right in line with demand. So it's exactly where we would like for it to be. With respect to APRISO, as you know, in previous quarters, we have been shipping well under demand.

The securities analyst responded, "Okay. And just a quick follow-up to that. Just to be clear, the level of inventory on hand for both products basically in line with what we've seen historically?" Derbyshire responded, "Yes."

47. Derbyshire's statements in the August 8, 2013 call were false and misleading because he knew or was reckless in not knowing the wholesaler inventory levels that Salix had presented to the public – and what the public thus had "seen historically," in the analyst's words – were far below the actual levels as of August 2013. Thus, it was false and misleading for Derbyshire to answer "yes" to the analyst's question.

48. Despite increased growth in prescriptions for Salix's products, Salix's sales practices caused wholesaler inventory levels of Xifaxan and Apriso to rise to approximately 10 months in the third quarter, and almost 11 months by the end of the fourth quarter of 2013.

d. The Q3 and Q4 2013 Earnings Calls

49. Salix's overselling of demand continued in the third quarter 2013. Salix's earnings call for the third quarter of 2013 took place on November 7, 2013. During the call, a securities analyst asked, "[O]n Xifaxan, anything unusual in the quarter, be it inventory, price, anything like that?" Derbyshire responded, "[I]n terms of Xifaxan, so demand for the quarter was about $159 million, and of course, we shipped about $165 million, $166 million. So it was a little bit ahead of demand."

50. Throughout 2013, Derbyshire had continually represented in prior earnings calls that wholesaler inventory levels were at the 10-12 week range. Derbyshire's statement during the third quarter call that sales were "a little bit ahead of demand," implied that wholesaler inventory may have increased slightly – something he knew not to be true. In fact, by this time, Derbyshire was aware that wholesaler inventory levels were increasing significantly.

51. In 2013, the EVP discussed with Derbyshire whether Salix should change its business model and "take its lumps" by decreasing its sales for a period of time to enable wholesalers to reduce their inventory levels. Among other things, the EVP explained that this change would enhance Salix's overall profitability in the long term because Salix would no longer have to offer discounts well in excess of industry norms.

52. Salix discussed its results for the fourth quarter of 2013 during a February 27, 2014 earnings call with analysts and investors. During the call, a securities analyst asked Derbyshire, "On Xifaxan, anything going on in the quarter, inventory-wise, which would prevent quarter-over-quarter growth into the first quarter?" Derbyshire responded, "[B]ased on the latest . . . run-rate data, we were right in line with demand and no changes with Xifaxan."

53. Derbyshire's statements were false and misleading. Salix's Trade Relations and Finance groups had been involved in Salix's overselling of demand for years and had heard complaints from wholesalers that inventories were outpacing demand, had seen wholesalers' internal data supporting such claims, and had discussed Salix's sales practices and wholesalers' inventory problems with Derbyshire directly. Accordingly, at the time Derbyshire reported that sales "were right in line with demand," he either knew or was reckless in not knowing that these statements were false and misleading.

III. Derbyshire Misrepresented Wholesaler Inventory in 2014

A. Derbyshire Made False and Misleading Statements About Salix's First Quarter 2014 Wholesalers' Inventory Levels

a. Events Leading up to the Q1 2014 False Statements

54. By the first quarter of 2014, Derbyshire knew or was reckless in not knowing that high wholesaler inventory levels of Xifaxan and Apriso would make it difficult for Salix to meet its publicly disclosed revenue guidance for the quarter. Indeed, Wholesaler A told Salix in late 2013 that it would not purchase any Xifaxan or Apriso in the first quarter due to its already high inventory levels.

55. On January 2, 2014, Salix acquired another pharmaceutical company, Santarus, Inc., and its portfolio of products, including the flagship products of Glumetza and Uceris. Santarus had used IMAs with wholesalers, and, at the time of the acquisition, wholesalers had one to two months of Glumetza and Uceris in inventory. Salix cancelled those IMAs and aggressively pushed wholesalers to purchase significant amounts of Glumetza and Uceris to enable Salix to satisfy its quarterly revenue targets.

56. Around February 2014, the Trade Relations Director met with Derbyshire to discuss plans to continue to offer promotions to the Big Three to buy Xifaxan and Apriso and to

increase wholesalers' inventory of Santarus products to five months as a means of offsetting their reduced purchases of Xifaxan and Apriso.

57. On February 28, 2014, the Trade Relations Director offered Wholesaler B a $116 million promotional buy for Apriso, Xifaxan, and other products, at a 16 percent discount off WAC. Wholesaler B initially responded, "a lot of items close to or over 365 days. Unlikely we'll be able to target $100M net = $116 @ WAC without the help of Santarus inventory."

58. On March 20, 2014, Salix offered and sold a significant amount of Xifaxan at a substantial discount to a large retail pharmacy, despite knowing this sale would inhibit wholesalers' ability to work down their inventories.

59. In March 2014, the Trade Relations Director reached out to Wholesaler D – Salix's customer of "last resort" – for a promotional buy, noting "need Xifaxan more than anything else," and later stating that Salix needed Wholesaler D "to look [at] making a large buy of Xifaxan 550mg" of about $50 million. Salix offered a 19 percent discount off WAC and extended payment terms, and further stated that it "would consider a monthly storage fee due to the large purchases." Wholesaler D responded that Salix's discount was insufficient to purchase such a large amount of product, but it was interested in how much Wholesaler D could receive in "warehouse fees." Wholesaler D tentatively agreed to purchase about $52 million of Xifaxan, Apriso, and other products, at an unprecedented 26 percent discount off WAC.

60. In late March 2014, before it would agree to Salix's offer, Wholesaler D asked for an additional one percent discount as a "carrying cost" for holding large amounts of inventory. The Trade Relations Director told the EVP that the monthly cost to Salix would be roughly $630,000, and "Wholesaler D has 9 months of inventory so it would be 9 months before he touches this product (at the current sell rate)." The Trade Relations Director discussed this with

Derbyshire, and they decided to reject Wholesaler D's offer because these carrying costs were too high.

61. By March 25, 2014 – only six days before the end of the quarter – Salix remained $77 million below its $160 million revenue target. On March 26, 2014, Wholesaler B informed the Trade Relations Director that it would not purchase more Xifaxan because Wholesaler B's "CFO says nothing over 52 weeks this quarter." When he learned of it, Salix's EVP told the Trade Relations Director, "You need to sell everything that you can in order to get closer to the overall number," and instructed him to offer Wholesaler B more Santarus products. Wholesaler B ultimately purchased more Santarus products that quarter, but declined to purchase more Xifaxan, even though Salix offered an unprecedented 26 percent discount off WAC, stating, "we are not able to exceed 12 months [of Xifaxan inventory]."

62. On March 28, 2014, the Trade Relations Director reported the Wholesaler B purchase of Santarus product to Salix's Finance group, and the news was forwarded to Derbyshire, who asked, "Where are the Xifaxan orders?" Later that day, the EVP approached Wholesaler B with a promotional buy offering unprecedented Xifaxan discounts but Wholesaler B declined, explaining that its inventory levels were too high already.

63. Later on March 28, 2014, Derbyshire noted in an email to the CEO that Salix would be short on revenue even if Wholesaler D's tentative $52 million order came through, and even then might not be able to recognize revenue because they may not be able to ship product before quarter end. Derbyshire concluded, "This is so F?!/&? Up!!!" The CEO responded, "I agree. I've asked [the EVP] if he and I need to go to Wholesaler B . . . 1st thing Monday. I don't even know if there'll be anyone there to see us. It's just so hard to accept failure on this."

64. Still later on March 28, 2014, the CEO asked Derbyshire, "If the [Wholesaler D] order ships, do we meet our top line and bottom line guidance?" Derbyshire responded, "The bigger issue is Xifaxan," to which the CEO replied, "I know . . . just trying to salvage as much as we can, if it comes to that. This definitely sucks!" Wholesaler D ultimately came through with an order on March 31st, but reduced the amount of Xifaxan from $52 million to approximately $30 million.

65. The CEO forwarded to Derbyshire an email from Wholesaler B declining to meet and to buy more products. When Derbyshire asked, "Does [the EVP] have a backup plan?" the CEO replied, "A couple more things to try but can't do anything until Monday morning."

66. On March 31, 2014 – the last day of the quarter – the EVP reached out again to Wholesaler C for another Xifaxan buy. Wholesaler C declined and explained that it "just purchased over a year's worth of Xifaxan so I don't think we have any wiggle room to bring in more inventory."

67. That same day, the EVP contacted Wholesaler B once more, and Wholesaler B again declined, noting "we have made a decision based on our policy and the inventory on hand and that answer is: we are going to pass." When Wholesaler B further instructed Salix to stop asking Wholesaler B to make another buy, the EVP responded that he and the CEO were "disappointed" in Wholesaler B's decision. The Wholesaler B representative responded, "I agree the terms were generous[,] but we would not recognize profit until we sell the product so while it's a good long term buy it's not compelling in the short term and it gets past our 12 month limit."

68. As for Wholesaler A, it followed through on its late-2013 warning and greatly reduced its orders for Xifaxan and other Salix legacy products during the first quarter of 2014 to

allow it to reduce its already high inventory levels, which were about 300 days by the end of 2013. Wholesaler A instead purchased a larger volume of Santarus products in light of Salix's aggressive promotional price discounts.

69. In all, Salix's first quarter overselling of demand resulted in wholesaler inventory levels at around nine months for most products, including Xifaxan and Apriso. To maintain these levels, Salix had given wholesalers unprecedented WAC discounts for many of its products – Xifaxan discounts averaged 19 percent off WAC, and reached as high as 26 percent, and Apriso discounts averaged 17 percent off WAC – as well as more favorable payment terms.

70. None of the wholesalers told Salix that the reason why they did not buy more legacy Salix products was because they were focused on purchasing Santarus products. Instead, wholesalers made clear to Salix that their existing high levels of Xifaxan and Apriso were the reason they did not purchase more of these legacy products.

71. Salix's sales activity in the first quarter of 2014 allowed the company to meet its revenue guidance, but it missed its EPS (or "bottom line") guidance because the Santarus products had much lower profit margins than Xifaxan and Apriso. Furthermore, while industry data indicated prescriptions for Xifaxan and Apriso had increased 19 percent and 58 percent, respectively, Salix reported declining Xifaxan revenue (by 25 percent year-over-year), and flat Apriso revenue.

b. The Q1 2014 Earnings Call

72. On Salix's first quarter 2014 earnings call on May 8, 2014, when describing why Xifaxan revenue declined and Apriso revenue was flat despite strong prescription growth, Derbyshire stated,

> This was due to wholesalers and drug chains, which have had very thin inventories for Santarus products, focusing on securing

> additional product during the quarter to establish adequate inventories in accordance with our preferred inventory levels. This resulted in strong revenue growth for Santarus products in the first quarter. With the wholesale inventories for Santarus products now at [] more appropriate levels, we expect Xifaxan 550 sales to exceed or to track in line with prescription demand in the second quarter of 2014, as wholesalers bring Xifaxan 550 inventories back to more typical levels.

73. Derbyshire's explanation compelled analysts to ask whether Salix's wholesaler inventory levels were the cause. One securities analyst questioned Salix's reason for the dip in Xifaxan revenue, asking "I just want to make sure I understand the inventory dynamics here. Why would the addition of the Santarus assets necessarily impact your inventory patterns on your existing products like Xifaxan?" Derbyshire responded,

> I don't know – you may or may not be aware that Santarus did have inventory management agreements in place. And so shortly after the acquisition closed, we terminated those agreements, which I think caused a little angst with wholesalers with respect to their products. So they were focused and we were focused on wanting to make sure those inventory levels got to the level that we're comfortable with, which is typically in that 10 to 12 weeks. We didn't quite achieve that. We're probably more in the 2- to 3-month range with the Santarus products. So again, they were focused on getting there. We were focused on that as well. And they had existing inventories at the legacy Salix products, which they were comfortable with. So what we expect in second quarter is that Xifaxan 550 will rebound and more than likely exceed demand.

74. Another analyst asked, "And maybe you can clarify the comment about the inventory levels. You said 10 to 12 weeks and 3 months for – if you can just clarify for each of your products and the Santarus products where it stood at the end of the year and where it stands now since the difference between the run rates you gave and the 1Q sales for some of these products indicate a swing of several months' worth of demand trends." Derbyshire responded,

> Yes. So we would expect by the end of second quarter that in – ideally, all of our inventories for all of our products would be in

> the 10- to 12-week range. Clearly, we'd be in a 2- to 3-month range, so we would fully expect that. Keep in mind that the shipments, especially the Santarus products, were happening very early in the quarter – in first quarter and so here we are in May. And so inventories are, again, at that 2- to 3-month timeframe. We would like for it to be 10 to 12 weeks and we expect it to be there by the end of second quarter.

75. Later in the call, an analyst asked if Salix could "quantify on a dollar basis how much inventory contributed to maybe Uceris and how much drawdown contributed to Xifaxan?" Derbyshire replied,

> So if you look at the run rate as a surrogate for that and you do the math, what you'll come up with on the Santarus products that upon shipment, it was roughly 4 months of inventory. And then, obviously, that's been working down ever since. So again, at the end of the second quarter, we would expect to be in that 2-3 to month range. And then, if you look at the run rate for Xifaxan and apply it to what was shipped, so the run rate would be at $175 million and we shipped $114 million. So that would imply that 1.5 months or so of inventory was – came down.

76. In response to another question, Derbyshire reiterated that Salix's Xifaxan revenue numbers "represented a decrease in inventory of a little over a month."

77. One securities analyst reported, following the first quarter 2014 earnings call:

> The issue and the main questions on the call was why the channel shrinking its weeks in inventory of the legacy Salix products but growing the inventory for the acquired Santarus products (mainly Uceris and Glumetza) . . . [and the] message from SLXP after many questions seemed to be that the wholesalers are brin[g]ing all inventory levels to 7-8 weeks for all of the products. The channel issue is supposed to stabilize itself before the end of the year. Legacy Salix product had 12 weeks of channel inventory.

78. These statements by Derbyshire were false and misleading. Contrary to Derbyshire's representations, sales of Xifaxan and Apriso were not lower because wholesalers were "focusing on securing additional product during the quarter to establish adequate inventories." Instead, as alleged above, wholesalers declined to purchase more Xifaxan and

Apriso – despite Salix offering aggressive price discounts – because they already had approximately nine months' worth of those products. Accordingly, Derbyshire's statement that "inventories are, again, at that 2- to 3-month timeframe" was also false. And his statement that he expected wholesaler inventories for all of Salix's products to be in the 10- to 12-week range by the end of the second quarter was at least extremely reckless and misleading.

79. Derbyshire knew or was reckless in not knowing that his statements cited above were false and misleading and were without any reasonable basis. For example, as discussed above, Derbyshire knew, from discussions he had with the EVP and Trade Relations Director, and the failed efforts with Wholesaler B, that Salix's Xifaxan and Apriso revenues were negatively impacted solely by wholesalers' already high inventory levels, and he knew, or was reckless in not knowing, that wholesaler inventory levels were considerably higher than Salix represented. Derbyshire had been told about the promotional offers on legacy Salix products that had been made to the Big Three during the quarter and the Big Three's reasons for rejecting them, as well as the EVP's communications with Wholesaler B about its already high inventory levels that prompted the CEO's offer to fly to Wholesaler B's offices to close a deal before the end of the quarter. As of the May 8, 2014 earnings call, wholesalers' inventories significantly exceeded the amounts disclosed by Derbyshire.

80. During 2014, the EVP directly confronted Derbyshire about his statements on the earnings call and also made clear to Derbyshire that wholesaler inventory levels Derbyshire reported on the calls were wrong.

B. Derbyshire Made False Statements About Salix's Second Quarter 2014 Wholesaler Inventory Levels

a. Events Leading up to the Q2 2014 False Statements

81. On May 9, 2014, the Trade Relations Director emailed the EVP copies of the Big Three's Salix inventory data and proposed a plan to meet Salix's second quarter revenue targets. Among other things, the Trade Relations Director noted that the Big Three had over $1 billion in Salix products on hand and concluded that Salix could likely sell about $136 million that quarter, but that wholesalers had "to go over 52 weeks [of inventory] for this to work."

82. By May 22, 2014, Wholesaler A had declined a Salix promotional offer because "[w]e are working to bring our inventory position down." Wholesaler A attached its Salix inventory data and noted, "As you can see, we are still up over 200 days on legacy Salix products." Later that quarter, Salix offered Wholesaler A another deal for Xifaxan, and Wholesaler A again sent Salix its inventory data, noting that Salix's offer would

> [add] an additional 168 days [of inventory]. This would be in addition to the 265 days that we already have on hand. From a business perspective, I hope you would agree that this doesn't make sense. [We] will continue to sell through the inventory that we have on hand. We will not be able to participate in a buy this quarter.

83. On May 22, 2014, Wholesaler C rejected Salix's initial promotional buy, noting that the offer "would require us to bring in close to 450 days [of inventory] and Sr. Management doesn't have an appetite to go that high unless we get something like 30% off I bet." Five days later, Wholesaler C countered with a smaller proposed buy with a 17 percent discount off WAC – stating that "[i]t will take our inventory to 365 days" – and Salix accepted the deal. By June 17, 2014, Salix made another offer to Wholesaler C at a 19 percent discount off WAC for almost

all products, including Xifaxan and Apriso, and while Wholesaler C initially noted that it was "still pretty heavy inventory wise," it ultimately accepted the deal.

84. Salix also continued its aggressive sales efforts with Wholesaler B in the second quarter of 2014. On May 29, 2014, Derbyshire and other Salix executives flew to San Francisco to meet with Wholesaler B at its headquarters. In advance of the meeting, Wholesaler B sent Salix a proposed meeting agenda that listed the first agenda item as, "Future Inventory Targets; [Wholesaler B]: 6 month base level Salix & Santarus Inventory Levels." The CEO, Derbyshire, the EVP, and Trade Relations discussed that draft agenda over email on May 29, 2014.

85. At the May 29, 2014, meeting with Wholesaler B, Wholesaler B explained to Trade Relations its inventory situation and its plan to reduce inventory levels to not more than 6 months' supply and offered to purchase approximately $100 million of Salix products that quarter, which represented an almost 50 percent drop from the first quarter. The EVP told Derbyshire and the CEO about the substance of his discussion with Wholesaler B, and they agreed to accept Wholesaler B's offer.

86. Salix's continued overselling of demand resulted in wholesalers maintaining approximately nine months of Xifaxan and Apriso, with inventories of Santarus products Glumetza and Uceris at roughly seven and five months, respectively.

b. The Q2 2014 Earnings Call

87. On August 7, 2014, Salix held its second quarter 2014 earnings call with analysts and investors. Derbyshire again reported a discrepancy between the prescription demand for Xifaxan and Apriso and Salix's revenue for these products. Wholesaler inventory levels became what one analyst called the "topic of the day."

88. Derbyshire initially claimed he did not know what was causing Salix's wholesaler inventory movements "other than wholesalers are wanting to lower their overall inventories." A securities analyst later asked, "What are your plans to get better clarity going forward. So we have more of a – is there anything you can do in terms of reaching out to customers? Is the former target of say 12, 13 weeks just too high for the wholesalers without some type of contractual arrangement?" Derbyshire responded, "Sure. So your first question, yes. I mean, obviously we have – we're in touch with our trade partners. But you['re] right. I mean, I think the reality of keeping that 3 months of inventory is no longer going to be the case. So they, again – they're softening, and we can expect them to continue to soften some in third quarter and more so normalized in the fourth quarter."

89. When another securities analyst on the call asked what "normalized" meant and if Salix was now targeting a "new level . . . not 10 to 12 weeks, but something else," Derbyshire replied that "from an overall portfolio standpoint, I would say that's in the 8-week or minus a little bit range for the entire channel."

90. Later on the call, an analyst stated, "I don't think I heard your estimate for where you think inventory levels actually are at the end of the second quarter for Xifaxan and Apriso." Derbyshire responded, "[W]e have visibility in inventories because we know what we shipped, we know what pulls through, we know what returns are, so we have an idea – a visibility into inventory levels." Derbyshire added that inventories would "normalize around that 8-week or a little less level, and that would be true for both Xifaxan and Apriso."

91. Another analyst followed up with Derbyshire about his representations concerning why wholesalers were buying less Xifaxan and Apriso in the following exchange:

> Analyst: [J]ust conceptually, I know you've been asked a lot of inventory questions, but can you explain to us, conceptually, why

> wholesalers would be reducing inventory of your products because the Santarus – because the increasing inventory of Santarus products. Just – I'm just struggling to understand that. . . .
>
> Derbyshire: I think it's a function of where the Santarus products were when we acquired a company. And again, as we talked about this in the first quarter how their products were razor-thin and they didn't have the distribution we wanted to have at the retail level. So we wanted to get that in order. So that's the only explanation I have for that.
>
> Analyst: I guess, what has that got to do with the Salix legacy products? That's my key question.
>
> Derbyshire: Yes, I mean, I think, what we talked about on the first quarter call, we really don't know is the answer. But I think our customers are very comfortable with the Salix legacy products. And so I think they feel comfortable bringing those inventory levels down, and they've told us they want to bring those inventory levels down. And I think – that's why we say we think in the fourth quarter that things will normalize.

92. A securities analyst concluded on August 7, 2014, that Salix "continue[s] to see strong underlying [prescription] trends for key products and expect[s] normalization of inventory levels by year end," noting:

> Following cancellation of Santarus' inventory management agreements (IMAs) earlier this year, Salix's product sales have been distorted by the ongoing normalization of channel inventories, which have led to significant variances relative to consensus projections. On the Q1 call, mgt had expected wholesaler inventory to normalize in 2H14, with legacy Santarus inventories to fall in line with Salix's historical levels (10-12 weeks). Following further discussions with wholesalers during the quarter, mgt has now decided that ~8 weeks is a more appropriate level of inventory to have in the channel . . . Mgt now believes that product sales will finally track more in line with Rx trends in Q4.

93. Derbyshire's statements were false and misleading. At the time, wholesaler inventory levels remained around nine months, not the less than three months that he repeatedly claimed. It was misleading to assert that inventories of Xifaxan and Apriso would "normalize

around that 8-week or a little less level" when inventory levels for the entire channel were already at much higher levels.

94. At the time he made these statements, Derbyshire knew or was reckless in not knowing that these statements were false and misleading. As alleged above, Derbyshire was well aware of Salix's on-going problems selling Xifaxan and Apriso due to wholesaler inventory levels reaching approximately nine months of supply on hand.

C. Derbyshire Made Material Omissions in Salix's First and Second Quarter Reports in 2014

a. Derbyshire Omitted Material Information Concerning Salix's "Risk Factors"

95. Item 503(c) of Regulation S-K, 17 C.F.R. § 229.303(c), requires a reporting company in its annual Report on Form 10-K to "provide under the caption 'Risk Factors' a discussion of the most significant factors that make the offering speculative or risky." Part II, Item 1A of Form 10-Q requires a reporting company to disclose "any material changes from risk factors as previously disclosed" in its Form 10-K.

96. The Finance group typically prepared the first draft of the Risk Factors section and provided it to Derbyshire, who reviewed and edited it for inclusion in Salix's annual and quarterly reports.

97. Salix's annual Report on Form 10-K for its fiscal year ended December 31, 2013 ("2013 Form 10-K") disclosed numerous "Risk Factors" that could "materially adversely affect[]" Salix's "business, financial condition, results of operations or prospects," so that "the market price of [Salix] common stock could decline, and stockholders might lose all or part of their investment." Salix's lead risk factor was that "[f]uture sales of Xifaxan and our other marketed products might be less than expected." The discussion under that heading stated:

> We expect Xifaxan . . . to continue to be our most significant source of revenue in the future. If sales of our marketed products decline or if we experience product returns significantly in excess of estimated amounts recorded, particularly with respect to Xifaxan, it would have a material adverse effect on our business, financial condition and results of operations.

98. Salix's discussion under the lead risk factor regarding "[f]uture sales of Xifaxan" and Salix's other marketed products proceeded to discuss "a number of factors" that could affect future sales of Xifaxan and other products, including but not limited to "price increases"; "patient and physician demand"; "the availability of sufficient commercial quantities of the products"; and Salix's "success in getting other companies to distribute our products outside of [certain U.S. markets]."

99. Salix repeated this risk factor and the accompanying language verbatim in the Risk Factors section of its quarterly Reports on Form 10-Q for the first quarter of 2014, which it filed with the Commission on May 9, 2014, and for the second quarter of 2014, which it filed with the Commission on August 8, 2014.

100. Thus, Salix's quarterly Reports on Form 10-Q for the first and second quarters of 2014 failed to disclose that the longstanding sales practice of overselling of demand had resulted in a material change to the risk factor affecting the sales of Salix products (particularly, Xifaxan). That sales practice, in fact, had already had a material negative impact on Salix's first quarter 2014 sales and overall earnings, and it remained a nearly certain risk to Salix's future sales. Therefore, Salix's "Risk Factors" were misleading.

101. By the first quarter 2014, Derbyshire knew or was reckless in not knowing that Salix's longstanding sales practices had led to a significant decrease in its Xifaxan sales and would continue to be a risk to its revenue and sales in future quarters. Nevertheless, Derbyshire reviewed, approved, and signed Salix's first and second quarter Forms 10-Q that simply repeated

the "future sales" risk factor disclosure that had appeared in the 2013 Form 10-K. Thus, Derbyshire knew, or was reckless in not knowing, that the Risk Factor disclosure in the quarterly reports was false and misleading.

b. Derbyshire Failed to Disclose Material Information in the Management's Discussion and Analysis of Financial Condition and Results of Operations Section

102. Derbyshire also failed to disclose requisite material information in the MD&A section of Salix's quarterly Reports on Form 10-Q for the first and second quarters 2014.

103. Pursuant to Item 303 of Regulation S-K, 17 C.F.R. § 229.303, reporting companies are required to disclose in the MD&A section of Form 10-K information "necessary to an understanding of [the company's] financial condition, changes in financial condition and results of operations."

104. Item 303(b) of Regulation S-K, 17 C.F.R. § 229.303(b), sets forth the MD&A disclosure requirements applicable to quarterly Form 10-Q filings and provides that reporting companies must "[d]iscuss any material changes in the registrant's results of operations" with respect to that quarter and the corresponding quarter from the prior fiscal year.

105. Item 303(a)(3)(ii) of Regulation S-K, 17 C.F.R. § 229.303(a)(3)(ii), sets forth disclosure requirements and provides that reporting companies must disclose in the MD&A section of quarterly reports, among other things, "any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations."

106. The Finance group typically prepared the first draft of the MD&A section and provided it to Derbyshire, who reviewed and edited it for inclusion in Salix's quarterly Reports.

107. In its quarterly Reports on Form 10-Q for the first and second quarters of 2014, Salix failed to disclose the trend, known to management, of its regularly overselling demand, which had created high wholesaler inventory levels that could not be sustained, and which was already having a material negative effect on sales of Salix's legacy products and its results of operations, and had a reasonable likelihood of material adverse impact in the future.

108. As described above, Derbyshire knew of this trend; it essentially was the basis of Salix's entire business. Derbyshire knew or was reckless in not knowing at the time that Salix's longstanding practice of overselling had resulted in high wholesaler inventory levels at the end of each quarter, and that this trend was reasonably likely to continue in the future and pose a substantial risk to Salix's future sales and revenue. This trend, in fact, already had had a direct material negative impact on Salix's first quarter 2014 sales margins and earnings and on the company's sales, revenue, and income for the second quarter 2014. Derbyshire knew of those facts. His failure to disclose them made the first and second quarter 2014 Forms 10-Q materially false and misleading.

109. Nevertheless, Derbyshire reviewed, approved, and signed Salix's quarterly Reports on Form 10-Q for the first and second quarters of 2014.

IV. Due Diligence Related to a Possible Acquisition of Salix Uncovered the False Statements About Wholesaler Inventories

110. In August 2014, a competing pharmaceutical company, Purchaser A, offered to acquire Salix for $205 per share in cash, subject to due diligence, which was a premium over the average market price for Salix's stock at the time.

111. As part of its confidential due diligence, Purchaser A requested data on Salix's product channel inventory, including wholesaler inventory levels, retail, and "other" levels.

112. Derbyshire oversaw the preparation of a spreadsheet provided to Purchaser A that showed an artificially low level of Salix wholesaler inventory levels – about 4.6 months of Xifaxan and 6.2 months of Apriso as of the end of the second quarter of 2014. Derbyshire obtained that result by taking total inventory and then increasing the level of Salix drugs at retail pharmacies until he got the desired result. Purchaser A questioned this data's validity, because it appeared to rely upon assumptions that greatly understated Salix's wholesaler inventory levels. Salix's EVP agreed, and Salix put together more accurate data.

113. As a result, at Purchaser A's request, the EVP and Trade Relations Director approached wholesalers to obtain their internal inventory data for Salix's products. Collectively, that data reflected that the Big Three had on hand an average of about nine months of Xifaxan and almost 11 months of Apriso.

114. Thereafter, Purchaser A's CEO wrote a letter to Salix's CEO identifying "several business and accounting practices that significantly concern[ed]" Purchaser A, including excessive in-channel inventories that appeared to be indicative of "potential channel stuffing practices."

115. Due in part to Salix's high inventory levels, Purchaser A subsequently reduced its purchase offer from $205 per share to $175 per share, a roughly 15 percent decrease. Salix ultimately rejected this offer.

116. In October 2014, the Audit Committee of Salix's Board of Directors launched an investigation into Purchaser A's allegations. As a result of that investigation, Derbyshire resigned on November 5, 2014.

117. On November 7, 2014, Salix released its quarterly report for the third quarter of 2014 and disclosed its true wholesaler inventory levels:

> Net product revenue for the nine-month period ended September 30, 2014 was lower than expected, primarily because prescription growth for some of our key products, while strong, was less than the Company anticipated, and wholesaler discounts were higher than budgeted.
>
> We estimate that, as of September 30, 2014, we had the following wholesaler inventory levels:
>
> - Xifaxan 550: approximately 9 months;
> - Apriso: approximately 9 months;
> - Glumetza: approximately 7 months; and
> - Uceris: approximately 5 months.
>
> Months of wholesaler inventory at quarter end represents the Company's estimate of wholesaler inventory, divided by the Company's estimate of the succeeding quarter's demand (not taking into account any future anticipated demand growth beyond the succeeding quarter). We estimate that wholesaler inventory levels of Xifaxan 550 and Apriso were largely constant during the first nine months of 2014. Wholesaler inventory levels of Uceris and Glumetza were approximately 2 months and less than 1 month, respectively, at the time of the consummation of the Santarus transaction.

118. Salix further disclosed that it would be changing its sales practices and would negotiate DSAs with wholesalers to, among other things, "better forecast revenue and expenses." It also noted that "[w]e expect that these agreements, when finalized, will enable us to achieve our objective of predictably and deliberately reducing wholesaler inventory levels of Xifaxan 550, Apriso and Uceris to approximately 3 months at or before the end of 2016, depending on future demand for these products." Salix reported its expectation that this change in business practice would negatively affect its revenue for about two years.

119. In addition, for the first time, Salix further disclosed that wholesaler inventory levels were a "risk" to Salix's future financial results by disclosing the following risks:

a. Salix's "expectation as to future revenues, which is subject to uncertainty due to the absence of distribution services agreements with our principal wholesalers, including our level of wholesaler discounts;"

b. The risk that "the steps our principal wholesalers may take with respect to our key products following or in anticipation of the entry into distribution services agreements;"

c. The risk that Salix's "ability to enter into distribution services agreements with our principal wholesalers and to reduce our wholesaler inventory levels of Xifaxan 550, Apriso and Uceris to approximately three months at or before the end of 2016[.]"

120. On Salix's ensuing earnings call on November 6, 2014, analysts asked numerous questions seeking to square Salix's prior statements concerning its wholesaler inventory levels with the disclosures in its quarterly report.

121. During this earnings call, Salix further confirmed that wholesaler inventory levels would have a severe negative impact on Salix's future revenue stream. Given Salix's announced intent to reduce wholesaler inventory levels by approximately six months by the end of 2016, Salix's acting CFO confirmed in response to questions from analysts that Salix expected to lose six months of revenues on its key products.

122. Following these disclosures, Salix's closing stock price dropped approximately 34 percent in one trading day, from a close of $138.55 on November 6, 2014, to a close of $91.47 on November 7, 2014.

V. The Misrepresentations and Omissions Were Material

123. Derbyshire's misrepresentations and omissions alleged in this Complaint were material, and the omissions in the Risk Factors and MD&A sections of its first and second quarter 2014 Form 10-Qs were material as well. In Salix's industry, customer inventory levels were a crucial metric for assessing prospects for future sales and revenues, and thus for determining the value of Salix's stock. These facts were well known to Derbyshire. The significance of inventory levels is illustrated by the numerous questions on that subject from securities analysts who covered Salix, as described above.

124. Since at least 2013, Derbyshire reported that its wholesaler inventory levels were approximately 12 weeks or less, when, in fact, Salix's wholesalers had approximately three times that amount because Salix had been overselling demand for its products. The wholesalers' high inventory levels were critical to Salix's business operations and caused its inability to continue to sell product and grow its revenue. By overselling demand, Salix had virtually guaranteed that future sales of its products would, at some point, drop precipitously.

125. Furthermore, Derbyshire's misrepresentations and omissions created the false impression that Salix's product demand and growth were sustainable at levels that were materially higher than they actually were, because, in reality, Salix's high inventory levels presented a risk – realized by first quarter 2014 – that its product growth would be slowed due to higher-than-disclosed inventory levels.

126. In addition, the materiality of Derbyshire's misstatements and omissions is demonstrated by (1) analysts' consistent questions about wholesaler inventory levels of Salix's key products on earnings calls; (2) Purchaser A's approximately 15 percent reduction in its offered acquisition price after learning of Salix's true inventory levels; (3) the 34 percent drop in Salix's stock price after it disclosed its true wholesaler inventory levels; (4) Salix's reported expectation in November 2014 that it would take two years to reduce its inventory levels and that revenues would be materially negatively impacted during that time; and (5) Salix's admission that a likely drop in future sales on its principal products was the leading risk factor for investors.

VI. Derbyshire Profited from His Sales of Salix Stock While the Stock's Price Was Inflated Due to His Material Misrepresentations and Omissions

127. The misrepresentations and omissions alleged in this Complaint occurred in the offer and sale of securities. Derbyshire's misrepresentations and omissions in filings with the Commission and on earnings calls affected the value of Salix common stock.

128. In January and July 2014, Derbyshire offered and sold Salix common stock into the open market, at prices that were artificially inflated due to his material misrepresentations and omissions. He thereby obtained money or property by means of his misstatements and omissions.

129. Derbyshire also profited from artificial stock inflation caused by the misstatements and omissions for which he is responsible through the use of his inflated Salix stock to pay for taxes on the vesting of restricted shares of Salix stock.

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Thereunder

130. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 129 of this Complaint as if fully set forth herein.

131. As described above, Derbyshire, directly or indirectly, used the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of Salix securities, to knowingly or recklessly make untrue statements of material facts or omit to state material facts that were necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in:

a. Salix earnings calls in 2013 and 2014, as detailed above, and

b. the Risk Factors and MD&A sections of Salix's quarterly Reports on Form 10-Q for the first and second quarters of 2014.

132. Accordingly, Derbyshire directly and indirectly violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R. § 240.10b-5(b).

SECOND CLAIM FOR RELIEF

Violations of Section 17(a)(2) of the Securities Act

133. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 129 as if fully set forth herein.

134. As described above, Derbyshire, directly or indirectly, in the offer or sale of securities, used the means or instrumentalities of communication in interstate commerce, or of the mails, to obtain money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

135. Accordingly, Derbyshire directly and indirectly violated Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

THIRD CLAIM FOR RELIEF

Aiding and Abetting Salix's Violations of Section 13(a) of the Exchange Act and Rule 13a-13 Thereunder

136. The Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 129 as if fully set forth herein.

137. Under Section 20(e) of the Exchange Act, "any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this chapter, or of any rule or regulation issued under the Exchange Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided."

138. During 2014, pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rule 13a-13 thereunder, 17 C.F.R. § 240.13a-13, Salix was required to file with the Commission Forms 10-Q (reporting quarterly results) that truthfully and accurately reported on

Salix's revenues, earnings, other financial results, information about accounting practices, and other related information.

139. As alleged above, Salix failed to file truthful and correct quarterly reports with the Commission, and it failed to include material information in its required statements and reports as was necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

140. Derbyshire knew or was reckless in not knowing that Salix was violating Section 13(a) of the Exchange Act and the rules thereunder. Derbyshire knowingly or recklessly provided substantial assistance to Salix's violations by reviewing, approving, and signing the Forms 10-Q before they were filed with the Commission.

141. Accordingly, Derbyshire aided and abetted Salix's primary violations of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rule 13a-13 thereunder, 17 C.F.R. § 240.13a-13.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

A. Permanently enjoining Derbyshire from violating, directly or indirectly, Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b), and from aiding and abetting violations of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Exchange Act Rule 13a-13, 17 C.F.R. § 240.13a-13;

B. Prohibiting Derbyshire, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12(b) of the Exchange Act, 15 U.S.C. § 78*l*(b), or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d);

C. Ordering Derbyshire to disgorge the ill-gotten gains resulting from his violations, plus prejudgment interest thereon; and

D. Imposing a civil monetary penalty against Derbyshire, pursuant to Securities Act Section 20(d), 15 U.S.C. § 77t(d), and Exchange Act Section 21(d)(3), 15 U.S.C. § 78u(d)(3).

Dated: September 28, 2018

Respectfully submitted,

S/ Michelle I. Bougdanos

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