IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

HIGH RIVER LIMITED PARTNERSHIP, ICAHN PARTNERS MASTER FUND, L.P., ICAHN PARTNERS, L.P., VIKING GLOBAL EQUITIES LP, VGE III PORTFOLIO LTD., CR INTRINSIC INVESTMENTS, LLC, SIGMA CAPITAL ASSOCIATES, LLC, MILLENCO, L.L.C., PORTER ORLIN LLC, and ATTICUS CAPITAL LP,	)	
Plaintiffs,	)	Civil Action No. 2776-CC
v.	)	
DENNIS H. LANGER, JONATHAN S. LEFF, RODMAN W. MOORHEAD, III, WAYNE P. YETTER, TRANSKARYOTIC THERAPIES, INC., and SHIRE plc.,	)	
Defendants.	)	

ANSWER OF TRANSKARYOTIC THERAPIES, INC. AND SHIRE plc. TO PLAINTIFFS' VERIFIED COMPLAINT

Defendants Transkaryotic Therapies, Inc. ("TKT" or the "Company") and Shire plc. ("Shire" together with TKT, "Defendants"), by their undersigned attorneys, answer the Verified Complaint ("Complaint") filed by High River Limited Partnership, Icahn Partners Master Fund, L.P., Icahn Partners, L.P., Viking Global Equities LP, VGE III Portfolio LTD., CR Intrinsic Investments, LLC, Sigma Capital Associates, LLC, Millenco, L.L.C., Porter Orlin LLC, and Atticus Capital LP (collectively "Plaintiffs") as follows:

PRELIMINARY STATEMENT

Through this action, Plaintiffs allege that certain members of the former TKT's Board of Directors, aided by Shire, violated their fiduciary duties in approving the Company's sale to

Shire in an all cash transaction on July 27, 2005. Plaintiffs also allege that shareholder voting records relating to the merger have been lost, making it impossible for them to "replicate" the shareholder vote to approve the transaction, and therefore, this Court should declare the merger illegal. Because these allegations are directly refuted by both the public record and the record developed in connection with the appraisal actions previously filed by these same Plaintiffs, Defendants deny these allegations.

The allegations in the instant Complaint amount to little more than a rearguard action by Plaintiffs – a collection of hedge funds and market arbitrageurs – to buttress their appraisal claims by attacking the TKT Board and certain Shire officers with unsubstantiated allegations and innuendo. The acquisition of TKT was the result of an intensive, arm's length negotiation between two sophisticated parties. During the course of that negotiation, the TKT Board rejected two offers from Shire, at $29 to $31 per share, before accepting Shire's offer at $37 per share – which represented a greater than 50 percent premium to the market price a month before the merger was announced. In addition, TKT retained separate transaction counsel and obtained two fairness opinions from major investment banks to ensure that the interests of the TKT shareholders were vigorously pursued. Significantly, no other bidder for TKT came forward even after Plaintiffs and others made public their opinion that $37 per share was too low a price for TKT.

Plaintiffs' allegation that individual TKT directors were advancing personal interests in considering the merger is equally unfounded. Notably, Plaintiffs' contention that Warburg Pincus LLC ("Warburg Pincus") sought to liquidate its position in TKT without attempting to maximize the return on its investment is both factually baseless and utterly illogical. Plaintiffs' claim appears to rest solely on an unsubstantiated offhand comment about "TKT fatigue," but

Plaintiffs fail even to allege any facts supporting the counterintuitive notion that Warburg Pincus would seek to sell its TKT shares for less money than it believed it could obtain. As a major shareholder of TKT, Warburg Pincus plainly had every incentive to maximize shareholder value, and the factual record shows that its nominees to the TKT board diligently sought to do so.

Plaintiffs' claim that Dennis Langer agreed to the merger in exchange for a promise to let him purchase certain TKT assets is similarly contrary to the facts. The record developed in the appraisal action establishes that TKT, through its former CEO, had already discussed selling those assets to Dr. Langer prior to the merger discussions with Shire and that Dr. Langer informed the TKT Board of his negotiations with the Company regarding the assets. Shire did not agree to sell the assets to Dr. Langer, and in fact has never sold those assets to anyone. After the merger became effective, Shire did attempt to sell the assets to any party who was interested; however, there were no takers. The assets remain in Shire's possession although they are not currently being developed.

Likewise, Plaintiffs' allegation that Wayne Yetter voted for the transaction because of his relationship with Shire CEO Matthew Emmens is fiction. Messrs. Yetter and Emmens's relationship was professional and limited – they had worked together in the early 1980's and again in the mid-1990's at Merck and Astra Merck Inc. The two individuals have had limited contacts over the past 10 years, and any allegation that Mr. Yetter would agree to sell TKT to Shire simply because he used to work with Mr. Emmens is outrageous. Plaintiffs also allege that Mr. Emmens offered a position to Mr. Yetter on Shire's Board of Directors if Mr. Yetter would agreed to the transaction. No offer was ever made.

In short, Plaintiffs' claim that individual members of the TKT Board violated their fiduciary duties is contrary to the record established in the appraisal proceeding and is even

contrary to many of the factual allegations in Plaintiffs' Complaint. Tellingly, there is no allegation that any TKT director obtained an improper benefit. Mr. Yetter did not become a director of Shire. Dr. Langer did not purchase the abandoned TKT assets. The allegations of improper motives are based on little more than supposition.

Moreover, Plaintiffs were fully aware of the facts that they now claim reveal the "real value" of TKT at the time they acquired most of their shares. Indeed, Plaintiffs admit that they purchased most of their shares after the transaction with Shire had been announced, after the record date for the shareholder vote to approve the transaction, after a full briefing from the former CEO of TKT, and in all likelihood after the announcement of positive clinical test results for one of TKT's products. The entire purpose of their post-record date acquisitions was to capitalize on the very information they now claim was improperly withheld. In other words, no material facts were withheld from Plaintiffs or the other TKT shareholders.

Most of these Plaintiffs have also filed appraisal claims against TKT asking the Chancery Court to value their former interest in TKT at a price in excess of the negotiated price of $37 per share that was approved by TKT shareholders. Plaintiffs purchased most of their shares with the intention of extracting extra value from Shire or another bidder for TKT. No other bidder for TKT came forward, however, even after Plaintiffs and others made it very public that they thought $37 per share was too low a price for TKT. Faced with receiving merger consideration of $37 per share, the Plaintiffs – some of whom had purchased shares at prices greater than $37 – chose to reject the consideration that had been agreed to through arm's length negotiations. Then the Plaintiffs filed two lawsuits, one of them filled with unsupported personal attacks, in an effort to force TKT to pay them more than $37 per share.

Equally groundless are Plaintiffs' allegations that claim that the merger – approved and completed almost two years ago – should be deemed "illegal." Plaintiffs do not claim to have evidence that the transaction was not properly approved, but rather claim that the Chancery Court should presume as much because TKT has not provided petitioners with evidence documenting the vote – which resulted in the merger being approved by 52.6 percent of TKT's outstanding shares entitled to vote. Under Delaware law, the certificate of merger filed with the Secretary of State constitutes prima facie evidence that the required vote was obtained. Moreover, there is ample evidence to establish that the merger vote was proper, both in the record and in the documents TKT has already produced to Plaintiffs.

In sum, the instant suit is just the latest move in a series of strategic maneuvers by these hedge fund plaintiffs that began with an attempt to capitalize on a hoped-for bidding war for TKT that never materialized; continued with the assertion of appraisal rights for shares most of which they did not even have the right to vote in connection with the merger; and now ends with this Complaint filled with unsupported personal attacks – all in a veiled effort to squeeze a profit from their eleventh-hour investment in TKT.

Following are Defendants' specific Answers and Affirmative Defenses to the Complaint:

1. Deny paragraph 1, except admit that on July 27, 2005, TKT merged with a subsidiary of Shire and otherwise refer to the Complaint for its allegations.

2. Deny paragraph 2.

3. Deny paragraph 3, and specifically deny that Shire's current share price has any relevance to this litigation.

4. Deny paragraph 4.

5. Deny paragraph 5, except state that Defendants lack knowledge or information sufficient to form a belief as to the truth of Plaintiffs' claim that they cannot replicate TKT's vote count and on that basis deny such claim. Defendants further state that any effort to "replicate" the exact vote count from almost two years ago is both unnecessary and immaterial. TKT has filed a certificate of merger with the Delaware Secretary of State which constitutes prima facie evidence that the vote required by law was obtained. Moreover, while Plaintiffs did not request documents sufficient to replicate the July 2005 vote count during discovery in the appraisal proceeding, they have nevertheless received the certification of the inspector of election, the report of the inspector of election, the oath of the inspector, the proxy ballot and the affidavit of mailing. Approval of the merger was completely appropriate and conducted in accordance with Delaware law.

6. Deny paragraph 6.

7. Deny paragraph 7, and refer to the quoted document for a true and complete statement of its contents. By way of further response, Defendants state that Shire has not used these funds, which have been placed in a safe, interest bearing account.

8. Deny paragraph 8.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 9. Defendants further state on information and belief that Plaintiffs acquired beneficial ownership of over eight million shares after the June 10, 2005 record date for the vote of TKT stockholders on the merger. In addition, Defendants state on information and belief that Plaintiffs acquired beneficial ownership of many additional shares after the TKT board voted to recommend the merger and with knowledge of the transaction which they now challenge. Defendants deny the allegations of the third sentence of paragraph 9.

10. Deny paragraph 10, except admit TKT was a publicly-traded biotechnology company based in Cambridge, Massachusetts with a seven-member board of directors and that during an April 20, 2005 meeting of the board, a majority of the directors indicated that they favored proceeding with the merger on the ultimately accepted terms.

11. Deny paragraph 11, except admit that Shire is a publicly-traded British pharmaceutical company with headquarters in Wayne, Pennsylvania and Basingstoke, England; that Shire's chief executive officer is Matthew Emmens; that Mr. Emmens is an American; that Mr. Emmens was hired by Shire in 2003; and that, as admitted above, TKT merged with a subsidiary of Shire on July 27, 2005.

12. Deny paragraph 12, except admit that Jonathan Leff is a managing director of Warburg Pincus; that Warburg Pincus is a private equity and venture capital firm headquartered in New York, New York; that Mr. Leff was a director of TKT from 2000 through the date of the merger; that Rodman Moorhead was a director of TKT from 1992 through the date of the merger; and that Mr. Moorhead was an officer of Warburg Pincus at the time of the merger. Defendants refer to the text of the quoted e-mail in paragraph 12 for a true and complete statement of its contents. Defendants further deny Plaintiffs' characterization of the e-mail, which was sent more than a year after the TKT board approved the merger and was unrelated to the TKT-Shire transaction.

13. Deny paragraph 13, except admit that Wayne Yetter was the non-executive chairman of TKT's board of directors until January 17, 2005.

14. Deny paragraph 14, except admit that Dennis Langer attended Harvard Law School with Mr. Astrue, and was a TKT director throughout the merger process.

15. Deny paragraph 15, except admit that TKT's net loss for 2004 was nearly $66 million.

16. Deny paragraph 16, except admit that TKT was a biopharmaceutical company researching, developing and commercializing therapeutics primarily for the treatment of rare genetic diseases caused by protein deficiencies.

17. Deny paragraph 17, except admit that, at the time of the transaction, I2S – an enzyme replacement therapy for the treatment of Hunter's Syndrome – was one of TKT's most advanced active clinical programs and that on June 20, 2005, TKT announced positive top-line results from the Phase III clinical trial for I2S.

18. Deny paragraph 18.

19. Deny paragraph 19, except admit that Mr. Astrue served as TKT's general counsel from 2000 until 2003 and, later in 2003, rejoined the company as CEO. Defendants further admit, upon information and belief, Mr. Astrue's educational and employment history as stated.

20. Deny paragraph 20, except admit that after Mr. Astrue became CEO of TKT, the Company began implementing a strategy to reduce the number of products in its pipeline.

21. Deny paragraph 21 except admit that Warburg Pincus is a global private equity firm; Warburg Pincus had invested in TKT in some capacity since 1988; Warburg Pincus invested $100 million in TKT in 2000 at approximately $28 per share; and Mr. Leff joined the TKT board in mid-2000.

22. Deny the first sentence of paragraph 22. Defendants further state that the comments attributed to Dr. Pendergast, which were made ten months after the transaction, are taken completely out of context by Plaintiffs; Dr. Pendergast's comments had absolutely nothing to do with Warburg Pincus' investment in TKT, nor anything to do with the transaction here at issue.

Deny the remainder of paragraph 22 and refer to the depositions referenced for the complete testimony in context.

23. Deny paragraph 23.

24. Deny paragraph 24, and refer to the text of the documents referenced for a true and complete statement of their contents.

25. Deny paragraph 25, except admit that in mid-2004, Goldman Sachs presented Shire with a list of possible acquisition targets for Shire, of which TKT was one and that, initially, Shire considered approaching TKT to discuss a potential licensing partnership for Dynepo because Shire's business development team thought it would be a good strategic fit with one of Shire's existing products.

26. Deny paragraph 26, except admit that Shire initially approached TKT about a merger in November 2004, and Mr. Emmens worked for Mr. Yetter at Merck for approximately a year and a half in the mid-1980s and again at Astra Merck for approximately five and a half years in the mid-1990s. Defendants further admit that on or about November 15, 2004, Mr. Yetter received a voice mail from Mr. Emmens which Mr. Yetter later returned.

27. Deny paragraph 27, and refer to the document quoted for a complete and accurate statement of its contents.

28. Deny paragraph 28, and refer to the deposition referenced for the complete testimony in context.

29. Deny paragraph 29.

30. Deny paragraph 30, except admit that after Mr. Yetter spoke to Mr. Emmens on November 15, 2004, he called Messrs. Astrue and Leff to inform them of the contact from Shire and of Shire's informal proposal, and that on November 24, 2004, the board authorized TKT to

hire S.G. Cowen, LLC to act as the company's financial advisor in connection with the proposed transaction.

31. Deny paragraph 31, and refer to the text of the document quoted for a true and complete statement of its contents.

32. Deny paragraph 32, and refer to the text of the document quoted for a true and complete statement of its contents.

33. Deny paragraph 33, and refer to the text of the document quoted for a true and complete statement of its contents.

34. Deny paragraph 34.

35. Deny paragraph 35.

36. Deny paragraph 36.

37. Deny paragraph 37, except admit that in February 2005, Shire had increased its offer to $31 per share and Mr. Emmens had been authorized by the Shire board to revise its offer price to up to $33 per share, and refer to the text of the documents quoted for a true and complete statement of their contents.

38. Deny paragraph 38, except admit that on February 26, 2005, by a 5 to 2 vote, the TKT board rejected Shire's offer of $31 per share.

39. Deny paragraph 39, and refer to Mr. Emmens' deposition transcript for a true and complete statement of his testimony in context and further refer to the text of the document quoted for a true and complete statement of its contents.

40. Deny paragraph 40, and refer to the text of the document quoted for a true and complete statement of its contents.

41. Deny paragraph 41, except admit that in March 2005, TKT was negotiating a potential licensing deal for Dynepo with GlaxoSmithKline. Defendants also admit that, as was known in the fall of 2004, Replagal had previously been approved for marketing in Europe in 2001.

42. Deny paragraph 42.

43. Deny paragraph 43.

44. Deny paragraph 44, and refer to the text of the document cited for a true and complete statement of its contents.

45. Deny paragraph 45, except admit that a Deutsche Bank analyst report issued on April 10, 2005 included a 12-month price target for TKT of $44 and refer to that report for a true and complete statement of its contents.

46. Deny paragraph 46.

47. Deny paragraph 47, except admit upon information and belief that Dr. Reddy's Laboratories ("DRL") is an Indian-based generic drug manufacturer; that Phoenix IP Ventures is an intellectual property merchant bank; that Dr. Langer was President of DRL's North American branch from before the merger negotiations until July 2005; that, in July 2005, Dr. Langer left DRL and joined Phoenix IP Ventures in August 2005.

48. Deny paragraph 48, except admit that TKT and DRL were in negotiations concerning a potential joint venture, called "Zuma," focused on the out-licensing of TKT's dormant gene-activated protein portfolio; that the proposed terms of the Zuma transaction indeed "went through many changes," with numerous iterations throughout 2004 and 2005; and that Dr. Langer obtained the approval of TKT's audit committee before proceeding with negotiations regarding Zuma.

49. Deny paragraph 49, except admit that MPM Capital, a venture capital firm, engaged in negotiations with DRL to provide a portion of the financing anticipated in the Zuma transaction.

50. Deny paragraph 50.

51. Deny paragraph 51, and refer to Mr. Astrue's deposition transcript for a true and complete statement of his testimony. Defendants also state that Mr. Astrue's uncorroborated statements about "rampant" office rumors is not evidence of any agreement between Mr. Leff and Dr. Langer and is directly contradicted by the substantive evidence in this action.

52. Deny paragraph 52, except admit that Dr. Langer and Mr. Leff flew on the same plane for either part or the entirety of the distance to India in March 2005 and that Dr. Langer and his DRL colleagues met with Mr. Leff and a Warburg Pincus colleague while Dr. Langer and Mr. Leff were in India. Defendants further deny Plaintiffs' characterization of Dr. Langer's deposition testimony and refer to the deposition transcript for a true and complete statement of his testimony.

53. Deny paragraph 53, and refer to the text of the document and deposition testimony referenced for a true and complete statement of their contents.

54. Deny paragraph 54, and refer to the text of the document and deposition testimony referenced for a true and complete statement of their contents.

55. Deny paragraph 55.

56. Deny paragraph 56.

57. Deny paragraph 57, except admit that Mr. Astrue relinquished some or all of his role on the ad hoc committee of TKT's board of directors between the March 9, 2005 formation of

the committee and the April 21, 2005 merger vote and that immediately after the merger vote Mr. Astrue resigned as a director and officer of TKT.

58. Deny paragraph 58.

59. Deny paragraph 59.

60. Deny paragraph 60 and footnote 34.

61. Deny paragraph 61, and refer to the text of the document quoted for a true and complete statement of its contents.

62. Deny paragraph 62.

63. Deny paragraph 63.

64. Deny paragraph 64.

65. Deny paragraph 65.

66. Deny paragraph 66.

67. Deny paragraph 67.

68. Deny paragraph 68.

69. Deny paragraph 69 and footnote 44.

70. Deny paragraph 70.

71. Deny paragraph 71 and footnote 45.

72. Deny paragraph 72, and refer to the text of the document quoted for a true and complete statement of its contents. In particular, Defendants deny Plaintiffs' claim that positive top-line data in the Phase III clinical trial for I2S "guarantee[d] approval by the FDA and European regulators" for the drug.

73. Deny paragraph 73.

74. Deny paragraph 74, except admit upon information and belief that some of the Plaintiffs here became beneficial owners of TKT stock after the merger was announced, after the record date and, apparently, after the announcement of the Phase III results for I2S.

75. Deny paragraph 75, except admit that ISS and Glass Lewis both recommended against the merger. Defendants further state that the rigorous board process to which Plaintiffs refer in paragraph 75 included meeting on more than 20 occasions over a 6-month period, authorizing an appropriate market check, and seeking advice from two investment banks and two separate law firms and ensuring that the compensation for one of each would be independent of the outcome of the transaction.

76. Deny paragraph 76 except admit that Shire waived its right to cancel the merger if more than 15 percent of TKT's shareholders demanded appraisal.

77. Deny paragraph 77.

78. Deny paragraph 78.

79. Deny paragraph 79.

80. Deny paragraph 80.

81. Deny paragraph 81.

82. Deny paragraph 82.

83. Deny paragraph 83, except admit that the merger was adopted by a margin of more than 900,000 votes.

84. Paragraph 84 states a legal conclusion that does not require a response, except admit upon information and belief that some Plaintiffs are former beneficial stockholders of TKT. To the extent that a response is required to the remaining allegations in paragraph 84, they are denied.

COUNT I

85. Defendants repeat and reallege each and every response contained in the foregoing paragraphs as if fully set forth herein.

86. Paragraph 86 states a legal conclusion that does not require a response. To the extent that a response is required, deny paragraph 86.

87. Deny paragraph 87.

88. Paragraph 88 states a legal conclusion that does not require a response, except admit the TKT issued a proxy statement on June 27, 2005. To the extent that a response is required to the remaining allegations in paragraph 88, they are denied.

89. Deny paragraph 89.

90. Paragraph 90 states a legal conclusion that does not require a response. To the extent that a response is required, deny paragraph 90.

COUNT II

91. Defendants repeat and reallege each and every response contained in the foregoing paragraphs as if fully set forth herein.

92. Deny paragraph 92.

93. Paragraph 93 states a legal conclusion that does not require a response. To the extent that a response is required, deny paragraph 93.

94. Paragraph 94 states a legal conclusion that does not require a response. To the extent that a response is required, deny paragraph 94

COUNT III

95. Defendants repeat and reallege each and every response contained in the foregoing paragraphs as if fully set forth herein.

96. Deny paragraph 96.

97. Paragraph 97 states a legal conclusion that does not require a response. To the extent that a response is required, deny paragraph 97.

98. Paragraph 98 states a legal conclusion that does not require a response. To the extent that a response is required, deny paragraph 98.

99. Paragraph 99 states a legal conclusion that does not require a response. To the extent that a response is required, deny paragraph 99.

COUNT IV

100. Defendants repeat and reallege each and every response contained in the foregoing paragraphs as if fully set forth herein.

101. Deny paragraph 101.

102. Deny paragraph 102.

103. Deny paragraph 103.

104. Deny paragraph 104.

105. Deny paragraph 105.

106. Deny each and every allegation of the Complaint not otherwise responded to above.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. The Complaint is barred because Plaintiffs lack standing to bring the claims alleged.

3. The Complaint is barred for failure of causation, including but not limited to, the failure to show any damages caused by the Defendants alleged breach of their fiduciary duties or other alleged actions.

4. The Complaint is barred by the doctrine of accord and satisfaction.

5. The Complaint is barred by the doctrine of estoppel.

6. The Complaint is barred by the doctrine of laches.

7. The Complaint is barred by the doctrine of waiver.

8. The Complaint is barred by the doctrine of acquiescence.

9. The Complaint is barred by the doctrine of ratification.

WHEREFORE, Defendants respectfully request that this Court enter judgment against Plaintiffs on all counts and enter an Order denying all relief sought in the Complaint and granting Defendants such other relief as this Court deems reasonable and just.

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