

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

ABBOTT LABORATORIES,	)	
	)	
Plaintiff,	)	
	)	Case No. 18-6907
v.	)	
	)	
BLAYNE FLECK,	)	
	)	
Defendant.	)	

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff Abbott Laboratories (“Abbott”), by and through its undersigned counsel, brings this Complaint for Damages and Injunctive Relief against Defendant Blayne Fleck (“Fleck”) and hereby alleges as follows:

INTRODUCTION

1. Abbott brings this action to protect one of its greatest assets in the highly competitive Chronic Pain Therapies market — its competitive advantage in the form of its 2019 “playbook” for strategic marketing and geographic expansion in the United States and abroad. Fleck, as Abbott’s global marketing product manager, played a critical role in developing the 2019 playbook, all the while planning to leave Abbott and work for Nevro Corp. (“Nevro”), one of Abbott’s competitors in the Chronic Pain Therapies market.

2. On October 3, 2018, just days after finalizing the 2019 playbook, Fleck finally disclosed to Abbott that he was planning to leave, and had accepted a marketing position with Nevro.

3. Fleck’s planned employment at Nevro will (1) breach his Abbott Employee Agreement; and (2) misappropriate Abbott’s trade secrets as he will inevitably use or disclose them

in doing his job. The resulting harm to Abbott's business will be significant and irreparable.

4. Abbott seeks temporary, preliminary, and permanent injunctive relief to prevent Fleck from (a) working for Nevro for a period of 12 months, consistent with the terms of Fleck's Employee Agreement with Abbott, and (b) disclosing Abbott's trade secrets and other valuable proprietary and confidential information at any time.

5. This is an action for: (a) breach of contract; (b) violation of the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836 (the "DTSA"); and (c) violation of the Illinois Trade Secrets Act, 765 ILCS 1065/1, *et seq.* (the "ITSA").

PARTIES

6. Abbott is an Illinois corporation with its principal place of business in Abbott Park, Illinois.

7. Defendant Blayne Fleck is an individual who was employed by Abbott and, upon information and belief, is a resident and citizen of Texas.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction over the claim asserting violation of the DTSA under 28 U.S.C. § 1331. The Court has supplemental jurisdiction over the remaining state law claims under 28 U.S.C. § 1367 because those claims are so closely related to Abbott's federal law claim for misappropriation of trade secrets under the DTSA that they form part of the same case or controversy.

9. The Court independently has subject matter jurisdiction under 28 U.S.C. § 1332(a) because Abbott (an Illinois citizen) and Fleck (a Texas citizen) are citizens of different states, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

10. The Court has personal jurisdiction over Fleck because he "agree[d] to the

exclusive jurisdiction of the state and federal courts in Illinois” in any action “arising out of or relating to” his employment or Employee Agreement, and “stipulate[d] and consent[ed] to Illinois courts’ personal jurisdiction and waive[d] the right to object to an Illinois court’s jurisdiction” over him. (*See* Employee Agreement, attached hereto as Exhibit 1, ¶ 16(a).)

11. Venue is proper in this Court because Abbott and Fleck “irrevocably agree[d] that all claims” in any action related to Fleck’s employment with Abbott or his Employee Agreement “shall be heard and determined in Lake County, Illinois state court or the Northern District of Illinois federal courts.” (Ex. 1, ¶ 16(a).)

FACTS

The Chronic Pain Therapies Market That Abbott and Nevro Compete In

12. Abbott is a global healthcare company that develops, markets, and sells, among other things, medical and diagnostic devices to improve the health and lives of individuals around the world.

13. Among its offerings, Abbott is a leader in Chronic Pain Therapies, which include spinal cord stimulation (“SCS”) therapy, Dorsal Root Ganglion (“DRG”) therapy, and Radiofrequency (“RF”) therapy.

14. SCS is a type of neurostimulation therapy used to treat chronic pain by blocking or changing pain signals before they reach the brain.

15. Abbott’s portfolio of SCS products includes Abbott’s proprietary, patented BurstDR stimulation technology, and tonic therapy.

16. SCS technology requires implanting a small device that powers thin wires along the spinal cord. This device, in conjunction with BurstDR technology, interrupts pain signals from reaching the brain to change the patient’s perception and experience of pain.

17. DRG and RF are also treatments for chronic pain using neurostimulation. In fact, both DRG and SCS are considered spinal column stimulation therapies and are reimbursed under the same codes for insurance purposes.

18. The dynamic Chronic Pain Therapies market is highly competitive. Currently, only four companies hold approximately 98% of market share: Abbott, Nevro, Boston Scientific Corporation (“Boston Scientific”), and Medtronic PLC (“Medtronic”).

19. Abbott currently has the largest Chronic Pain Therapies market share in the United States.

20. The Chronic Pain Therapies market is global. For this reason, Abbott cohesively and strategically markets its Chronic Pain Therapies in all 50 states and in 56 countries.

21. Nevro is a more recent entrant to the Chronic Pain Therapies market. According to its website, Nevro was founded in 2006.

22. While Abbott, Boston Scientific, and Medtronic offer a diverse global portfolio spanning many different areas and products, Nevro operates in only one space: SCS.

23. Nevro’s SCS product, Senza, uses a technology called HF10. Like BurstDR, HF10 is designed to work by interrupting pain signals to the brain. HF10 entered the market after receiving FDA approval in 2015.

24. In the Chronic Pain Therapies market generally, and the sales of SCS devices specifically, Abbott and Nevro are direct competitors.

25. Like Abbott, Nevro sells its SCS product across the United States and in some global markets.

26. Because of the competitive and dynamic nature of the Chronic Pain Therapies market, there is tremendous value to Abbott in developing and implementing marketing strategies

designed to increase Abbott's market share both in the United States and globally, and to avoid losing market share to competitors like Nevro.

Fleck's Employee Agreement With Abbott

27. Defendant Fleck was hired by St. Jude Medical, Inc. ("St. Jude") in April 2014 to work in a marketing role.

28. In connection with his hiring, Fleck executed an Employment Agreement that governed his employment and, among other things, contained a non-competition clause restricting his ability to compete with St. Jude for 12 months after termination.

29. After Abbott acquired St. Jude, its employees, including Fleck, executed new agreements to secure eligibility for future compensation improvements.

30. Fleck executed his new Employee Agreement on February 6, 2018 (hereafter the "Agreement").

31. The Agreement contains the following acknowledgments, among others, by Fleck¹:

1. Employee acknowledges and agrees that:
 - (a) Abbott has a legitimate business interest in the protections and restrictions set forth in this Agreement and they are reasonable and necessary for the protection of Abbott's Confidential Information (defined below), business goodwill, and the maintenance of a stable and productive workplace for the benefit of Abbott and its employees.
 - (b) in exchange for signing this Agreement, Employee will: (i) learn and have access to Abbott's Confidential Information; (ii) have access to and authority to deal with certain customers and other parties upon whom Abbott depends for its business dealings; and (iii) have access to training (through on the job experience and otherwise) on Abbott's Confidential Information and other means of success.
 - (c) Employee's promises are necessary because Employee's possession of Abbott's Confidential Information, business contacts, training, and similar employment benefits gives Employee an enhanced

¹ Capitalizations of entire words in the Agreement are omitted from this Complaint.

ability to cause Abbott irreparable harm if Employee engaged in unfair competition.

- (d) Employee is engaged by Abbott in a position of trust and confidence in which Employee will use, observe, obtain or have access to Confidential Information and the other information and benefits described above.
- (e) at the time of signing this Agreement, Abbott's business is in the development, discovery, production, marketing and sale of global health care and medical research products and solutions, and that the market for such products and solutions is fiercely competitive.

32. The Agreement includes a provision barring disclosure of Confidential Information (the "Non-Disclosure Provision"):

- 2. As used in this Agreement, the following terms have the meanings specified:

- (d) "Confidential Information" means ... marketing, pricing and sales information, customer and prospective customer lists, material sourcing information and lists, business practices, methods and strategies, marketing plans and strategies, buying practices, financial data, operational data, plans and all other know-how, trade secrets, intellectual property and proprietary information;....

Employee acknowledges and agrees that items of Confidential Information are Abbott's valuable assets and have economic value, actual or potential, because they are not generally known by the public or others who could use them to their own economic benefit or the competitive disadvantage of Abbott.

- 8. **Non-Disclosure of Confidential Information.** Employee acknowledges ... Employee shall use all best efforts to protect the secrecy and confidentiality of all Confidential Information, including, as applicable, such efforts and measures as set forth in Abbott policies, procedures and guidelines. Employee shall not, during the term of employment with Abbott or thereafter, use or disclose, or assist in the disclosure to or use by others, directly or indirectly, any Confidential Information, except as required and authorized in the scope of Employee's job responsibilities and in the

furtherance of Abbott's business (to the extent consistent with applicable confidentiality obligations between Abbott and third parties)....

33. The Agreement also includes a provision barring Fleck's employment with a competitor in a similar role for the 12 months following his employment with Abbott (the "Non-Compete Provision"):

2. As used in this Agreement, the following terms have the meanings specified:

(a) "Abbott Customer" means, during the last twelve (12) months of Employee's employment with Abbott, any person, corporation or any other commercial organization or entity that Employee called upon, dealt with or had direct contact with: (i) for purposes of selling, promoting, or marketing; (ii) regarding the use of an Abbott service or product on behalf of Abbott; or (iii) that possessed or was provided with Confidential Information.

(b) "Competing Business" means any person or organization that is engaged in or planning to become engaged in a business that involves a Competing Product.

(c) "Competing Product" means any product, process, technology, machine, invention or service, either in existence or under development, that has (or will have) the same or similar purpose or use as an existing or developmental product, process, technology, machine, invention or service researched, discovered, developed, manufactured, imported, marketed, sold, offered for sale or used by Abbott.

(e) "Covered Supplier" means an Abbott supplier (person, corporation, or any other commercial organization or entity) that Employee or a person acting under Employee's supervision had significant business-related contact or dealings with on behalf of Abbott, or was provided Confidential Information about, during the last two years of Employee's employment with Abbott.

9. **Non-Competition.** Employee shall not, during Employee's employment and twelve (12) months after Employee's termination for any reason, in each country in which Abbott conducts business, except as expressly authorized in writing in advance by the Abbott Divisional Vice President & Associate General Counsel, Litigation or his/her designee:

- (a) participate in, manage, supervise, or provide services to a Competing Business: (i) that are the same as or similar in function or purpose to any services Employee provided to Abbott during the last two years of Employee's employment with Abbott; or (ii) that are otherwise likely to result in the use or disclosure of Confidential Information, notwithstanding Employee's undertaking to the contrary

- (d) directly or indirectly, promote or market any Competing Products to any Abbott Customer, or solicit any Abbott Customer or Covered Supplier for any purpose related to Competing Product; or
- (e) knowingly induce or encourage an Abbott Customer or a Covered Supplier to cease, interfere with or reduce business activity conducted with Abbott.

Employee agrees and acknowledges that subsections (d) and (e) are reasonably limited in geography by their nature to those places or locations where the Abbott Customers and Covered Suppliers are located and do business, and if such geographic limit is insufficient under applicable law, then the restrictions in Section 9 shall be considered limited to the Employee's assigned location or territory, which depending on Employee's position, could extend to the United States and each additional country where Abbott does business.

34. With respect to any future employment, the Agreement imposes specific notification obligations on Fleck (the "Notification Provision"):

- 13. **Notifications to Abbott and New / Potential Employer.** For twenty-four (24) months following the date of Employee's termination from Abbott:

- (a) Employee shall communicate Employee's obligations under this Agreement to each subsequent intended or actual employer, including providing to each such subsequent employer a copy of this Agreement.
- (b) Employee shall notify Abbott of the name and address of Employee's each subsequent intended or actual employer. Abbott shall have the right to advise any subsequent employer of Employee's obligations hereunder.
- (c) If Employee accepts a position with a Competing Business, Employee shall provide Abbott with the information needed or requested for Abbott to conduct a reasonable evaluation of the position as it relates to this Agreement.

- (d) If the scope or applicability of the restrictions in Sections 9 or 10 [providing for non-solicitation] are unclear to Employee, Employee shall first seek clarification of the restriction(s) from the Divisional Vice President, Employee Relations, before taking any action which might reasonably be construed as violation of this Agreement. Employee shall not to sue or take other legal action to challenge the application or enforceability of the restrictions in Sections 9 or 10 without first seeking, in writing to the Abbott Division Vice President & Associate General Counsel, Litigation or his/her designee, to resolve any issue or concern Employee has with those restrictions. This Section 13(d) shall apply during Employee's employment with Abbott and for twenty-four (24) months following the date of Employee's termination from Abbott.

35. Fleck also acknowledged that Abbott will face irreparable injury in the event of breach or threatened breach of the Agreement:

- 11. **Breach and Remedies.** In the event of Employee's breach or threatened breach of any portion of this Agreement, Employee acknowledges and agrees that:

- (c) The restrictive period in Section 9 (Non-Competition), 10 (Non-Solicitation of Employees) and 13 (Notifications to Abbott and New/Potential Employer) shall be extended by the length of time that Employee violates any of those section(s).
- (d) Abbott will face irreparable injury which may not be reasonably possible to calculate in dollar terms, and that in addition to other remedies available, Abbott shall be entitled to injunctions enjoining such breach or threatened breach by Employee, Employee's agents or representatives, or any other persons or entities acting for or with Employee. Employee further acknowledges and agrees that in addition to any other rights and remedies, Abbott shall be entitled to damages, attorneys' fees and all other costs and expenses reasonably incurred by Abbott in enforcing this Agreement.

Fleck's Critical Role With Abbott In the Chronic Pain Therapies Market

36. Until giving notice on October 3, 2018, Fleck was the Product Manager for Global DRG/RF.

37. Fleck's marketing role was global in scope.

38. While his title referred specifically to DRG and RF, Fleck had broad responsibilities as a key contributor to the overall commercialization and marketing efforts for all Chronic Pain Therapies, including SCS.

Abbott's 2019 Marketing Plan

39. In the month before he resigned, Fleck was intimately involved in efforts to develop Abbott's 2019 Chronic Pain Therapies "playbook" for strategic marketing and expansion in the United States and abroad.

40. Fleck agreed in early September 2018 to lead a team that, over the following several weeks, developed and completed Abbott's 2019 Chronic Pain Marketing Plan (the "2019 Marketing Plan").

41. The 2019 Marketing Plan includes the global 12 to 18-month marketing plan for Abbott's Chronic Pain Therapies business.

42. The 2019 Marketing Plan includes, among other information:

- a. Abbott's 2019 revenue target for the global Chronic Pain Therapies market, including target growth percentage;
- b. Abbott's five enumerated "Operating Imperatives" for achieving its global marketing objective. For example, one of the "Operating Imperatives" centers around Abbott's insights into the barriers that currently are reducing patient use of Chronic Pain Therapies, and its strategies for combating those barriers to increase use of its products. This "Operating Imperative" is accompanied by ten initiatives for executing the operating imperative, each of which includes a detailed description of the initiative, the tactics for implementing it, the geographic region where it would be implemented, the timing for implementation, and the budget for implementation. The remaining "Operating Imperatives" include similarly detailed and granular initiatives, descriptions, tactics, geographic regions, timing, and budget information;
- c. Abbott's proprietary insights into the Chronic Pain Therapy combinations utilized by its customers – that is, what percentage of its customers use RF, DRG, or SCS only; what percentage use a combination of two of those therapies; and what percentage use all three therapies. Based on these insights, Abbott evaluated and developed a new sales approach to drive further growth for Abbott in the Chronic

Pain Therapies market;

- d. Abbott's intended marketing messaging to patients – *i.e.* how it plans to advertise its Chronic Pain Therapies in 2019 – to differentiate Abbott's Chronic Pain Therapies from its competitors' products and drive consumers to purchase Abbott's products;
- e. Abbott's 2018-2019 product map, including the timing of projected regulatory approvals for various therapies within the Chronic Pain Therapies market;
- f. Abbott's competitive insights into the Chronic Pain Therapies market, including key changes in the market since the development of the 2018 Chronic Pain Marketing Plan and implications of these key changes for Abbott's marketing and sales strategies; and
- g. Abbott's analysis of the competitive landscape in the Chronic Pain Therapies market, including anticipated market launches and regulatory approvals, and its assessment of each of its competitors' strength in the market.

43. In September 2018, Fleck spent roughly 40 to 60 hours leading the team that developed this 2019 Marketing Plan.

44. The final 2019 Marketing Plan was completed on September 25, 2018, only eight days before Fleck resigned.

45. As of October 3, 2018, Fleck was one of only eight people within Abbott privy to the highly confidential 2019 Marketing Plan.

46. The 2019 Marketing Plan is designated "Abbott Confidential, internal use only," and stated that it is "[n]ot to be reproduced, distributed or excerpted."

47. Drafts of the 2019 Marketing Plan were distributed and exchanged only among the people involved in creating the plan and were not accessible to individuals outside of that core team.

48. All of the core team members involved in preparing the 2019 Marketing Plan were subject to the same Abbott Employee Agreement as Fleck, which includes restrictive covenants prohibiting them from sharing confidential information like the 2019 Marketing Plan.

49. High-level strategic information like the 2019 Marketing Plan is known by the individuals who developed it, even if they do not have physical copies of the final product.

50. Because Fleck led the team that developed the 2019 Marketing Plan just a few weeks ago, he knows Abbott's strategic objectives and its plan for achieving them, regardless of whether he retained a physical copy of the Plan.

51. In essence, as of October 3, 2018, Fleck has Abbott's marketing "playbook" for the next 12 to 18 months in the Chronic Pain Therapies market.

The 2019 Geographic Expansion Plan

52. In addition, since the beginning of 2018, Fleck represented the marketing function on the core team for Abbott's 2019 geographic expansion plan (the "2019 Geographic Expansion Plan") for its Chronic Pain Therapies business.

53. The 2019 Geographic Expansion Plan includes Abbott's assessment, strategies, and plan regarding entry of its Chronic Pain Therapies business into new global markets and their strategic expansion in existing global markets.

54. The 2019 Geographic Expansion Plan includes, for every region and country that is part of the Plan, the business case for expansion, the expected timing of entry or expansion, the expected revenue, and the planned method for entry or expansion.

55. Like the 2019 Marketing Plan, the 2019 Geographic Expansion Plan is designated "Abbott Confidential, internal use only" and states that it is "[n]ot to be reproduced, distributed or excerpted."

56. As of October 3, 2018, the only individuals privy to the 2019 Geographic Expansion Plan were the selected representatives, one from each core function (e.g. regulatory, operations, supply chain).

57. Also similar to the 2019 Marketing Plan, the 2019 Geographic Expansion Plan is a high-level strategic plan that can easily be remembered without retaining physical materials.

Additional Confidential Information

58. Because of his global marketing role, Fleck also has intimate knowledge of Abbott's Chronic Pain Therapies' pricing "pain points" – that is, Abbott's margins and the discounts it is able and willing to offer in certain circumstances based on regions and accounts.

59. In addition, to develop the 2019 Marketing Plan and the 2019 Geographic Expansion Plan, Fleck was given access to proprietary worldwide data that allowed him to view, on an account-by-account basis, the identity of the account, the size of the account, and the mix of therapies used by the account.

60. This proprietary worldwide data allows Fleck to easily identify Abbott's top accounts worth targeting and pursuing for a competitor's business.

61. In sum, Fleck was intimately involved in the development of highly proprietary and confidential strategic plans — Abbott's proverbial 2019 "playbook" — directed specifically to Chronic Pain Therapies, the use of which by a competitor would be devastating for Abbott's business.

Abbott's Efforts to Maintain Confidentiality

62. Abbott's 2019 Marketing Plan, 2019 Geographic Expansion Plan, pricing strategies, and accompanying worldwide sales data are not known to Nevro and Abbott's other competitors.

63. To the contrary, Abbott tightly protects the secrecy of these strategic plans and data from its competitors, which gives Abbott a competitive advantage based on its significant investment in developing successful strategies for expanding its Chronic Pain Therapies business.

64. In the hands of a competitor, this information would allow the competitor to anticipate and effectively undermine Abbott's strategic moves, thereby depriving Abbott of its competitive advantage and unfairly threatening its market share.

65. Abbott has gone to great lengths to maintain the secrecy of its trade secrets and other confidential information.

66. Abbott invests millions of dollars each year to protect the confidentiality of its trade secrets and other proprietary information, including implementing appropriate security systems for both its physical offices and electronic databases, including restricted, password-protected SharePoint drives.

67. Abbott employs robust technology systems designed to protect the integrity of its data and monitors its systems for signs of infection, intrusion, and dissemination.

68. Abbott also has an Electronic Media Use Policy that instructs employees to take appropriate precautions against allowing unauthorized access and prohibits sharing unauthorized information with third parties.

69. Moreover, Abbott protects the confidentiality of its trade secrets and other proprietary information by limiting access to a small number of individuals whose role is critical in the development, analysis, or implementation of the information.

70. Like Fleck, Abbott requires that employees sign agreements acknowledging the existence and importance of Abbott's confidential information and trade secrets, agreeing not to use or disclose such information except as required and authorized within the scope of their employment at Abbott, and stipulating that they will not work for a competitor for a period of time in any role that might involve the use of such information.

Fleck's Resignation and Stated Intention to Work for Nevro

71. On October 3, 2018, just eight days after completing Abbott's 2019 Marketing Plan, Fleck gave notice of his resignation of his employment with Abbott in a meeting with his supervisor, Laura Sterling.

72. During that meeting, Fleck disclosed that after his employment with Abbott ends, he will be working in a marketing position for Nevro.

73. Fleck also acknowledged that Nevro is a direct competitor and suggested that his non-compete agreement will not apply because Nevro is based in California.

74. Before October 3, 2018, Fleck did not disclose to Abbott that he was in discussions with Nevro, let alone considering accepting an offer of employment.

75. However, since Fleck's notice of resignation, Abbott has learned that Fleck was actively engaged in discussions with Nevro about a marketing role even before he agreed to lead the team that developed Abbott's 2019 Marketing Plan, and while he was working to develop the 2019 Geographic Expansion Plan.

76. Indeed, on information and belief, Fleck was discussing employment with Nevro at least as early as July 30, 2018. That is the date of a draft non-disclosure agreement between Fleck and Nevro recovered from Fleck's work computer.

77. Fleck has not been forthcoming in providing information to Abbott about his anticipated role at Nevro. Fleck has not disclosed to Abbott the precise role that Fleck will be serving at Nevro, other than that it will be a marketing function.

78. Fleck's withholding of information about his new role is a breach of the Notification Provision.

79. Given that Fleck has disclosed he will be working in a marketing capacity, Fleck

will be working for Nevro — a competitor — in the same or a very similar function as the one he performed for Abbott as recently as this month.

80. Fleck's working for Nevro in a marketing function is a breach of Fleck's Non-Compete Provision.

81. If allowed to join Nevro before the end of his non-compete period, Fleck will be unable to divorce himself from the proprietary and confidential strategies he helped develop while at Abbott.

82. For example, Fleck will necessarily use his knowledge of Abbott's 2019 Geographic Expansion Plan when developing expansion plans on behalf of Nevro, which thus far has followed Abbott into markets it has entered with its Chronic Pain Therapies.

83. Similarly, Fleck will necessarily use his knowledge of Abbott's 2019 Marketing Plan in developing, implementing, and analyzing Nevro's marketing strategy.

84. For example, if involved in deciding whether Nevro should expand into a particular market, Fleck cannot "forget" Abbott's plans as to expansion in that market, Abbott's perceptions of the likelihood of succeeding in that market, and Abbott's timing and methods for entering that market.

85. Similarly, if Fleck is involved in deciding how much of Nevro's marketing budget it should devote to a particular marketing initiative, he will not be able to make that decision in a vacuum, unaffected by his knowledge of the budget Abbott has earmarked for competing initiatives. Fleck could also use his knowledge of Abbott's nationwide pricing margins and floors to immediately implement pricing at Nevro that will undercut Abbott in key accounts.

86. As a final example, Fleck, with knowledge of Abbott's plans for marketing messages that help patients to differentiate Abbott's products from its competitors' products, may

“invent” a marketing campaign on Nevro’s behalf that would preempt and neutralize Abbott’s campaign before it even begins.

87. Fleck’s use of his knowledge of the 2019 Geographic Expansion Plan, the 2019 Marketing Plan, Abbott’s pricing strategies, or any other confidential, proprietary and/or trade secret information, for the benefit of Nevro is a breach of Fleck’s Non-Disclosure Provision.

88. In the highly competitive and dynamic Chronic Pain Therapies market, annual strategic planning is a key driver to maintaining or increasing market share.

89. For that reason, Abbott undertakes significant effort to maintain the secrecy of annual strategic marketing planning from competitors to prevent competitors from undermining those plans.

90. Fleck’s employment with Nevro will allow Nevro to gain an unfair competitive advantage to undermine Abbott’s efforts through asymmetrical knowledge of Abbott’s marketing and expansion plans.

91. Nevro’s knowledge of and/or benefit from Abbott’s 2019 “playbook” risks depriving Abbott of market share it otherwise would have achieved.

92. The amount of such impact cannot be precisely or accurately quantified or measured given the uncertainty of what Abbott would have achieved without Fleck’s improper disclosure or use of Abbott’s strategies.

COUNT I – BREACH/ANTICIPATORY BREACH OF CONTRACT

93. Plaintiff repeats and realleges Paragraphs 1 through 92 as though fully set forth herein.

94. The Agreement is a valid and enforceable contract between Abbott and Fleck.

95. Abbott has fully performed its obligations under the Agreement.

96. Fleck has breached and/or will breach the Non-Compete Provision by accepting employment with Nevro, a “Competing Business” involving a “Competing Product” to Abbott’s Chronic Pain Therapies.

97. In particular, Fleck will be in a marketing role at Nevro, and accordingly will provide services to Nevro that are the same or very similar in function to those he provided to Abbott.

98. In addition, Fleck’s employment with Nevro is likely to result in his use and disclosure of Abbott’s Confidential Information because Fleck cannot divorce himself from the confidential marketing, pricing, and expansion strategies that he developed for Abbott for 2019 while creating or executing Nevro’s marketing, pricing, and expansion strategies in 2019.

99. Fleck has breached and/or will breach the Non-Disclosure Provision because Fleck’s employment with Nevro will require him to use and disclose Abbott’s Confidential Information.

100. Fleck has breached the Notification Provision by failing to provide Abbott with the information Abbott needs to conduct a reasonable evaluation of Fleck’s position as it relates to the Agreement.

101. If Fleck undertakes employment with Nevro, as intended, Abbott will be irreparably harmed by Fleck’s breaches of the Agreement because its proprietary and confidential strategic business plans for 2019 will be unfairly undermined and challenged by its direct competitor.

102. Abbott seeks injunctive relief to prevent Fleck’s threatened breaches of the Agreement.

COUNT II – DEFEND TRADE SECRETS ACT (18 U.S.C. § 1836)

103. Plaintiff repeats and realleges Paragraphs 1 through 92 as though fully set forth

herein.

104. Abbott has many trade secrets related to its Chronic Pain Therapies business, including confidential marketing strategies, geographic expansion plans, marketing methods, financial information, customer lists, pricing methodologies and approaches, and other data.

105. Abbott derives economic value from these trade secrets because they are not known to Abbott's competitors, thereby allowing Abbott to gain a competitive advantage in the Chronic Pain Therapies market through the strategies and information it invests in developing.

106. Abbott maintains these trade secrets as confidential internally by limiting access to a small number of individuals whose role is critical in the development, analysis, or implementation of the information.

107. Access to this information is not available to Abbott employees who do not have a business need to access the information, and all individuals accessing the information are subject to employee agreements containing non-disclosure obligations and other restrictive covenants.

108. In his employment with Nevro, Fleck will inevitably misappropriate Abbott's trade secrets because he will be unable to perform his role in Nevro's marketing function without accounting for, and considering, Abbott's trade secret information regarding the 2019 Marketing Plans, 2019 Geographic Expansion, granular financial data as to each customer account, pricing methodologies and approaches, and other proprietary information.

109. Fleck's misappropriation will cause Abbott irreparable harm by allowing Nevro to undermine Abbott's competitive advantage in the Chronic Pain Therapies market in 2019 — an advantage that Abbott has gained through its investment in the development of trade secret information.

110. Abbott seeks injunctive relief to prevent Fleck's threatened misappropriation of

Abbott's trade secrets.

COUNT III – ILLINOIS TRADE SECRETS ACT (765 ILCS 1065/1, et seq.)

111. Plaintiff repeats and realleges Paragraphs 1 through 92 as though fully set forth herein.

112. Abbott has many trade secrets related to its Chronic Pain Therapies business, including confidential marketing strategies, geographic expansion plans, marketing methods, financial information, customer lists, pricing methodologies and approaches, and other data.

113. Abbott derives economic value from these trade secrets because they are not known to Abbott's competitors, thereby allowing Abbott to gain a competitive advantage in the Chronic Pain Therapies market through the strategies and information it invests in developing.

114. Abbott maintains these trade secrets as confidential internally by limiting access to a small number of individuals whose role is critical in the development, analysis, or implementation of the information.

115. Access to this information is not available to Abbott employees who do not have a business need to access the information, and all individuals accessing the information are subject to employee agreements containing non-disclosure obligations.

116. In his employment with Nevro, Fleck will inevitably misappropriate Abbott's trade secrets because he will be unable to perform his role in Nevro's marketing function without accounting for, and considering, Abbott's trade secret information regarding 2019 marketing plans, 2019 geographic expansion, granular financial data as to each customer account, pricing methodologies and approaches, and other proprietary information.

117. Fleck's misappropriation will cause Abbott irreparable harm by allowing Nevro to undermine Abbott's competitive advantage in the Chronic Pain Therapies market in 2019 — an

advantage that Abbott has gained through its investment in the development of trade secret information.

118. Abbott seeks injunctive relief to prevent Fleck's threatened misappropriation of Abbott's trade secrets.

PRAYER FOR RELIEF

Abbott respectfully requests that the Court find in its favor and against Defendant Blayne Fleck, and grant Abbott the following relief:

- A. Issue temporary, preliminary, and permanent injunctive relief prohibiting Fleck from employment with Nevro for a period of 12 months from the date the Order is entered;
- B. Issue temporary, preliminary, and permanent injunctive relief prohibiting Fleck from using or disclosing Abbott's trade secrets or confidential information;
- C. Award Abbott monetary damages to which it is entitled for Fleck's misappropriation of Abbott's trade secrets up until the date Fleck is finally and permanently enjoined from further infringement, including compensatory damages;
- D. Award Abbott costs, attorneys' fees, and expenses;
- E. Award Abbott pre- and post-judgment interest on its damages; and
- F. Award such other and further relief as the Court deems just and equitable.

JURY DEMAND

Abbott demands trial by jury on all the claims for damages.

Dated: October 15, 2018

Respectfully submitted,

/s/ Ronald S. Safer

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