IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BRISTOL-MYERS SQUIBB CO.,

Plaintiff,

- against -

DAVID BERMAN,

Defendant.

PLAINTIFF BRISTOL-MYERS SQUIBB CO.'S VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

Bristol-Myers Squibb Company ("BMS"), by and through its undersigned attorneys, for its Complaint against David Berman ("Berman"), upon knowledge with respect to its own acts and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. BMS brings this action to ensure that Berman, until recently the Vice President, Leader of BMS's Immuno-Oncology ("I/O") Exploratory Development Team ("EDT"), does not inflict immediate, irreparable harm on it by violating either of the non-competition covenants of the Market Share Units Agreement (the "MSU Agreement") and Performance Share Units Agreement (the "PSU Agreement" and collectively the "Agreements") between Berman and BMS and using confidential and trade secret information for the benefit of BMS's leading

competitor in the research, development, and commercialization of novel immuno-oncology therapies for cancer.

2. As background, BMS is a global pharmaceutical company whose business focuses on discovering, developing, and delivering innovative medicines to fight serious diseases, including cancer. Recently, BMS has made significant advancements in the treatment of cancer using inhibitors of checkpoints in the human body's immune system, such approach is called immuno-oncology ("I/O"). For example, Yervoy®, which was developed by BMS, became the first I/O drug approved by the Food & Drug Administration ("FDA") in 2011 and has been highly successful in prolonging the life of patients suffering from melanoma.

3. More recently, BMS has developed and launched another I/O drug called Opdivo® which has recently been approved for the treatment of both melanoma and lung cancer and is in development for the treatment of several other cancers – both alone and in combination with other traditional and I/O cancer treatments. AstraZeneca and MedImmune—AstraZeneca's global biologics research and development arm—have recently entered the neck-and-neck race to develop I/O compounds. Recently, AstraZeneca announced a strategic collaboration with Celgene Corporation to develop a PD-L1 inhibitor, which would compete directly against previously-developed BMS compounds. *AstraZeneca Enters Strategic Immuno-Oncology Collaboration with Celgene Corporation to*

Develop PD-L1 Inhibitor Programme for Patients with Serious Blood Cancers, AstraZeneca (Apr. 24, 2015).

4. Berman has worked at BMS since May 2005 and has served in a number of senior leadership roles within oncology: Director, Oncology Discovery Medicine; Group Director, Global Clinical Lead for Elotuzumab; Executive Director, Global Clinical Lead for Yervoy®; and most recently as Vice President, Leader of the I/O EDT.

5. On May 26, 2015, Berman resigned and informed BMS that he would be taking a senior position within AstraZeneca's oncology division (believed to be within its MedImmune subsidiary). When BMS reminded Berman that Berman was subject to non-competition covenants, Berman acknowledged that he was aware of those covenants but said that he intended to work for a competitor in spite of them.

6. As Vice President, Leader of the I/O EDT, Berman was responsible for (among other things) creating and implementing development strategy for exploratory I/O development projects, engaging external I/O thought leaders and cultivating relationships to further BMS's I/O portfolio, and utilizing his unique knowledge of BMS's I/O program to oversee the pipeline process.

7. In order to obtain access to BMS's trade secrets and highly-confidential and proprietary information necessary for the performance of these

duties, Berman signed BMS's Confidentiality Agreement, attached hereto as Exhibit A, requiring that Berman to not use or disclose BMS's confidential and proprietary information at any time during or after his employment with BMS, except in the course of carrying out his employment responsibilities to BMS.

8. Separately from the standard Confidentiality Agreement, in an effort to encourage long-term growth and success, BMS also provided its most senior employees the opportunity to share in any wealth-creation realized by BMS. In recognition of Berman's important role at BMS, Berman was offered an equity package where he was presented with market share units and performance share units. Participation in the program was not mandatory, and BMS made clear that the acceptance or rejection of the shares would have no impact whatsoever on Berman's employment with BMS.

9. Acceptance of that equity package required acceptance of the MSU Agreement and the PSU Agreement. Both the Agreements contain industry-standard non-competition covenants (the "Non-Competes") that prohibit Berman from working for a competitor for twelve months following the termination of his employment with BMS. Berman signed the Agreements and specifically acknowledged the Non-Competes in doing so.

10. On May 26, 2015, Berman resigned from BMS to accept a position at AstraZeneca in a substantially similar role to his position at BMS. On information

and belief, Berman will be responsible for implementing research and development strategies for AstraZeneca's I/O products, including those that compete directly with Opdivo® and Yervoy® and other earlier stage BMS I/O pipeline products and combinations thereof.

11. Berman's position at AstraZeneca will be very similar to his role at BMS; he will be working for a direct competitor of BMS concerning products that compete directly with BMS, in some cases, will be contracting and cultivating relationships with the same I/O thought leaders and medical groups he met through his employment at BMS. Furthermore, Berman will be directly involved in the research and development of products that compete with Yervoy® and Opdivo® and other earlier stage BMS I/O pipeline products and combinations thereof. It will be impossible for Berman to perform these roles without (even unknowingly) drawing upon the vast knowledge and experience regarding I/O that he obtained at BMS -- I/O's industry leader. This inevitable injury to BMS's hard-earned competitive standing is quintessential irreparable harm.

PARTIES

12. Plaintiff BMS is a corporation organized under the laws of the State of Delaware with its principal place of business located at 345 Park Avenue, New York, New York. BMS is widely recognized as an industry leader and has been commended in both medical literature and the mainstream media for its innovation,

commitment to quality and corporate responsibility. In particular, BMS is at the forefront of the search for advances in the treatment of cancer, and its achievements in and commitments to the field of oncology have garnered considerable recognition.

13. Of particular importance to this case are BMS's cancer immunotherapies (I/O) that use the human body's own immune system to attack certain deadly forms of cancer. In March 2011, the FDA approved Yervoy®, the first drug shown to prolong the lives of patients suffering from melanoma. Additionally, in December 2014 the FDA gave preliminary approval to Opdivo® for the treatment of advanced melanoma and more recently the FDA approved Opdivo® for the treatment of lung cancer, Opdivo® is also being developed alone and in combination with other cancer treatments for the treatment of several other cancers. BMS markets Yervoy® and Opdivo® worldwide. In addition to Yervoy® and Opdivo®, BMS is actively involved in developing other I/O compounds, many of which have not been publicly announced as well as combinations of approved and earlier stage compounds.

14. Upon information and belief, Defendant David Berman is an individual who resides at 6 Anderson Lane, Princeton, New Jersey. Berman was employed by BMS as Vice President, Leader of BMS's I/O EDT from December 2014 until May 2015. Prior to his leaving BMS, Berman was primarily responsible

for clinical development of BMS's early stage I/O portfolio worldwide, was closely connected to the clinical development of the entire I/O portfolio, and to the evaluation and development of new I/O targets in Discovery. Upon information and belief, Berman was offered a similar position at AstraZeneca and will participate in the research and development of similar I/O therapies.

JURISDICTION

15. Because this is a cause in equity, this Court has jurisdiction over this proceeding pursuant to 10 Del. C. § 341.

16. By entering into the MSU Agreement, Berman agreed to litigate all disputes arising out of the that contract in the State of Delaware. (MSU § 14.) Specifically:

> For purposes of litigating any dispute that arises under this MSU grant or Agreement, the parties hereby submit to and consent to the jurisdiction of the State of Delaware, agree that such litigation shall be conducted in the courts of Wilmington, Delaware, or the federal courts for the United States District Court for the District of Delaware, and no other courts where this MSU grant is made and/or performed.

17. The PSU Agreement contained similar language in which Berman agreed to litigate all disputes arising out of that contract in the State of Delaware. (PSU § 20.) Specifically:

> For purposes of litigating any dispute that arises under this MSU grant or Agreement, the parties hereby submit to and consent to the jurisdiction of the State of Delaware, agree that such litigation shall be conducted in the courts of Wilmington, Delaware, or the federal

courts for the United States District Court for the District of Delaware, and no other courts where this MSU grant is made and/or performed.

BACKGROUND

18. Over 13 million individuals in the U.S. have been diagnosed with some form of cancer. Traditional treatments for cancer include chemotherapy, radiation therapy and surgery, which focus on the intrinsic properties of the tumor.

19. By comparison, I/O harnesses the human body's own immune system to fight cancer cells by targeting pathways that cancer uses to evade immune recognition and destruction. Imunne-oncology therapies such as Checkpoint-based compounds are a new front in the war on cancer. In fact, they are the headline at the American Society of Clinical Oncology meeting being held this week in Chicago where BMS is presenting data on a large number of investigational I/O compounds and combinations.

BMS Develops Yervoy®

20. BMS is the recognized leader in the development of I/O cancer treatments. Its initial breakthrough drug for cancer treatment was Yervoy®, the first drug to significantly extend the lives of patients suffering from advanced melanoma.

21. Yervoy® blocks the CTLA-4 pathway that would otherwise prevent the body's immune system from destroying tumor cells. Thus by blocking the CTLA-4 pathway, Yervoy® enables the body's immune system to increase

important T-cells that seek out and destroy cancer cells. In essence, Yervoy® removes the natural brake built into the human body's immune responses.

22. It took BMS years to research and develop this groundbreaking I/O treatment. Over this period, BMS spent hundreds of millions on research and development as well as patient studies and clinical trials to finally develop Yervoy®. After clinical trials, Yervoy® was approved by the FDA in March 2011 to treat melanoma that has spread (metastatic) or cannot be removed by surgery (unresectable). Yervoy® was the first I/O drug to receive approval by the FDA.

23. Since its approval in 2011, Yervoy® has been highly successful in prolonging the life of thousands of patients suffering from metastatic melanoma. In 2014, Yervoy® sales totaled $1.3 billion.

BMS Continues Its Success with Development of Opdivo®

24. Although Yervoy® is the first drug of its kind to be approved by the FDA, pharmaceutical companies are in the process of developing other I/O compounds to build on Yervoy®'s success. BMS and one of its key competitors, AstraZeneca, have focused on the receptor proteins found on T-cells, the most advanced of which is programmed death receptor 1 ("PD-1").

25. Researchers recognized the importance of PD-1 after analyzing its interaction with programmed death receptor 1 ligand 1 ("PD-L1"). When PD-1 approaches PD-L1, the two proteins bind to one another resulting in the T-cell

dying or becoming docile. In other words, when PD-L1 is present, T-cells will deactivate and no longer attack abnormal and foreign cells, such as cancer. The discovery of PD-L1 on the surface of cancerous cells and its interaction with PD-1 in this pathway was a major breakthrough in cancer research. This explains why the human immune system fails to naturally respond to cancer cells present in the human body.

26. Opdivo®, a PD-1 inhibitor developed by BMS as a next generation I/O medicine was first approved by the FDA in 2014 to treat patients with melanoma and more recently in 2015 to treat patients with squamous non-small cell lung cancer. BMS is studying Opdivo® alone and in combination with other I/O medicines and targeted cancer therapies to treat other types of cancers.

27. BMS has several other I/O medicines in earlier stages of development for treating a variety of cancers both alone and as part of various combinations.

28. Many patients in clinical trials have experienced even greater success rates with combination therapies that administer Yervoy® and Opdivo® as part of the same therapeutic regimen. Most recently, BMS announced positive results from a Phase II trial evaluating the use of Opdivo® with Yervoy®. This combination led to an improvement in survival in a sizable portion of the patients with previously treated advanced melanoma compared to the current standard of care.

29. BMS had been recognized as leading the charge in the developing PD-1 treatments. *Market Talk: Bristol Seen Leading Cancer, Immunotherapy Hunt*, Dow Jones News Service (May 16, 2013) ("JPMorgan says the data don't 'change our view that Bristol remains the clear leader.'").

30. In developing Opdivo®, BMS spent hundreds of millions on research and development and invested countless hours on conducting clinical studies and tests.

AstraZeneca is a Key Competitor to BMS

31. I/O is becoming an increasingly competitive field, with many pharmaceutical companies aiming to develop compounds that would compete directly with BMS's treatments.

32. For example, AstraZeneca recently announced that it was entering into a strategic I/O collaboration in order to develop a PD-L1 inhibitor. *AstraZeneca Enters Strategic Immuno-Oncology Collaboration with Celgene Corporation to Develop PD-L1 Inhibitor Programme for Patients with Serious Blood Cancers*, AstraZeneca (Apr. 24, 2015); *With Opdivo Approval, Bristol-Myers Arms for PD-1 Battle Against Merck's Keytruda*, FiercePharma (Dec. 23, 2014) ("Big names like AstraZeneca . . . are hard at work on potential rivals, ramping up R&D and looking for approvals for their products.").

33. AstraZeneca's PD-L1 compound, which would compete directly with Opdivo®, is currently named MEDI4736. Last year, AstraZeneca announced the start of the Phase III program for MEDI4736 to treat non-small cell lung cancer and other cancers. *AstraZeneca Initiates Phase III Immunotherapy Study for MEDI4736 in Patients with Lung Cancer*, AstraZeneca (May 8, 2014).

34. AstraZeneca and MedImmune are currently engaged in 31 clinical trials for the drug and recently announced that it was granted Fast-Track designation by the FDA for the investigation of MEDI4736 as a monotherapy treatment for patients with advanced non-small-cell lung carcinoma. *AstraZeneca to Update on Progress with Immuno-Oncology Pipeline and Combination Treatments at ASCO 2015*, AstraZeneca (May 13, 2015).

35. AstraZeneca is also in the process of developing tremelimumab, a CTLA-4 antagonist, which is in the same class as and will compete directly with BMS's Yervoy®. Just last month, AstraZeneca announced that the FDA granted Orphan Drug Designation to tremelimumab for the treatment of malignant mesothelioma. *Tremelimumab Granted Orphan Drug Designation by US FDA for Treatment of Malignant Mesothelioma*, AstraZeneca (April 15, 2015). Further, AstraZeneca and its wholly-owned subsidiary MedImmune are currently investigating the use of tremelimumab in combination with AstraZeneca's PD-L1

immunotherapy. *Id.* This is in direct competition with BMS's research regarding the combination treatment of Opdivo® and Yervoy®.

36. The competition is especially fierce between BMS and AstraZeneca because BMS was able to get its drugs to market faster. Any access to BMS's proprietary I/O information would allow AstraZeneca to take advantage and expedite its own research and development including gaining an earlier understanding of which combinations of medicines to explore, which tumors to go after and which putative drug targets do not work well.

Berman's Employment with BMS

37. Berman was hired by BMS in May 2005 as Director, Oncology Medicine. He has since held multiple positions including: Group Director, Global Clinical Lead for Elotuzumab and Executive Director, Global Clinical Lead for Yervoy®. Most recently, in December 2014, BMS announced his promotion to Vice President, Leader of I/O EDT.

38. On March 31, 2015, as a result of his seniority within the company, Berman was offered and chose to accept certain market share units and performance share units as part of BMS's Stock Incentive Plan.

39. Pursuant to the MSU Agreement, attached hereto as Exhibit B, BMS provided Berman with shares of BMS's common stock that would vest in quarter

increments over five years. In return, Berman agreed to a non-competition covenant.

40. The Non-Compete Covenant provides, in pertinent part:

> Given the extent and nature of the confidential information that you have obtained or will obtain during the course of your employment with the Company or a subsidiary of the Company, it would be inevitable or, at the least, substantially probable that such confidential information would be disclosed or utilized by you should you obtain employment from, or otherwise become associated with, an entity or person that is engaged in a business or enterprise that directly competes with the Company. Even if not inevitable, it would be impossible or impracticable for the Company to monitor your strict compliance with your confidentiality obligations. Consequently, you agree that you will not, directly or indirectly:
>
> ii) during the Non-Competition and Non-Solicitation Period, whether or not for compensation, either on your own behalf or as an employee, officer, agent, consultant, director, owner, partner, joint venturer, shareholder, investor, or in any other capacity, be actively connected with a Competitive Business or otherwise advise or assist a Competitive Business with regard to any product, investigational compound, technology, service, line of business, department or business unit that competes with any product, technology, service, line of business, department or business unit with which you worked or about which you became familiar as a result of your employment with the Company or a subsidiary of the Company. take any action that might divert any opportunity from the Company or any of its affiliates, successors or assigns (the "Related Parties") that is within the scope of the present or future operations or business of any Related Parties . . . .
>
> vi) during the Non-Competition and Non-Solicitation Period, engage in any activity that is harmful to the interests of the Company or its Related Parties, including, without limitation, any conduct during the term of your employment that violates the Company's Standards of Business Conduct and Ethics, securities trading policy and other policies.

(MSU ¶ 3(a).)

41. The MSU Agreement defines "Non-Competition Period" as Berman's period of employment and 12 months following his termination date. (*Id.*, ¶ 9(c)(iii)) It also provides that:

> "Competitive Business" means any business that is engaged in or is about to become engaged in the development, production or sale of any product, process or service concerning the treatment of any disease, which product, process or service resembles or competes with any product, process or service that was sold by, or in development at, the Company or a subsidiary of the Company during your employment with the Company or a subsidiary of the Company.

(*Id.*, ¶ 9(c)(i.)

42. The PSU, attached hereto as Exhibit C, contains identical restrictions and definitions. (PSU ¶ 10.)

43. Directly above his signature in both the MSU Agreement and PSU Agreement, Berman covenanted: "I hereby agree to all the terms, restrictions and conditions set forth in the Agreement, including, but not limited to, post-employment obligations related to non-competition and non-solicitation." (MSU, at 16-17; PSU at 16.)

BMS Provided Berman Confidential Information In Connection With His Employment

44. As the Vice President, Leader of I/O EDT, Berman was primarily responsible for overseeing the research and development of BMS's entire I/O

portfolio, including combinations with Opdivo® and Yervoy® and has an in-depth knowledge about BMS's target Discovery and development efforts.

45. BMS provided Berman with highly-confidential and proprietary information. Specifically, BMS provided Berman with intimate knowledge of its: relationships with experts, leading academics, and clinical centers and various I/O therapy pipelines. Berman is aware of a significant amount of currently non-public information, including BMS's ongoing pipeline strategies, which will not become public for at least another year, particularly given the timelines involved in drug development and the conduct of clinical trials. Accordingly, Berman had significant contact with/and access to confidential information regarding BMS's customers and potential customers in the I/O and oncology fields.

46. Most recently, Berman has been one of the few senior level BMS employees involved in crafting BMS's long-term strategic plan, which includes access to sales figures, marketing materials, and proprietary information relating to confidential BMS clinical trials.

47. Berman also had knowledge of BMS strategies that were specific to the overlap in the market between BMS and AstraZeneca.

Berman Leaves BMS to Work for a Competitor

48. On May 20, 2015, Berman informed his direct supervisor Michael Burgess, Leader of Exploratory Clinical & Translational Research, that he would be resigning from BMS and beginning work at AstraZeneca.

49. BMS reminded Berman of his non-competition obligations and Berman acknowledged that he was bound by the provisions contained in both the PSU Agreement and MSU Agreement.

50. On May 26, 2015, Berman submitted a letter of resignation to Michael Burgess, attached hereto as Exhibit D, indicating that his resignation was effectively immediately. BMS again reminded Berman of his non-competition obligations.

51. Upon information and belief, Berman will imminently begin working for AstraZeneca in a role within oncology, substantially similar to his role at BMS.

CLAIMS

COUNT 1: Breach of Contract

52. Plaintiff repeats and realleges each of the foregoing allegations as though fully set forth herein.

53. The Non-Competes constitute enforceable agreements that impose upon Berman certain contractual obligations, including that Berman not:

> be actively connected with a Competitive Business or otherwise advise or assist a Competitive Business with regard to any product, investigational compound, technology, service, line of business,

> department or business unit that competes with any product, technology, service, line of business, department or business unit with which you worked or about which you became familiar as a result of your employment with the Company or a subsidiary of the Company. take any action that might divert any opportunity from the Company or any of its affiliates, successors or assigns (the "Related Parties") that is within the scope of the present or future operations or business of any Related Parties . . . .

54. BMS acted in reliance upon the promises Berman made in the Non-Competes by providing Berman with access to BMS's trade secrets and its highly-confidential and proprietary information.

55. BMS has performed its obligations under the Non-Competes, in all material respects. By accepting employment with AstraZeneca in a position with responsibilities virtually identical to the position he held with BMS, Berman has breached his obligations under the Non-Competes.

56. If Berman is not enjoined from commencing employment at AstraZeneca, and thereby violating the Non-Competes, BMS will be irreparably injured.

PRAYER FOR RELIEF

WHEREFORE, BMS respectfully requests that the Court:

A. Issue preliminary and permanent injunctive relief enjoining Berman from commencing any employment with AstraZeneca with responsibility for oncology within twelve months of Berman' departure from BMS;

B. Issue injunctive relief enjoining Berman from making any use whatsoever of BMS's Confidential Information (as that term is defined in the Confidentiality Agreement);

C. Award BMS such further relief as the Court deems just and proper.

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