

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA,

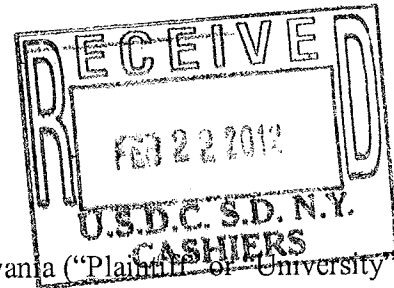
Plaintiff,

-against-

CRAIG B. THOMPSON, M.D. and AGIOS
PHARMACEUTICALS, INC.,

Defendants.
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CASE NO. 12 CV 1330
COMPLAINT



Plaintiff Trustees of the University of Pennsylvania (~~“Plaintiff of University”~~),

by its attorneys, Morgan, Lewis & Bockius, LLP, alleges for its complaint against defendants
Craig B. Thompson, M.D. (“Thompson”), and Agios Pharmaceuticals, Inc. (“Agios”)
(collectively, “Defendants”), the following:

INTRODUCTION

1. Thompson is a renowned cancer researcher and clinician. Between 1998 and November 2010, Thompson served as a faculty member of the University, Director of the Abramson Cancer Center at the University (the “Cancer Center”), and Scientific Director of the Leonard and Madlyn Abramson Family Cancer Research Institute (the “Institute”). During his tenure, Thompson oversaw the work of several hundred cancer researchers as well as the activities of more than 300 full-time faculty physicians and other University personnel involved in cancer prevention, diagnosis, and treatment. While a faculty member at the University, and as Scientific Director of the Institute, Thompson conducted extensive research on the role that

metabolic changes play in the origin and proliferation of cancer resulting in discoveries relating to diagnostic and therapeutic inventions.

2. Pursuant to his faculty appointment at the University, Thompson was bound by the University's Patent and Tangible Research Property Policies and Procedures ("Patent Policy") governing practices and procedures on inventions, patents, and tangible research. The provisions of the Patent Policy were among the terms of Thompson's employment.

3. Thompson violated and breached the Patent Policy, breached the terms of his employment, and breached his fiduciary duty to the University, *inter alia*, by failing to disclose to the University research and discoveries that he instead provided to a for-profit corporation and ultimately publicly disclosed in international journal publications, both to the detriment of the University.

4. Rather than disclose to the University, as required by the Patent Policy, Thompson disclosed his research and discoveries to defendant Agios Pharmaceuticals, Inc. ("Agios"), a for-profit corporation formed by Thompson and others. Agios was well aware of Thompson's intentional failure to disclose the subject matter of the journal publications to the University, and of his public disclosure of his research and discoveries through the journal publications. Agios tortiously interfered with Thompson's contractual obligations to the University and aided and abetted Thompson's breach of fiduciary duty.

5. In addition to the allegations described in this Complaint, Thompson may have breached the terms of his employment, and breached his fiduciary duty to the University,

by improperly disclosing other research and discoveries owned by the University to either Agios or other third-parties, to the detriment of the University.

PARTIES

6. The University is a non-profit organization devoted to higher education with its principal place of business at 3451 Walnut Street, Philadelphia, Pennsylvania 19104.

7. Thompson is the current President and Chief Executive Officer of Memorial Sloan-Kettering Cancer Center (“MSK”), 1275 York Avenue, New York, New York 10065, and is a citizen of the State of New York, residing in New York City.

8. Agios is a corporation existing under the laws of the State of Delaware, and is a citizen of the State of Massachusetts with its principal place of business and corporate headquarters located at 38 Sidney Street, Cambridge, Massachusetts 02139.

JURISDICTION AND VENUE

9. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship and because the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(1) and (2), because Thompson is a citizen and resident in this District, because Thompson and Agios have had significant contacts with this District, and because a substantial part of the events or omissions giving rise to the claims occurred in this District and a substantial part of the property that is the subject of this action is located in this District.

FACTUAL ALLEGATIONS

11. The University is one of the world's most significant research and teaching institutions, attracting award-winning educators and scholars. In addition, the Perelman School of Medicine ("Perelman"), a component of the University, is one of the top recipients of National Institutes of Health funding and consistently ranks among the top five in U.S. News and World Report's rankings of research-oriented medical schools.

12. Perelman, together with the University's clinical enterprise, is known as "Penn Medicine." Penn Medicine employs over 20,000 full-time employees. In addition to Perelman, Penn Medicine is comprised of three affiliated hospitals – Hospital of the University of Pennsylvania, Penn Presbyterian Medical Center, and Pennsylvania Hospital, and other clinical components.

13. The Institute is a separately incorporated 501(c)(3) organization whose mission is dedicated to cancer research at the Cancer Center. The Cancer Center employs more than 500 research and clinical specialists, all dedicated to preventing, diagnosing, and curing cancer. The Cancer Center has won the prestigious designation of "Comprehensive Cancer Center" by the National Cancer Institute continuously for over 30 years based on its innovative treatments for cancer patients and integrated research programs.

14. The University's Center for Technology Transfer ("CTT") serves as a bridge between University faculty and researchers, including Penn Medicine faculty, and the business community. CTT facilitates and evaluates invention disclosures, protects the University's intellectual property, obtains and manages patents, copyrights and trademarks derived from the University's academic research, and markets and licenses the University's

intellectual property to established companies as well as new business ventures for product development and commercialization.

Agreements between Craig B. Thompson, M.D., and the University of Pennsylvania

A. The Employment Agreement

15. The terms of Thompson's initial employment with the University are set forth in two letters dated October 29, 1998, and in the various policies of the University, including the Patent Policy (collectively referred to as the "Employment Agreement"). The first of the two October 29, 1998 letters, accepted by Thompson on November 2, 1998, sets forth Thompson's role as a fully tenured professor, as well as his appointment as Scientific Director of the newly formed Institute, including a description of the laboratory and working space to be funded through the Institute. Thompson's initial appointment was for a period of nine years, to be renewable upon completion of the term.

16. The second letter of the two October 29, 1998 letters, also accepted by Thompson on November 2, 1998, sets forth Thompson's compensation package, including his annual base salary, his administrative stipend as Scientific Director of the Institute, as well as a target incentive bonus based upon performance. In addition, the University offered Thompson a considerable one-time payment to offset expenses associated with his assuming the position at the University.

17. On September 12, 1999, Thompson accepted the terms of an additional employment agreement for his faculty appointment as the first Chair of the Department of Cancer Biology at the University. The letter, dated September 7, 1999 from William N. Kelley, MD, to Thompson, stated that Thompson was bound by the various "policies, procedures, and

programmatic objectives of the University, Health System and Medical Center, and School as set out in the University's Statutes, Health System Bylaws, Faculty Handbook and as otherwise communicated to [him] and as they may be modified in the future." Copies of the October 29, 1998 letters and the September 7, 1999 letter are attached hereto as Exhibits A, B and C, respectively, and a copy of the Patent Policy is attached hereto as Exhibit D.

B. The Patent and Tangible Research Property Policies and Procedures of the University of Pennsylvania

18. As a condition of employment at the University, all faculty and researchers using research facilities are bound by the Patent Policy, which the University makes available to faculty, inter alia, online and in the Faculty Handbook.

19. By accepting and using University facilities and resources, Thompson was bound by all the terms of the Patent Policy, and irrevocably assigned to the University all rights, title, and interest to any invention or associated materials to the University.

20. Pursuant to Article 1.4 of the preamble to the Patent Policy, the University "endeavors to marshal its resources and exploit its assets to serve the public interest, and in so doing reinvests in the research enterprises of its faculty, employees and students. Members of the University community share in the University's responsibility to serve the public interest, and have a duty to disclose and assign their inventions." See Exhibit D.

21. Under the Patent Policy, an INVENTION is defined as "technical information, trade secrets, developments, discoveries, inventions, know-how, methods, techniques, formulae, data, processes and other proprietary ideas or matter." ("Invention"). Id. at 5.0.15. MATERIALS are defined as "lab notebooks, records, drawings, sketches,

photographs, radiographs or other images, models, biological specimens, chemical samples, or other materials needed to support the preparation, submission, prosecution, defense or enforcement of a patent in the United States or other applicable jurisdictions.” *Id.* at 5.0.21.

22. The Patent Policy defines INVENTORS as “University faculty, emeritus faculty, visiting faculty or researchers, adjunct faculty, postdoctoral employees or trainees, or other employees, or students, or others who individually or jointly make an INVENTION subject to the PATENT POLICY and who meet the criteria for inventorship under the United States patent laws and regulations.” *Id.* at 5.0.17.

23. Under the Patent Policy, INVENTORS are required to file invention disclosures for all Inventions covered by the Patent Policy “promptly” with CTT. Moreover, if the University wishes to retain title to an Invention, “an INVENTOR shall sign all documents necessary for the University to protect an INVENTION, file patent application(s), comply with applicable law in connection with such INVENTION, and confirm in writing the INVENTOR’s prior assignment to the University of all right, title and interest in and to such INVENTION.” *Id.* at 2.1.2.

24. As a condition of University employment, faculty members, employees and other covered individuals “irrevocably assign[] all right, title and interest in and to INVENTIONS, together with associated MATERIALS, and patent applications and patents which may issue, effective as of his or her first date of employment, matriculation in research, or use of any University resources, whichever occurs first” *Id.* at 2.1.1.

25. Article 2 of the Patent Policy also governs INVENTIONS made by graduate students in the course of employment or research at the University:

INVENTIONS made by graduate students in the course of employment at the University or research carried out in University laboratories as part of a post-baccalaureate or postdoctoral degree or non-degree program, or resulting from work directly related to the graduate student's employment, training or research responsibilities at the University, or from work or research performed under a grant or other sponsorship, or undertaken with another INVENTOR who has a duty to make or has made ASSIGNMENT to the University, shall be the property of the University and shall be subject to this PATENT POLICY. Any INVENTIONS arising from a dissertation submitted as a part of the requirements for a degree shall be subject to the PATENT POLICY. In such instances, graduate students shall be deemed to have hereby irrevocably made ASSIGNMENT to the University effective as of the first date of matriculation, and will be deemed an INVENTOR for purposes of distributions and otherwise pursuant to this PATENT POLICY.... Id. at 2.1.4.

26. Under the Patent Policy, TANGIBLE RESEARCH PROPERTY is defined as “unique research products or tools, such as biological materials or chemical moieties, whether or not patentable or otherwise protectable using intellectual property laws.” (“Tangible Research Property”). Id. at 5.0.29. An INVESTIGATOR is defined as “any University faculty member, emeritus faculty, visiting faculty professor or researcher, adjunct faculty, postdoctoral employee or trainee, or other employee, or an undergraduate or graduate student engaged in sponsored or unsponsored research.” Id. at 5.0.19.

27. Article 4 of the Patent Policy governs the policies and procedures relating to Tangible Research Property and requires INVESTIGATORS to irrevocably assign all rights, title, and interest in Tangible Research Property to the University. Id. at 4.0. It also requires INVESTIGATORS to promptly disclose new Tangible Research Property to CTT and to cooperate in the preparation and prosecution of patents or other intellectual property protection. Id. at 4.1.

28. Although Inventions and Tangible Research Property are assigned to the University pursuant to the Patent Policy, the University retains the right to further direct or

assign ownership of such intellectual property. For example, the Institute was formed pursuant to an agreement between the University and The Abramson Family Foundation (the “Institute Agreement”). Under the Institute Agreement, certain research programs, including those conducted under the auspices of the Institute, shall be considered “Institute Research Programs.” Depending on how the Institute Research Programs are funded, the University has either sole ownership of the intellectual property at issue in this case, or joint ownership with the Institute and/or other third-parties.

The *Nature* and *Cancer Cell* Publications

A. The *Nature* Article

29. *Nature*, a weekly publication of the Nature Publishing Group, is an interdisciplinary scientific journal. Important new advances and original research in many fields of scientific research are published either as articles or letters in *Nature*.

30. On November 22 and December 10, 2009, *Nature* published in online and print versions, respectively, an article entitled “Cancer-associated IDH1 mutations produce 2-hydroxyglutamate.” The *Nature* article listed Thompson, along with other researchers including Patrick S. Ward, an MD/Ph.D. graduate student supervised by Thompson (“Ward”), as a contributing author from the Cancer Center at the University. The *Nature* article is attached hereto as Exhibit E.

31. On information and belief, the *Nature* article disclosed publicly for the first time, that mutations in the enzyme cytosolic isocitrate dehydrogenase 1 (“IDH1”) resulted in altered enzymatic substrate specificity which resulted in a net increase in the intra-cellular levels

of a metabolite, 2-hydroxygluturate (“2HG”), which may contribute to the formation and malignant progression of gliomas, the most common type of brain cancer. See Exhibit E.

32. The findings disclosed in the *Nature* article had significant clinical implications in that “they suggest that 2HG production will identify patients with IDH1 mutant brain tumors. This will be important for prognosis as patients with IDH1 mutations live longer than patients with gliomas characterized by other mutations. In addition, patients with lower-grade gliomas may benefit by therapeutic inhibition of 2HG production.” Id.

33. At the time of the publication of the *Nature* article, Thompson was employed as a University faculty member and Scientific Director of the Institute and Ward was an MD/Ph.D. graduate student supervised by Thompson. Nevertheless, Thompson failed to disclose the subject matter of the publication to CTT and the University, as required by the Patent Policy.

B. The *Cancer Cell* Article

34. *Cancer Cell*, a monthly publication of Cell Press, publishes reports of novel results in any area of cancer research, from molecular biology to clinical oncology. The peer-reviewed scientific journal focuses on all aspects of cancer research at the cellular level.

35. On February 18 and March 16, 2010, *Cancer Cell* published in online and print versions, respectively, an article entitled “The Common Feature of Leukemia-Associated IDH1 and IDH2 Mutations Is a Neomorphic Enzyme Activity Converting α -Ketoglutarate to 2-Hydroxygluturate.” The *Cancer Cell* article is attached hereto as Exhibit F.

36. Along with other authors, the *Cancer Cell* article listed Thompson last and with an asterisk, which, based on conventional practice in the industry, indicates that he was both the senior author and the corresponding author, meaning the author who was responsible for moving the article through the journal's submission process. See Exhibit F.

37. The *Cancer Cell* article disclosed that in addition to the earlier finding that somatic mutations in IDH1 observed in gliomas can lead to the production of 2HG, tumor 2HG is elevated in a high percentage of patients with cytogenetically normal acute myeloid leukemia ("AML"). The data disclosed in the *Cancer Cell* article implicates mutated forms of the IDH family of enzymes in a broader range of cancer indications, and further demonstrates that mutations in IDH2 can also cause altered enzymatic substrate specificity which may result in the intra-cellular levels of 2HG, similar to results seen with mutated forms of IDH1. The data also disclosed that less than "half of cases with elevated 2HG possessed IDH1 mutations. The remaining cases with elevated 2HG had mutations in IDH2, the mitochondrial homolog of IDH1." Id.

38. The data disclosed in the *Cancer Cell* article built upon the data disclosed in the earlier *Nature* article in that it concluded that AML leukemia patients with IDH mutations display a "significantly reduced number of other well characterized AML-associated mutations and/or associated chromosomal abnormalities, potentially implicating IDH mutation in a distinct mechanism of AML pathogenesis." Id.

39. The *Cancer Cell* article noted the significance of this finding, stating the following:

Most cancer-associated enzyme mutations result in either catalytic inactivation or constitutive activation. Here we report that the common feature of IDH1 and IDH2 mutations observed in AML and glioma is the acquisition of an enzymatic activity not shared by either wild-type enzyme. The product of this neomorphic enzyme activity can be readily detected in tumor samples, and we show that tumor metabolite analysis can identify patients with tumor-associated IDH mutations. *Id.*

40. Although the *Cancer Cell* article listed Thompson as both the senior and corresponding author, and although Thompson was employed as a University faculty member and Director of the Institute during the time of the article's publication, Thompson failed to disclose the subject matter of the publication to CTT and the University, as required by the Patent Policy.

Thompson's Contractual and Fiduciary Duty to Disclose Inventions and Tangible Research Property to CTT and the University

41. The University's Patent Policy required Thompson to disclose all Inventions "promptly" to CTT and to assign to the University all right, title and interest in and to the Inventions. Thompson had similar duties with respect to Tangible Research Property.

42. Thompson had superior knowledge as compared to the University with respect to the results of his specific research activities, as well as impending authorship in academic publications resulting from those research activities.

43. Under the Patent Policy, the University was dependent upon Thompson to disclose any Inventions or Tangible Research Property that he created during the course of his employment "promptly" to CTT, and to cooperate in protecting the intellectual property of the University.

44. Under the Patent Policy, the University also was dependent on Thompson to provide truthful information to CTT regarding the significance and potential patentability of his research and discoveries.

45. Thompson's employment agreement, including the Patent Policy, created a relationship of trust and confidence between the parties regarding Thompson's disclosure of his research and discoveries.

46. In addition, Thompson may have breached the terms of his employment, and breached his fiduciary duty to the University, by improperly disclosing other research and discoveries owned by the University to either Agios or other third-parties, to the detriment of the University.

Agios Pharmaceuticals, Inc. and Its Provisional and International Patent Applications

A. The Creation of Agios Pharmaceuticals, Inc.

47. On or about August 7, 2007, Lewis Cantley, Ph.D., Tak Wah Mak, Ph.D., and Thompson formed Cancer Metabolism Therapeutics, Inc. ("CMT") as a Delaware corporation. In addition to being an acronym for Cancer Metabolism Therapeutics, the letters "CMT" also are first letters of each of the founders' last names.

48. On or about September 24, 2007, CMT registered to do business in the Commonwealth of Massachusetts.

49. Beginning with its 2007 Annual Report, CMT listed Thompson as a director. At that time, Thompson was still employed by the University as a full-time faculty

professor and the Scientific Director of the Institute. The 2007 CMT Annual Report is attached hereto as Exhibit G.

50. On or about April 10, 2008, CMT filed a certificate with the Secretary of State of the State of Delaware and the Secretary of the Commonwealth of Massachusetts changing the name of the corporation from CMT to Agios Pharmaceuticals, Inc. (“Agios”).

51. On July 7, 2008, Agios announced through a press release that it had closed \$33 million in Series A funding “to accelerate the development of a pipeline of drugs that regulate cancer metabolism.” The press release listed its founders as “three of the foremost authorities and leaders within the field of cancer metabolism”: Lewis C. Cantley, Ph.D., Tak W. Mak, Ph.D., and Craig B. Thompson, M.D. The July 7, 2008 Agios press release is attached hereto as Exhibit H.

B. The Agios Provisional and International Patent Applications

52. Between March 13, 2009 and March 16, 2010, the publication date of the *Cancer Cell* article, Agios filed 20 provisional patent applications with the U.S. Patent Office. Agios filed 16 of the 20 provisional patent applications before November 22, 2009, the publication date of the *Nature* article.

53. A provisional patent application is a document filed with the U.S. Patent Office, the purpose of which is to establish the earliest filing date for inventions that may be claimed based on the description and drawings contained in the application. A provisional patent application can establish an earlier filing date only if a continuation patent application containing formal claims is filed within one year.

54. The research, data, findings, and recommendations for patient screenings disclosed in the *Nature* and *Cancer Cell* articles were included in the 20 Agios provisional patent applications filed with the U.S. Patent Office. For example, the *Cancer Cell* article describes that IDH2 mutations are more common in AML than IDH1 mutations, whereas IDH1 mutations are prevalent in gliomas. The *Cancer Cell* article also indicates that 2HG can be used as a screening and diagnostic marker and that 2HG appears to be an important marker for IDH1/2-mutated neoplasms. The *Cancer Cell* article also indicates that Thompson was testing the potential of a screening and diagnostic approach involving the detection of 2HG in the peripheral blood of leukemia patients. See Exhibit F.

55. Agios's provisional patent application Serial Number 61/266929, filed on December 4, 2009, discloses in its Examples that the spectrum of IDH1 mutations in AML differ from that seen in gliomas. An excerpt of provisional patent application (61/266929) is attached hereto as Exhibit I. Further, this provisional patent application, as well as other earlier filed provisional patent applications, such as provisional patent application Serial Number 61/253820, filed on October 21, 2009, describe using 2HG as a screening and diagnostic marker for AML and that one could detect 2HG in the peripheral blood of leukemia patients. An excerpt of provisional patent application (61/253820) is attached hereto as Exhibit J. These provisional applications recite in the "Methods of evaluating samples and/or subjects" sections:

Embodiments of the method comprise evaluation of one or more parameters related to IDH, e.g., IDH1 or IDH2...

In an embodiment of the evaluation, which can be performed before and/or after treatment has begun, is based, at least in part, on analysis of tissue (e.g., a tissue other than a tumor sample), or bodily fluid, or bodily product... Exemplary bodily fluids include blood, plasma...

E.g., the tissue, fluid, or product can be analyzed for the presence or level of an alpha hydroxy neoactivity product, e.g., 2HG.... Id.

56. On March 12, 2010, Agios filed international patent WO 2010/105243 (the “International Application”), claiming priority to nine provisional patent applications, in turn having filing dates ranging from March 13, 2009 to December 4, 2009. The International Application describes as inventions research findings disclosed in the *Nature* and *Cancer Cell* articles. An excerpt of the International Application (2010/105243) is attached hereto as Exhibit K.

57. Agios filed 21 provisional patent applications with the U.S. Patent Office within one-year of the first priority document filing on March 13, 2009. These filings subsequently matured to no less than nine international patent application filings.

58. Upon information and belief, nothing was published relating to the cancer metabolism research disclosed in the *Nature* and *Cancer Cell* articles before Agios filed its provisional patent applications with the U.S. Patent Office.

C. Thompson’s Failure to Disclose Inventions and Tangible Research Property to the University

59. As a contributing and senior/corresponding author of the *Nature* and *Cancer Cell* articles, respectively, Thompson created Inventions and Tangible Research Property that he was required to disclose to CTT and the University pursuant to the Patent Policy.

60. Rather than disclose the subject matter of the *Nature* and *Cancer Cell* articles to CTT and the University, as was required under the Patent Policy, Thompson, upon information and belief, disclosed his findings to Agios. Agios, in turn, filed 20 provisional patent applications with the U.S. Patent Office on the same subject matter disclosed in the

Nature and *Cancer Cell* articles. The filing of some or all of the provisional patent applications, in combination with Thompson's other wrongful activities, limited the University's opportunity to obtain patent protection in the United States.

61. Because the *Nature* and *Cancer Cell* articles disclosed to the public discoveries and patentable inventions before the University had the opportunity to file any patent applications, the publications also limited if not destroyed the University's opportunity to obtain patent protection outside of the United States.

62. Immediately after the online publication of the *Cancer Cell* article on February 18, 2010, CTT's Director of Life Sciences Licensing, Robert H. Schenkel, Ph.D. ("Schenkel"), who was unaware of the Agios provisional patent application filings or of Agios's intent to file the International Application, sent an e-mail message to Thompson regarding the possibility of a "significant patentable invention" from the research disclosed in the article (the "February 18 E-mail"). A copy of the February 18 E-mail is attached hereto as Exhibit L.

63. The February 18 E-mail recognized that "[a]lthough the publication precludes Penn obtaining IP protection outside of the US, we have one year to file a patent application so as to protect Penn's US IP rights." See Exhibit L.

64. As a follow up to the February 18 E-mail, on March 1, 2010, Schenkel, CTT Executive Director Michael Cleare, Ph.D. ("Cleare"), and CTT Deputy Executive Director John S. Swartley, Ph.D. ("Swartley"), met with Thompson to discuss the research findings publicly disclosed in the *Nature* and *Cancer Cell* articles and the potential patentability of those findings (the "March 1 Meeting").

65. At the March 1 Meeting, Thompson downplayed the significance of the *Nature* and *Cancer Cell* articles and falsely represented to CTT that the research and findings in the articles did not amount to a patentable invention.

66. At the time that Thompson represented to CTT that the research disclosed in the *Nature and Cancer Cell* articles did not amount to a patentable invention, Thompson knew that his representation was false. At the time of the March 1 Meeting, Thompson was aware that Agios had filed at least 20 provisional patent applications for the same subject matter disclosed in the *Nature* and *Cancer Cell* articles.

67. Thompson's false representation was calculated to persuade CTT and the University that the University had no protectable interest in the inventions disclosed in the articles, and induced CTT not to take actions that would have protected the University's right to realize value from Thompson's research and discoveries.

68. Upon information and belief, Agios was aware that Thompson had both a contractual and fiduciary duty to disclose his creation of Inventions and Tangible Research Property to CTT and the University prior to the publication of the *Nature* and *Cancer Cell* articles, and after their publication.

69. Upon information and belief, Thompson's failure to disclose Inventions to CTT both prior to publication and at the March 1 Meeting resulted in the University losing its opportunity to claim the subject matter at issue in 20 Agios provisional patent applications.

70. As a result of Thompson's superior knowledge and expertise, CTT and the University reasonably placed trust and confidence in Thompson's assertions, to the University's detriment.

71. On April 15, 2010, Agios announced that Agios and Celgene Corporation ("Celgene"), a public biotechnology company, had entered into an agreement to form a strategic collaboration in the area of cancer metabolism ("Celgene Agreement"). On information and belief, under the terms of the Celgene Agreement, Agios received a \$130 million up-front payment and Celgene received an exclusive option to develop drugs from the Agios cancer metabolism platform. The April 15, 2010 Agios press release is attached hereto as Exhibit M.

72. On November 3, 2010, Thompson took a one-year leave of absence from the University and Institute to take the position of President and Chief Executive Officer of Memorial Sloan Kettering Cancer Center ("MSK") in New York City, New York.

73. On December 14, 2010, Agios announced the publication of the *Cancer Cell* article, stating that the research on metabolic IDH1 and IDH2 and their presence in the growth of tumors in AML patients "was conducted as a collaboration between Weill Cornell Medical College, Memorial Sloan Kettering Cancer Center, the University of Pennsylvania and Agios." (emphasis added). The December 14, 2010 Agios press release is attached hereto as Exhibit N.

74. On October 31, 2011, Thompson formally resigned from the University's faculty and the Institute to assume the permanent role of President and Chief Executive Officer of MSK. He continues to serve in such position.

75. Upon information and belief, Thompson continued his affiliation with Agios during his one-year leave of absence from the University and Institute beginning in November 2010. He continues to be listed on Agios's web-site, along with Drs. Cantley and Mak, as one of the company's founders.

76. On October 5, 2011, Agios announced the extension of its April 2010 Celgene Agreement and an additional \$20 million in funding under the terms of the extended collaboration agreement. The October 5, 2011 Agios press release is attached hereto as Exhibit O.

77. On November 17, 2011, Agios issued a press release stating that it had secured \$78 million in an oversubscribed Series C financing, the proceeds of which "will be used to advance the company's rapidly emerging portfolio of cancer metabolism therapeutics." The November 17, 2011 Agios press release is attached hereto as Exhibit P.

78. The Series C financing added to the Series A financing that Agios raised in 2008 (\$33 million), as well as to the \$130 million up-front payment that Agios received from Celgene in April 2010.

FIRST CAUSE OF ACTION

(Breach of Contract Against Craig Thompson, M.D.)

79. The University repeats and realleges the allegations set forth above as if fully set forth herein.

80. Thompson's Employment Agreement, including the Patent Policy, created valid contractual obligations between Thompson and the University.

81. Under the Employment Agreement, Thompson was contractually obligated to serve as a faculty member and the Science Director of the Institute, and to abide by the University's practices and policies governing its faculty members.

82. Under the Patent Policy, Thompson was contractually obligated to "promptly" disclose the existence of Inventions and Tangible Research Property to CTT.

83. The University performed all of its obligations under the Employment Agreement.

84. Thompson materially breached his obligations under the Employment Agreement by failing to disclose his creation of Inventions and Tangible Research Property to CTT and the University, both prior to and after the publication of the *Nature* and *Cancer Cell* articles.

85. Because of Thompson's failure to disclose Inventions and Tangible Research Property to CTT and the University prior to the publication of the *Nature* and *Cancer Cell* articles, the University's opportunity to obtain patent protection for its intellectual property was limited or destroyed.

86. As a result of Thompson's breaches of contract, the University has been damaged in an amount to be determined at trial, such amount being no less than \$100 million.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty Against Craig Thompson, M.D.)

87. The University repeats and realleges the allegations set forth above as if fully set forth herein.

88. Under the foregoing factual allegations, Thompson had a fiduciary duty to the University that was separate from and independent of the terms set forth in his Employment Agreement and the Patent Policy.

89. As a senior faculty member at the University and Scientific Director of the Institute, positions Thompson held for over a decade, he garnered confidence from the University based on his superior expertise and knowledge.

90. Thompson's special expertise and knowledge, and his integral involvement in groundbreaking cancer metabolism research, placed him in a superior position to understand and communicate the value and potential patentability of the research he conducted, using the University's resources, during his tenure at the University.

91. As a result of Thompson's breach of his fiduciary duties with the University, the University's opportunity to protect valuable intellectual property was limited or destroyed, thereby damaging the University in an amount to be determined at trial, such amount being no less than \$100 million.

THIRD CAUSE OF ACTION

(Diversion of Corporate Opportunity Against Craig B. Thompson, M.D.)

92. The University repeats and realleges the allegations set forth above as if fully set forth herein.

93. Without affirmative disclosure of Inventions and Tangible Research Property by its researchers and faculty, as required under the Patent Policy, it is impossible for

CTT or the University to learn of such material prior to public disclosure, resulting in lost opportunities to protect the University's intellectual property.

94. As a fiduciary with the University possessing special expertise and knowledge, Thompson also recognized the University's continuing financial interest and tangible expectancy in the Inventions and Tangible Research Property of its researchers and faculty.

95. Thompson's failure to disclose Inventions and Tangible Research Property to CTT prior to its publication in *Nature* and *Cancer Cell* has directly damaged the University by preventing it from protecting its ownership interest in Inventions through the timely filing of applications with the U.S. Patent Office, as well as international applications.

96. Thompson's failure to disclose Inventions and Tangible Research Property to CTT and the University not only constituted a breach of his fiduciary duty to the University, but also limited or destroyed the University's opportunity to protect valuable intellectual property.

97. As a result of Thompson's failure to disclose Inventions and Tangible Research Property to CTT and the University, the University has been damaged in an amount to be determined at trial, such amount being no less than \$100 million.

FOURTH CAUSE OF ACTION

(Fraud Against Craig Thompson, M.D.)

98. The University repeats and realleges the allegations set forth above as if fully set forth herein.

99. Under the foregoing factual allegations and by virtue of his special knowledge and expertise in the field of cancer research, Thompson had a fiduciary duty to the University that was separate and independent of his contractual obligations as set forth in his Employment Agreement, including the Patent Policy.

100. Thompson was aware at the time of the *Nature* and *Cancer Cell* publications in late 2009 and early 2010 that the research and discoveries revealed in those publications constituted Inventions and Tangible Research Property under the University's Patent Policy.

101. Upon information and belief, Thompson was aware, based on his leadership status at Agios and continued involvement in the company's research endeavors, that Agios already had filed 20 provisional patent applications covering the subject matter of the *Nature* and *Cancer Cell* articles well before the publication of the *Nature* and *Cancer Cell* articles.

102. Upon information and belief, Thompson was aware at the time that he received the February 18 E-mail from CTT's Schenkel, inquiring about the publication of the *Nature* and *Cancer Cell* articles and the potential patentability of the research disclosed therein, that Agios already had filed its provisional patent applications covering the same subject matter.

103. Upon information and belief, Thompson was aware at the March 1 Meeting with CTT management (including Schenkel, Cleare, and Swartley) regarding the subject matter of the *Cancer Cell* article, that Agios already had filed its provisional patent applications covering the same subject matter.

104. Thompson, with intent to deceive the University as to its rights to the Inventions and Tangible Research Property contained in the *Nature* and *Cancer Cell* publications, represented to CTT management at the March 1 Meeting that there was nothing patentable in the publications, all the while knowing that Agios already had filed its provisional patent applications covering the same subject matter.

105. Thompson's failure to disclose the Inventions and Tangible Research Property contained in the *Nature* and *Cancer Cell* publications to CTT included fraudulent concealment and affirmative misrepresentations, and limited or destroyed the University's opportunity to seek patent protection from the U.S. Patent Office.

106. As a result of the fraud perpetrated by Thompson, the University has been damaged in an amount to be determined at trial, such amount being no less than \$100 million.

FIFTH CAUSE OF ACTION

(Tortious Interference with Contract Against Agios Pharmaceuticals, Inc.)

107. The University repeats and realleges the allegations set forth above as if fully set forth herein.

108. The Thompson Employment Agreement, including the Patent Policy, required Thompson to disclose Inventions and Tangible Research Property "promptly" to CTT.

109. Upon information and belief, Agios was aware of the Employment Agreement between Thompson and the University.

110. Upon information and belief, Agios intentionally induced Thompson to breach the Employment Agreement.

111. As a result of Agios's tortious interference with the contractual relations between Thompson and the University, the University has been damaged in an amount to be determined at trial, such amount being no less than \$100 million.

FIFTH CAUSE OF ACTION

(Aiding and Abetting a Breach of Fiduciary Duty Against Agios Pharmaceuticals, Inc.)

112. The University repeats and realleges the allegations set forth above as if fully set forth herein.

113. Upon information and belief, Agios was aware that from October 1998 through the present, Thompson had a fiduciary relationship with the University.

114. As described through his actions above, Thompson breached his fiduciary duty to the University by failing to disclose Inventions and Tangible Research Property to CTT and the University prior to its public disclosure and by fraudulently concealing the potential patentability of that material from the University.

115. Upon information and belief, Agios had actual knowledge of Thompson's breach as early as March 13, 2009, the date of its first priority filing of a patent application with the U.S. Patent Office.

116. Upon information and belief, Agios knowingly participated in and gave substantial assistance to Thompson's breach by engaging in a joint effort to secure patent protection for Thompson's cancer metabolism research and discoveries, as disclosed in the *Nature* and *Cancer Cell* publications.

117. As a result of Agios's aiding and abetting in Thompson's breach of his fiduciary duties to the University, the University has been damaged in an amount to be determined at trial, such amount being no less than \$100 million.

WHEREFORE, Plaintiff demands judgment as follows:

- a. Money damages in an amount to be determined at trial, such amount being no less than \$100 million.
- b. Such other and further relief in favor of the University as this Court deems just and proper.

Dated: New York, NY
February 22, 2012

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