



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JOHN M. KIHM, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

DAVID M. MOTT, LEON O.
MOULDER, DR. MARY LYNNE
HEDLEY, TIMOTHY R. PEARSON,
KAVITA PATEL, LAWRENCE M.
ALLEVA, GARRY A. NICHOLSON,
PASCALE WITZ, DR. BETH
SEIDENBERG, NEW ENTERPRISE
ASSOCIATES 13, L.P., NEA
PARTNERS 13, L.P., NEA 13 GP, LTD,
NEA 15 OPPORTUNITY FUND, L.P.,
NEA PARTNERS 15-OF, L.P., NEA 15
GP, LLC, NEW ENTERPRISE
ASSOCIATES, INC., NEA
MANAGEMENT COMPANY, LLC,
CITIGROUP INC., and CITIGROUP
GLOBAL MARKETS, INC.,

Defendants.

C.A. No. 2020-0938-MTZ

PUBLIC VERSION

FILED ON: November 6, 2020

VERIFIED CLASS ACTION COMPLAINT

Plaintiff John M. Kihm, by and through his undersigned counsel, respectfully submits this Verified Class Action Complaint and alleges as follows upon knowledge as to himself and his own actions and as to all other matters upon information and belief, including publicly available documents and documents

produced by Tesaro, Inc. (“Tesaro” or the “Company”) in response to Plaintiff’s demand pursuant to 8 *Del. C.* § 220:

NATURE OF THE ACTION

1. On December 3, 2018, Tesaro’s board of directors (the “Board”) agreed to sell Tesaro to GlaxoSmithKline, plc (“GSK”) for \$75 per share, or approximately \$5.1 billion (the “Acquisition”), after an abbreviated, non-public, single-bidder sale process. The timing and manner of the Acquisition was surprising. Tesaro’s cancer drug Zejula had blockbuster potential. It was an approved medicine for second-line maintenance of ovarian cancer, and it was in clinical trial for first-line maintenance therapy and wider applications. Tesaro was bullish on the outcome of Zejula’s clinical trial, and it possessed value-maximizing strategic alternatives to finance the Company through the expected positive results of the clinical trial in 2019.

2. The Acquisition happened when it did because of the personal imperatives of Tesaro’s lead investor and principal officers, their influence over the remainder of Tesaro’s board of directors (the “Board”), and the opportunism of Tesaro’s conflicted lead financial advisor.

3. Tesaro Chairperson of the Board David M. Mott was a general partner of global venture capital firm New Enterprise Associates (together with its

affiliates, “NEA”), the lead venture capital investor in Tesaro and one of the largest venture capital funds in the world. Announcing a sale of Tesaro by the end of 2018 was critical to the fortunes of Mott and NEA’s other general partners. Operating under a new managing general partner, NEA’s general partners wanted to raise a large new fund in 2019 for which they would charge investors ██████ carry (i.e., ██████ of the gain on all of the new fund’s investments) rather than the industry standard 20%. “Super-premium” carry was rare and could only be achieved by the most-respected venture capital firms with a track record of top-tier performance. Absent the Acquisition, NEA’s fundraising effort was a hard sell and NEA had no realistic chance of charging ██████ carry. The primary NEA fund invested in Tesaro was nearing the end of its life, its financial returns were unimpressive, and much of its invested capital remained illiquid. Selling Tesaro at a premium to its share price in late 2018 positioned NEA to raise a new fund on highly favorable terms by (i) significantly improving the absolute and relative performance of the NEA funds invested in Tesaro, (ii) placating NEA’s current investors by converting their unrealized gains into liquidated returns of capital that they could reinvest in a new NEA fund, and (iii) allowing NEA to tout a successful exit from a major investment. The personal economic benefit to NEA’s general partners of successfully raising a new multi-billion-dollar fund that would charge investors

█ carry dwarfed the Company-specific opportunity cost of engineering a poorly timed, non-value-maximizing sale of Tesaro.

4. NEA cultivated relationships with Tesaro's senior officers and a great majority of Tesaro's ten-person Board, including Chief Executive Officer and co-founder Leon O. Moulder, Jr. and President and Chief Operating Officer and co-founder Dr. Mary Lynne Hedley. They had strong reasons not to get in the way of NEA's favored exit strategy. Moulder received \$167 million in the Acquisition and the opportunity to start a new biotechnology investment firm. Hedley received \$112 million and the opportunity to run Tesaro's oncology business within GSK, which had no significant oncology business of its own, outside of Moulder's shadow.

5. The Acquisition was facilitated by a banker who was attuned to the conflicts of Mott, Moulder, and Hedley and who himself had a massive conflict of interest. Chris Hite, the head of the global healthcare group for Citigroup Global Markets Inc. (together with its parent Citigroup Inc., "Citi"), was simultaneously acting as Tesaro's lead financial advisor and representing GSK on a major strategic transaction. Hite's simultaneous work for GSK on a major transaction was misleadingly concealed from the Board and never disclosed to Tesaro's stockholders.

6. GSK's initial acquisition proposal was choreographed in advance, without Board involvement. [REDACTED]

[REDACTED] GSK then obtained access to Tesaro's confidential information by feigning interest in a co-promote/collaboration relationship that GSK lacked a platform to develop. Hite was then asked to advise Tesaro's Board and its Financing Committee. In advance of those meetings, Hite told GSK's CFO that Tesaro would be "open to an acquisition proposal." GSK moved quickly to acquire the Company in a single-bidder process.

7. Tesaro was under no pressure to sell. It possessed financing alternatives. The conflicts and influence of NEA, Tesaro's senior officers, numerous NEA-affiliated outside directors, and Citi explain why the Board welcomed GSK's bid, ignored Citi's known conflicts, and failed to pursue the strategic alternative of financing the Company through 2019, when expected positive results of an important clinical trial for Zejula would be announced.

8. GSK locked up the Acquisition with deal protections that limited bidder due diligence and prompt deal approval via a tender offer. The Board allowed its financial advisors to assess the fairness of the Acquisition using newly created financial projections that were inconsistent with Tesaro's updated Long Range Plan ("LRP"). The Board hid the LRP from Tesaro's stockholders.

9. In this class action, Plaintiff seeks to hold responsible certain Tesaro directors and/or officers, NEA, and Citi for the underpriced, ill-timed, conflicted Acquisition.

PARTIES

Plaintiff John H. Kihm

10. Plaintiff was, at all relevant times, a beneficial owner of shares of common stock in Tesaro, a commercial-stage biopharmaceutical company.

Defendant David M. Mott

11. Defendant David M. Mott served as Chairperson of the Board from July 2011 until the closing of the Acquisition. At all relevant times, Mott was a general partner of NEA and led NEA's health care investment practice. Mott was responsible for \$1 billion in venture capital at NEA. As a general partner of NEA, Mott owed fiduciary duties to NEA and its funds, in addition to the fiduciary duties he owed Tesaro and its stockholders. As discussed below, NEA funds owned a combined 19% of Tesaro at the time of the Acquisition.

Defendant Leon O. Moulder

12. Defendant Leon O. Moulder was Tesaro's Chief Executive Officer. He co-founded Tesaro with defendant Dr. Mary Lynne Hedley in 2010. Previously, Moulder and Hedley had worked together as senior executives of

Abraxis BioScience, Inc. (“Abraxis”) (from 2009 to 2010) and MGI Pharma, Inc. (from 2004 to 2009).

13. Through the Acquisition, Moulder received \$155,854,551 for his Tesaro shares, options and RSUs and an additional \$10,997,196 in golden parachute compensation. By way of comparison, Moulder’s compensation as CEO of Tesaro was \$6 million per year as of 2017.

14. Moulder’s relationship with NEA is multi-faceted, longstanding, and continuing.

15. In 2011, Moulder became a director of biopharmaceutical company Trevana, Inc. (“Trevana”), in which NEA was a lead investor. Moulder became Chairman of the Board of Trevana in June 2013, led Trevana through its 2014 IPO, and he remains Trevana’s Chairman. NEA retained a substantial ownership stake in Trevana through 2018.

16. In 2019, Moulder became an NEA venture advisor.

17. At the time of the Acquisition, Moulder had plans to start his own biotechnology investment firm. In March 2019, two months after the closing of the Acquisition, he formed Tellus BioVentures, LLC. In order for that firm to succeed, it was important for Moulder to secure substantial liquid assets and to stay in the good graces of NEA, one of the largest biotechnology venture capital firms.

Defendant Dr. Mary Lynne Hedley

18. Defendant Hedley was a Tesaro co-founder and the President and Chief Operating Officer and a director of Tesaro from its founding until the closing of the Acquisition.

19. Through the Acquisition, Hedley received \$112,500,429 for her Tesaro shares, options and RSUs and an additional \$8,770,318 in golden parachute compensation. Hedley's compensation as President and COO of Tesaro in 2017 was about \$5.1 million.

20. After the Acquisition, Hedley remained Tesaro's President and Chief Operating Officer. Because GSK did not have a preexisting oncology business, Tesaro became the Boston-based headquarters for all of GSK's oncology work.

21. Hedley maintains a non-Tesaro relationship with NEA. In April 2017, NEA caused Hedley to be appointed to the board of Millendo Therapeutics, Inc., in which NEA is the largest stockholder.

Defendant Timothy R. Pearson

22. Defendant Timothy R. Pearson was Tesaro's chief financial officer from May 2014 until the closing of the Acquisition. Pearson was not a director of Tesaro.

23. Pearson held 6,211 shares of Tesaro common stock at the time of the Acquisition. Pearson's total cash compensation for his Tesaro shares, options and RSUs in connection with the Acquisition was \$11,848,039. Pearson was also paid an additional \$4,126,470 in golden parachute compensation.

24. Pearson was a longtime former colleague of Mott at MedImmune, Inc. ("MedImmune"), which Mott had founded in 1988. Pearson succeeded Mott as MedImmune's CFO in 2000, and Pearson remained in that position throughout Mott's tenure as CEO of MedImmune from 2000 to 2008. Pearson's close connection to Mott led to a valuable relationship with NEA.

25. Pearson joined the board of NEA-controlled GlycoMimetics Inc. ("GlycoMimetics") in March 2014. In March 2019, it was announced that Pearson would succeed an NEA co-founder as the chairman of the board of GlycoMimetics. Pearson was paid over \$1 million for his service on the GlycoMimetics board from 2014 through 2019.

26. Pearson joined the board of RA Pharmaceuticals, Inc. ("RA") in May 2016, at a time when NEA was RA's largest stockholder and a general partner of NEA was chairman of the board of RA. When RA was acquired in April 2020, Pearson received more than \$2.4 million for his outstanding stock options and unvested RSUs in RA.

27. Defendants Moulder, Hedley, and Pearson are referred to herein as the “Officer Defendants.”

Defendant Kavita Patel

28. Defendant Kavita Patel was a member of the Board from March 2016 until the closing of the Acquisition.

29. In November 2017, Patel joined NEA as a Venture Partner on NEA’s healthcare team. Mott was quoted as stating that Patel would “add tremendous value to NEA’s healthcare practice” and that he was “thrilled to welcome her to the team.”

30. In February 2018, Patel joined the board of Radiology Partners Holdings, LLC (“Radiology Partners”), an NEA portfolio company. NEA’s website trumpets: “Since helping form the company, NEA has led every single equity round for Radiology Partners, contributing a total of \$189M to the company’s growth and making [it] the largest investment in NEA’s 41-year history.”

31. No Tesaro public filing mentions Patel’s connection to NEA or Radiology Partners. Tesaro’s proxy statement, dated April 6, 2018, describes Patel’s background as follows:

Kavita Patel, M.D. has served on our board of directors since March 2016. Dr. Patel has been a Non-Resident Senior Fellow at The

Brookings Institution, a premier research and thought leadership organization, since January 2011. In this role, Dr. Patel provides senior level vision and guidance for the Center for Health Policy in the Department of Economic Studies of the Institution, specifically helping healthcare systems understand how to transform their clinical environments to become more accountable for the care they provide. Dr. Patel has also been a practicing primary care physician at Johns Hopkins since January 2011. From 2009 to 2010, she served as Director of Policy for the Office on Intergovernmental Affairs and Public Engagement at The White House. Prior to that, she served as Deputy Staff Director for Health for Senator Edward M. Kennedy from 2007 to 2009. Dr. Patel currently serves as a member of the board of directors of SSM Healthcare, a nonprofit integrated delivery system, Community Catalyst, a national advocacy organization, and the National Initiative for Children's Healthcare Quality. She is also a member of the advisory board for the National Commission on Physician Payment Reform, the Robert Graham Center for Policy Studies in Family Medicine and Primary Care, and the Johns Hopkins Medicine Sibley Hospital Innovation Hub. Dr. Patel earned her bachelor of arts from the University of Texas at Austin, her M.D. from the University of Texas Health Science Center, and her master of science in health sciences from the University of California, Los Angeles. The board of directors believes Dr. Patel's years of healthcare leadership experience and clinical work in primary care, research, innovation, policy and advocacy provide her with the qualifications and skills to serve as a director.

32. The Questionnaire for Directors, Executive Officers and Principal Stockholders that Patel signed and submitted to Tesaro on January 22, 2018, [REDACTED]

[REDACTED]

[REDACTED]

33. In February 2019, the month after the Acquisition closed, Patel joined the board of directors of Personal Genome Diagnostics, a privately held NEA portfolio company.

34. Patel was paid \$1,456,600 for her Tesaro shares, options and RSUs in connection with the Acquisition.

Defendant Lawrence M. Alleva

35. Defendant Lawrence M. Alleva was a member of the Board from March 2012 until the closing of the Acquisition.

36. Alleva was the first director of Tesaro not employed by Tesaro or any of Tesaro’s venture capital investors. Alleva exemplifies a phenomenon of how the first outside director of a pre-IPO company is typically not truly independent:

The first independent, outside director of a pre-IPO company is not truly independent by the litmus test applied to public company directors. They are almost always someone personally or professionally affiliated with the company, and the founder and CEO often have primary responsibility for identifying them. This approach allows companies to benefit by better assessing director engagement and fit prior to recruitment. However, it dramatically shrinks the pool of qualified candidates and heightens the risk that a director is coopted by insiders and does not provide truly independent oversight.¹

37. Alleva had been a partner of PricewaterhouseCoopers (“PwC”) for 28 years until his retirement in June 2010. PwC’s pharmaceutical and biotechnology

¹ David F. Larcker & Brian Tayan, *The First Outside Director*, Stanford Closer Look Series, Apr. 30, 2020, available at <https://ssrn.com/abstract=3590799>.

clients during the last years of Alleva's tenure included Abraxis, where Moulder was CEO; MedImmune, where Mott was CEO; Cubist Pharmaceuticals, Inc., where Moulder was a director; and Shire plc, where Mott was a director.

38. After leaving PwC, Alleva joined the boards of various NEA portfolio companies. Alleva has had no evident sources of post-PwC income other than his directorships with NEA portfolio companies. Alleva's relationship with NEA had been a significant source of personal wealth and ongoing income. According to publicly available data, an average PwC partner earns about \$573,000 per year. In connection with the Acquisition, Alleva was paid \$5,463,809 for his Tesaro shares, options and RSUs. From 2015 through 2019, Alleva was paid at least \$1.5 million for serving on boards of directors of NEA portfolio companies other than Tesaro.

39. Alleva served on the board of GlobalLogic, Inc., a privately held NEA portfolio company, from at least July 2011 until that company was sold in 2013.

40. In July 2014, Alleva joined the board of Mirna Therapeutics, Inc. ("Mirna"). NEA owned 17.8% of Mirna's common stock before its IPO. Mirna was acquired in August 2017.

41. In March 2015, Alleva was appointed to the Board of Adaptimmune Therapeutics plc ("Adaptimmune"). NEA was Adaptimmune's largest pre-IPO

stockholder, and remained its largest stockholder at all relevant times. Alleva and Mott served concurrently on Adaptimmune's board.

42. In September 2017, Alleva was appointed to the board of directors of Mersana Therapeutics, Inc. ("Mersana"). Mersana had just completed its IPO and NEA remained its largest stockholder. Mott was chairman of Mersana's board at all relevant times.

43. In June 2019, Alleva joined the board of directors of Galera Therapeutics, Inc. ("Galera"). NEA was Galera's largest stockholder.

Defendant Garry A. Nicholson

44. Defendant Garry A. Nicholson was a member of the Board from May 2015 until the closing of the Acquisition.

45. Nicholson had been an executive at Pfizer (and, before that, Eli Lilly and Company) until April 2015. Nicholson's ongoing relationship with NEA was valuable to him post-Pfizer.

46. In June 2015, NEA led a Series A financing of XTuit Pharmaceuticals, Inc. ("XTuit") and Mott joined XTuit's board of directors. In September 2015, Nicholson became President, CEO, and a director of XTuit. Nicholson remained in the President and CEO positions until October 2016. Nicholson served with Mott on the board of Xtuit until it went out of business in

2018. Nicholson has had no full-time employment since his departure from Pfizer, other than his tenure at XTuit.

47. In September 2018, Nicholson was appointed to the board of G1 Therapeutics, Inc. (“G1”), a publicly held company. A significant stockholder in G1 was MedImmune Ventures, Inc., a venture capital fund affiliated with MedImmune that Mott had founded in 2002 and whose investment committee Mott had chaired until July 2008. On information and belief, Mott recommended Nicholson to his former colleagues.

48. Nicholson was paid \$1,320,380 for his Tesaro shares, options and RSU’s in connection with the Acquisition.

49. In February 2019, Nicholson joined the board of Personal Genome Diagnostics Inc., a privately held NEA portfolio company.

50. In January 2020, Nicholson joined the board of Turning Point Therapeutics, Inc., a publicly held NEA portfolio company.

Defendant Pascale Witz

51. Defendant Pascale Witz was a member of the Board from June 2018 until the closing of the Acquisition.

52. Witz already had a valuable relationship with NEA by the time she joined the Tesaro Board. Witz was appointed to the board of directors of Regulus

Therapeutics Inc. (“Regulus”) in June 2017, at approximately the same time that NEA invested in Regulus and became its second-largest investor.

53. Witz was paid \$1,103,477 for her shares, options and RSU’s in connection with the Acquisition.

Defendant Dr. Beth Seidenberg

54. Defendant Dr. Beth Seidenberg was a member of the Board from June 2011 until the closing of the Acquisition. At all relevant times, Seidenberg was a partner with Kleiner Perkins Caufield & Byers (“Kleiner Perkins”). Seidenberg founded venture capital firm Westlake Village BioPartners in September 2018, at which time she began “transitioning out” from Kleiner Perkins.

55. Kleiner Perkins’s Tesaro shares were held through Kleiner Perkins Caufield & Byers XIV, LLC and, to a much lesser extent, KPCB XIV Founders Fund, LLC.

56. At the time of the Acquisition, Kleiner Perkins owned about 4% of the Company’s shares, which it cashed out for \$166,662,300. Kleiner Perkins agreed to vote its shares in favor of the Acquisition.

57. Kleiner Perkins was the only venture capital investor other than NEA that had Board representation in late 2018. Kleiner Perkins had already distributed a significant block of Tesaro shares to its investors at much higher share prices a

year earlier. At the time of the Acquisition, Kleiner Perkins was willing to defer to NEA, a firm with which Kleiner Perkins has deep co-investment relationships.

58. Kleiner Perkins and NEA have co-invested in at least 37 companies. The Kleiner Perkins-NEA relationship is particularly strong in the healthcare and life sciences sector. Seidenberg and Mott sat together on the board of Epizyme, Inc. from before its IPO until NEA and Kleiner Perkins liquidated their stakes in Epizyme in 2019. Seidenberg and Mott served together on the board of directors of 3-V Biosciences, Inc. (now known as Sagimet Biosciences) for a decade beginning in 2009, as representatives of Kleiner Perkins and NEA. Seidenberg serves on the board of Atara Biotherapeutics, Inc., where the lead independent director is an NEA partner. Seidenberg's founding of a new venture capital firm in late 2018 focused on the life sciences sector made her even less inclined to alienate NEA, given its prominence in that sector.

59. Defendants Mott, Moulder, Patel, Alleva, Hedley, Nicholson, Witz, and Seidenberg are referred to herein as the "Director Defendants."

The NEA Defendants

60. Defendant New Enterprise Associates 13, L.P. ("NEA 13") is a Cayman Islands entity based in Maryland, and an affiliate of NEA. NEA 13 directly owned 9,681,039 Tesaro shares at the time of the Acquisition.

61. Defendant NEA Partners 13, L.P. (“NEA Partners 13”) is a Cayman Islands entity based in Maryland, and an affiliate of NEA. NEA Partners 13 is the sole general partner of NEA 13. As such, it indirectly held the shares owned by NEA 13.

62. Defendant NEA 13 GP, LTD (“NEA 13 LTD,” and together with NEA 13 and NEA Partners 13, the “NEA 13 Defendants”) is a Cayman Islands entity based in Maryland, and an affiliate of NEA. NEA 13 LTD is the sole general partner of NEA Partners 13. As such, it indirectly held the shares owned by NEA 13.

63. Defendant NEA 15 Opportunity Fund, L.P. (“NEA 15”) is a Delaware limited partnership based in Maryland, and an affiliate of NEA. NEA 15 directly owned 739,516 Tesaro shares at the time of the Acquisition.

64. Defendant NEA Partners 15-OF, L.P. (“NEA Partners 15”) is a Delaware limited partnership based in Maryland, and an affiliate of NEA. NEA Partners 15 is the sole general partner of NEA 15. As such, it indirectly held the shares owned by NEA 15.

65. Defendant NEA 15 GP, LLC (“NEA 15 LLC,” and together with NEA 15 and NEA 15 Partners 15, the “NEA 15 Defendants”) is a Delaware limited liability company based in Maryland, and an affiliate of NEA. NEA 15 LLC is the

sole general partner of NEA Partners 15-OF. As such, it indirectly held the shares owned by NEA 15.

66. Defendant New Enterprise Associates, Inc. (“NEA, Inc.”) is a Delaware corporation based in Maryland, and an affiliate of NEA. NEA, Inc. directly or indirectly (including through its officers, directors, and employees) controlled the NEA 13 Defendants and the NEA 15 Defendants. NEA, Inc. also provided various managerial services to the NEA 13 Defendants and the NEA 15 Defendants, and received fees for those services.

67. Defendant NEA Management Company, LLC (“NEA Management”) is a Delaware limited liability company based in Maryland and, on information and belief, is the ultimate parent company of the entities in the NEA organization. NEA Management directly or indirectly (including through its officers, managers, and employees) controlled NEA, Inc., the NEA 13 Defendants, and the NEA 15 Defendants. NEA Management indirectly held all 10,420,555 Tesaro shares held by the NEA 13 Defendants and the NEA 15 Defendants, as reflected on its Form 13F filings with the SEC. NEA Management is the ultimate beneficiary of all management fees and carried interest in connection with NEA funds.

68. Together, NEA Management, NEA, Inc., the NEA 13 Defendants, and the NEA 15 Defendants are referred to herein as the “NEA Defendants.”

69. Because of Mott's role as a general partner of NEA, because Mott directed and implemented NEA's strategy with respect to Tesaro and the Acquisition, and because Mott's conduct served to benefit each of the NEA Defendants, Mott's conduct and knowledge alleged in this Complaint is attributable to all of the NEA Defendants.

70. The NEA Defendants and Mott cashed out for a combined \$782,793,750, plus \$1,755,805 for stock options and RSUs in the Acquisition.

The Citi Defendants

71. Defendant Citigroup Inc., a Delaware corporation, is a publicly traded bank holding company and financial holding company. Defendant Citigroup Global Markets, Inc., a New York corporation and a wholly owned subsidiary of Citigroup Inc., was a financial advisor to the Board in connection with the Acquisition.

72. Citigroup Inc. and Citigroup Global Markets, Inc. are referred to herein as the "Citi Defendants."

FACTUAL BACKGROUND

NEA's Investment in Tesaro

73. Tesaro is an oncology-focused biopharmaceutical company founded in March 2010 by Moulder and Hedley, with backing from NEA. At Tesaro's

founding, Tesaro obtained \$20 million in Series A financing, with about \$18 million from NEA and the remainder from management.

74. Tesaro undertook a Series B financing in June and July 2011 and May 2012. NEA was the largest investor in the Series B round, investing about \$40 million of the total \$101 million.

75. Tesaro completed its IPO in June 2012. Before the IPO, NEA held 50.3% of Tesaro's common stock. After the IPO, NEA held 43.1%. Following a series of secondary offerings and private placements of common stock, NEA's stake declined to 35.3% as of the 2013 notice of annual meeting, 27.4% in 2014, 24.6% in 2015, 23% in 2016 (following a private placement in which NEA and Kleiner Perkins each invested an additional \$50 million at \$35.19 per share), and approximately 19% as of the 2017 annual meeting, at which level it remained until the Acquisition.

76. NEA was always the dominant venture capital investor in Tesaro. Two other venture capital firms owned significantly smaller stakes. InterWest Partners invested about \$20 million in the Series B financing, and its ownership declined from 12.7% to 11.5% in the IPO. By the end of March 2018, when InterWest had decided to give up its Board representative, its ownership stake had declined to 3.8%. Kleiner Perkins invested about \$15 million in the Series B

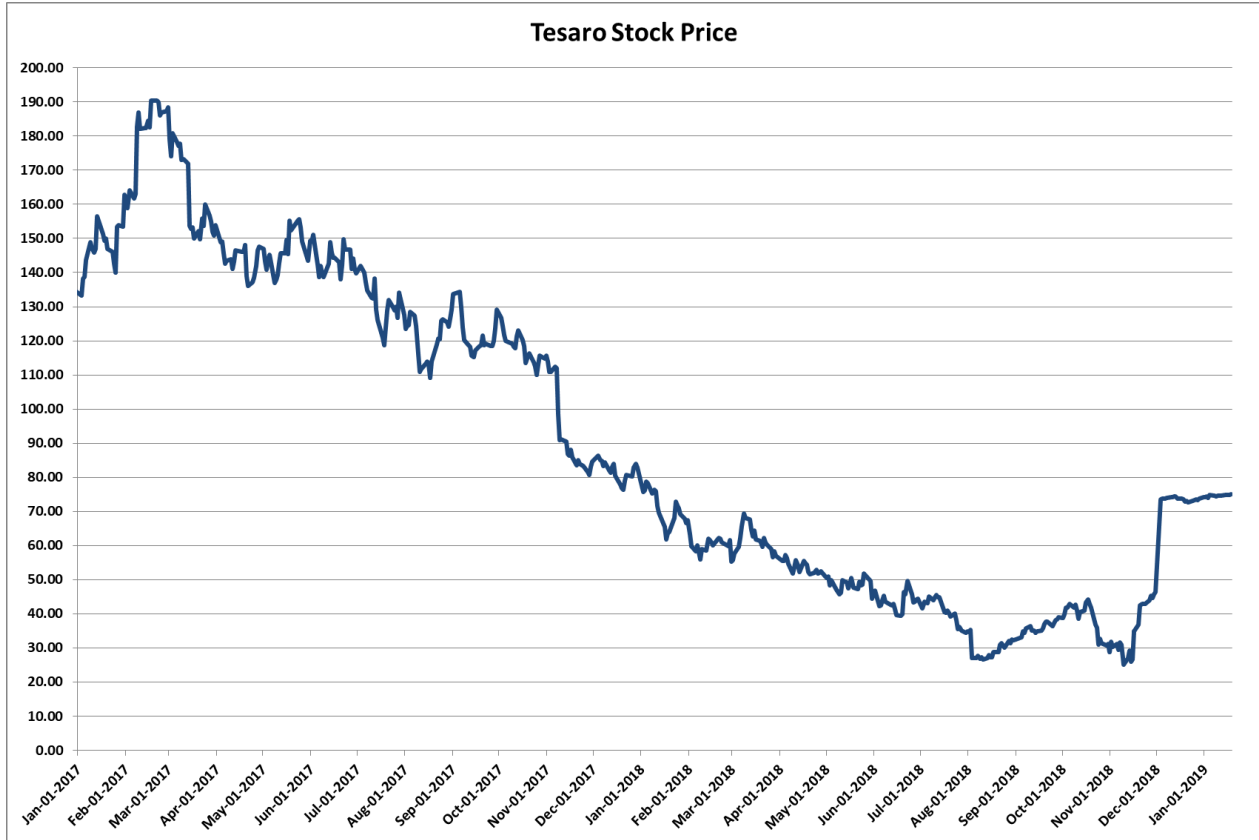
financing, and its ownership declined from 9.5% to 8.2% in the IPO. Kleiner Perkins's stake declined to 4.6% as of the 2015 notice of annual meeting, but increased to 6.5% in 2016. On September 11, 2017, when Tesaro was trading in the vicinity of \$130 per share, Kleiner Perkins distributed 667,283 Tesaro shares to its investors. Kleiner Perkins owned approximately 4.2% of Tesaro as of the 2018 annual meeting.

77. In early 2017, the Board authorized the retention of Citi to pursue a potential sale of the Company. That unsuccessful non-public process concluded in June 2017.

78. Through much of 2017, NEA's decisions to retain a large stake in Tesaro, cultivate relationships with numerous Tesaro directors and officers, and keep Tesaro independent appeared brilliant. Tesaro's stock price skyrocketed to over \$190 per share on February 1, 2017, and remained over \$120 per share as of September 2017.

79. By the beginning of 2018, however, Tesaro's stock price had dropped to approximately \$70 per share. By August 2018, Tesaro's stock price had plummeted to approximately \$30 per share. A massive portion of NEA's unrealized gains had evaporated.

80. The following chart reflects Tesaro’s stock price from the start of 2017 through the closing of the Acquisition in January 2019.



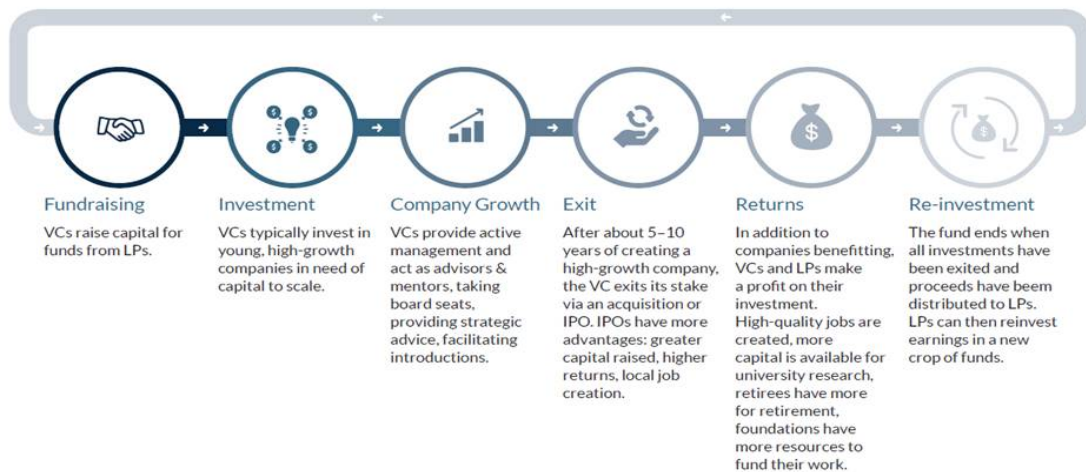
The Importance To NEA’s General Partners of Selling Tesaro

81. The plunge in Tesaro’s stock price came at a horrible time for the general partners of NEA. As discussed below, throughout 2018, NEA was preparing to raise its next and largest fund, which would be known as New Enterprise Associates 17, L.P. (“NEA 17”). Potential investors in NEA 17 would be scrutinizing the 2018 year-end returns of NEA’s most mature post-global

financial crisis fund, NEA 13. Mott could significantly improve the returns for NEA 13 by engineering a near-term sale of Tesaro.

82. The chart below, taken from the 2020 yearbook of the National Venture Capital Association, depicts the life cycle of venture capital funds within a venture capital firm:

How Venture Capital Works



As applied to NEA 13, NEA did its fundraising for NEA 13 in 2009 and began investing out of NEA 13 in May 2009. NEA 13 invested those funds in Tesaro, among other portfolio companies. NEA provided active management of Tesaro and watched it generate huge *unrealized* returns for NEA 13 through 2017. As of late 2018, NEA wanted to exit from Tesaro and deliver returns to investors in NEA 13, so that those same investors would reinvest their returns in NEA 17 upon its fundraising launch in early 2019.

Fundraising NEA 17 was a Challenge at a Critical Time for NEA

83. NEA was co-founded in 1977 by venture capital legend Dick Kramlich, who served as managing general partner of the firm until 1999. In 1999, Kramlich became chairman of NEA and Peter Barris took over as managing general partner. Barris grew NEA from having raised approximately \$1 billion in capital to having raised over \$20 billion in capital.

84. Barris's final act as managing general partner was fundraising New Enterprise Associates' sixteenth fund ("NEA 16"). NEA 16 closed its fundraising at \$3.3 billion, making it the then-largest venture capital fund ever raised.

85. In June 2017, upon the closing of NEA 16, NEA announced a generational leadership change. Kramlich became chairman emeritus, Barris became chairman and Scott Sandell took over leadership of the firm as sole managing general partner.

86. A major problem confronting Sandell and NEA was that it had become increasingly difficult to trigger exits from portfolio companies within the lifespan of a venture capital fund. The problem plagued the entire venture capital industry, but was particularly acute for NEA. Sandell was quoted as follows on December 3, 2018: "There's a lot of congestion on the road to liquidity. Market dynamics are compelling companies to stay private longer, which creates growing

demand for follow-on dollars and stretches investor holding periods to a decade or more.” Industry publication *Secondaries Investor* wrote on December 6, 2018: “NEA has for a long time struggled with unrealized investments. They number in the hundreds, *Secondaries Investor* understands.”

87. NEA’s struggle with exiting investments was an existential threat. According to NEA’s then-Chief Operating Officer Ravi Viswanathan: “You really do need to figure out a way to give liquidity to your investors, your venture and other investors, and your employees because if you don’t do that venture capital really doesn’t work.”

88. NEA’s change in leadership and struggles with exiting its investments raised questions about the firm’s future. Many of NEA’s contemporary venture capital firms had unraveled or were unraveling after extended periods of success. Oak Investment Partners (“Oak”), for example, was founded a year after NEA and had, in 2006, raised what was then the largest venture capital fund at \$2.5 billion. When Oak went to raise its next fund in 2010, Oak was only able to raise approximately \$750 million of its targeted \$1.5 billion. By 2014, Oak was effectively defunct, with the remaining partners splitting apart. Likewise, Kleiner Perkins was founded five years before NEA and was for many years one of the most well-respected and successful venture capital firms. Kleiner Perkins’s

longtime leader, John Doerr, left his role as general partner in March 2016. Although Kleiner Perkins was able to fundraise two new funds totaling \$1.4 billion in 2016, the firm suffered key partner departures in the following years and was a shell of its former self by late 2018.

89. A major litmus test for NEA would be its attempt to fundraise NEA 17 beginning in early 2019. NEA's business model was premised on raising extraordinarily large venture capital funds with super-premium carried interest fees. Each occasion for raising a new fund was a challenge that invited scrutiny of the firm and its recent track record.

90. One difficulty for NEA's fundraising aspirations was that NEA had historically been at the bottom of the exclusive cohort of venture capital firms that could charge super-premium carry. A leading academic text on the venture capital industry, published in 2011, just after the launch of NEA 13, selected what the authors deemed the top-tier venture capital firms, with the six most elite in "Group A" and the next nine in "Group B." ANDREW METRICK AND AYAKO YASUDA, VENTURE CAPITAL & THE FINANCE OF INNOVATION 86 (2d ed. 2011). NEA was selected for Group B. [REDACTED]

[REDACTED] At the time, NEA had distinguished itself by having raised the largest dedicated venture capital

fund in history, having raised three venture capital funds in excess of \$2 billion, and having managed six venture capital funds that performed in the top quartile compared to other venture capital funds of the same vintage.

91. NEA's continued ability to charge super-premium carry was dependent on the firm maintaining exceptional attributes and a superior performance track record. The Cooley law firm's 2019 "Primer: Carried Interest in Venture Capital Funds" notes that most venture capital firms charge 20% carry but "Some *exceptionally well performing funds with superior investment track records* or similar pedigree attributes assess flat, headline rates of 25%, 30% or in just a few outlier cases in the industry something higher." (emphasis added) Private Equity International's 2016 "Private Equity Fund Investment Due Diligence" contains the following discussion of the attributes that allow a firm to charge super-premium carry:

There is definitely a gap between the top-quartile fund managers (the 'haves') and the rest (the 'have nots'). *GPs with an excellent track record, a compelling and proven investment strategy, an experienced and stable management team (including transparent succession plans), and a reliable and happy investor base from prior funds are able to complete fundraising in three to six months, achieve better, more manager-friendly terms (for example, super carry) and are oversubscribed.* In contrast, GPs with mixed performance, succession issues or a less compelling strategy (either relating to industry or geography) are struggling with their fundraising (sometimes 18 months or longer), may not reach their target volume (not to speak of reaching the hard cap) and have less GP-friendly terms. Whether fund

terms are more GP friendly or more LP friendly reflects the respective GP's position in the market, not the other way around. Successful managers will always be able to have better, more GP-friendly terms than less successful ones as investors prefer good performance over good terms.

(emphasis added).

92. As applied to NEA, the factors suggested it would be a challenge for NEA to raise a huge fund with super-premium carry. NEA did not have a “stable management team.” NEA had just undergone a generational change in leadership. NEA did not have a “happy investor base from prior funds.” NEA had developed a reputation for struggling to realize its investments and return capital from its prior funds. The NEA funds that would be scrutinized by investors were not “exceptionally well performing.” As explained below, the performance of the critical NEA funds was only somewhat above average.

93. Venture capital funds are evaluated by their performance relative to other funds launched in the same year, which is commonly referred to as the fund's vintage. Relative fund performance is grouped according to quartile. The key metrics tracked by limited partners include internal rate of return (IRR), the ratio of distributions to paid in capital (DPI), and the ratio of total value (*i.e.*, distributions plus unrealized investments) to paid in capital (TVPI or TVM).

94. Venture capital fund limited partners, which are typically pension funds, endowments and other institutional investors, generally receive semi-annual or quarterly reports on the performance of their funds. A core focus of most of these reports is the quartile performance of each fund. For example, below is an excerpt of the semi-annual performance report to the Pennsylvania State Employees' Retirement System (redactions in original publicly available version; highlighting added) that contains column headings focusing on quartile performance and ranking:

Commonwealth of Pennsylvania State Employees' Retirement System
 Schedule of Private Equity Investments by Vintage Year
 As of June 30, 2018

Investment	Sector	Commitments	Contributions ⁽¹⁾	Distributions	Market Value	Unrealized Gain/(Loss)	IRR ⁽¹⁾	TVM	Upper Quartile IRR ⁽¹⁾	Upper Quartile TVM ⁽¹⁾	Quartile Ranking (TVM)
Sterling Capital Partners II	Buyout	30,000,000	27,224,698	29,432,439							
Summit Partners Private Equity Fund VII	Buyout	97,134,500	97,134,505	149,090,790							
Summit Partners Venture Capital Fund II	Venture Capital	15,000,000	15,000,000	33,039,452							
Templeton Strategic Emerging Markets Fund II	Special Situations	100,000,000	74,742,190	149,972,520							
Vestar Capital Partners V	Buyout	50,000,000	48,164,752	56,036,714							
Weston Presidio V	Buyout	50,000,000	43,269,290	109,759,888							
Total: 2005		\$ 1,410,929,988	\$ 1,344,439,267	\$ 2,096,642,245							
2006											
ABRY Senior Equity II	Special Situations	30,000,000	25,408,970	44,861,146							
AKA Secondary Fund IV	Special Situations	80,000,000	66,908,452	97,663,182							
Alpha Private Equity Fund S	Buyout	57,796,800	62,184,152	94,043,299							
Artiman Ventures II	Venture Capital	25,000,000	20,967,427	13,141,575							
Asia Alternatives Capital Partners	Buyout	50,000,000	23,406,269	39,734,979							
Avenue Asia Special Situations Fund IV	Special Situations	50,000,000	31,897,973	34,473,134							
Bain Capital Fund IX	Buyout	75,000,000	72,937,500	109,893,859							
Bain Capital IX Co-Investment Fund	Buyout	15,000,000	14,456,250	21,969,013							
Berkshire Fund VII	Buyout	32,000,000	29,159,700	57,043,321							
Blackstone Capital Partners V	Buyout	150,000,000	141,252,710	234,156,926							
Brait IV	Buyout	25,000,000	15,396,613	4,805,667							
Care Capital Investments III	Venture Capital	25,000,000	19,990,191	12,565,534							
Centerbridge Capital Partners I	Special Situations	50,000,000	51,804,352	108,128,663							
Cerberus Institutional Partners Series Four	Special Situations	75,000,000	68,695,715	110,419,966							
Charterhouse Capital Partners VIII	Buyout	63,826,976	67,961,522	70,399,353							
Charters Capital XV	Buyout	31,133,996	28,814,337	61,309,658							
Devon Park Bioventures	Venture Capital	10,842,697	8,417,877	25,366,934							
Eureka II	Buyout	20,000,000	17,826,449	20,777,356							
First Reserve Fund XI	Buyout	60,000,000	61,497,082	40,018,579							
Francisco Partners II	Buyout	30,000,000	29,186,046	40,942,804							
GTCR IX	Buyout	50,000,000	46,134,343	79,736,269							
Great Hill Equity Partners III	Buyout	35,000,000	31,191,528	41,373,122							
HarbourVest Partners VIII	Buyout	100,000,000	98,000,000	115,842,185							
Hellman & Friedman Capital Partners VI	Buyout	125,000,000	112,971,649	217,035,494							
Highland Capital Partners VII	Venture Capital	35,000,000	35,000,000	29,269,697							
Lime Rock Partners IV	Buyout	25,000,000	23,650,060	78,679,839							
Madison Dearborn Capital Partners V	Buyout	75,000,000	66,925,260	112,996,164							
Meritech Capital Partners III	Venture Capital	35,000,000	35,000,000	184,132,770							
New Enterprise Associates 12	Venture Capital	35,000,000	35,626,297	42,164,278							
NewSpring Growth Capital II	Buyout	10,000,000	8,757,900	13,962,639							
OCM Principal Opportunities Fund IV	Special Situations	20,000,000	20,400,000	33,971,751							
Oak Investment Partners XII	Venture Capital	40,000,000	39,214,554	29,547,539							
PNC Equity Partners II	Buyout	15,000,000	12,151,978	26,013,377							
Pemira IV	Buyout	127,779,198	123,910,382	202,031,861							
Polaris Venture Partners V	Venture Capital	50,000,000	49,000,000	45,730,738							
Siguler Guff BRIC Opportunities Fund	Buyout	10,000,000	9,500,000	10,789,681							

95. Venture capital fund performance metrics typically become meaningful to limited partners after about six to eight years into a particular fund's life. At that point, for most funds, a meaningful portion of the fund's investments should be realized and the valuation of the unrealized investments should (hopefully) be more stable and accurate. Cambridge Associates, a firm that advises limited partners about venture capital investments and prepares widely recognized quarterly benchmarking reports, reports its "research shows that most funds take at least six years to settle into their final quartile ranking, and previous to this settling they typically rank in 2-3 other quartiles; therefore fund or benchmark performance metrics from more recent vintage years may be less meaningful." Allen Latta, managing director of Campton Private Equity Advisors, explains "it isn't until around years 7 to 8 that a fund has really matured to a point that the performance can be useful."

96. Accordingly, limited partners seeking to evaluate NEA would focus on NEA 13 (2009 vintage). Limited partners might also look to NEA 12 (2006 vintage) although, fortunately for NEA, many limited partners discount the performance of funds that were raised shortly before the global financial crisis because most had difficult investing conditions and poor absolute performance. NEA 14 (2012 vintage), NEA 15 (2015 vintage) and NEA 16 (2017 vintage) were

too recent to have meaningful results. NEA 10 (2000 vintage) and NEA 11 (2003 vintage) were too distant to provide meaningful insight concerning NEA's current investment team.

97. As of the end of 2017, NEA 13's performance (15.54% IRR; 0.82x DPI; 1.91x TVPI) was solidly above median (11.58% IRR; 0.67x DPI; 1.68x TVPI) but not quite upper quartile (19.06% IRR; 1.06x DPI; 2.04 TVPI). NEA 12's performance was poor in an absolute sense (7.13% IRR; 1.17x DPI; 1.44x TVPI). Compared to its vintage peers, NEA 12 was approximately median (7.05% IRR; 0.85x DPI; 1.52x TVPI) and well below upper quartile (13.03% IRR; 1.38x DPI; 1.91x TVPI).

NEA Implements a Plan to Facilitate Fundraising NEA 17

98. NEA held a firm offsite meeting in early 2018 to plan its strategy for fundraising NEA 17 starting in early 2019. NEA's general partners desired for NEA 17 to be, yet again, the then-largest venture capital fund ever raised and to charge super-premium carry. To achieve that outcome, NEA would need to address its shortcomings before it started fundraising in early 2019.

99. One part of NEA's strategy involved devising and implementing an extraordinary transaction to return capital to its current investors before the start of fundraising NEA 17. Throughout 2018, NEA worked to create a new "spin-out"

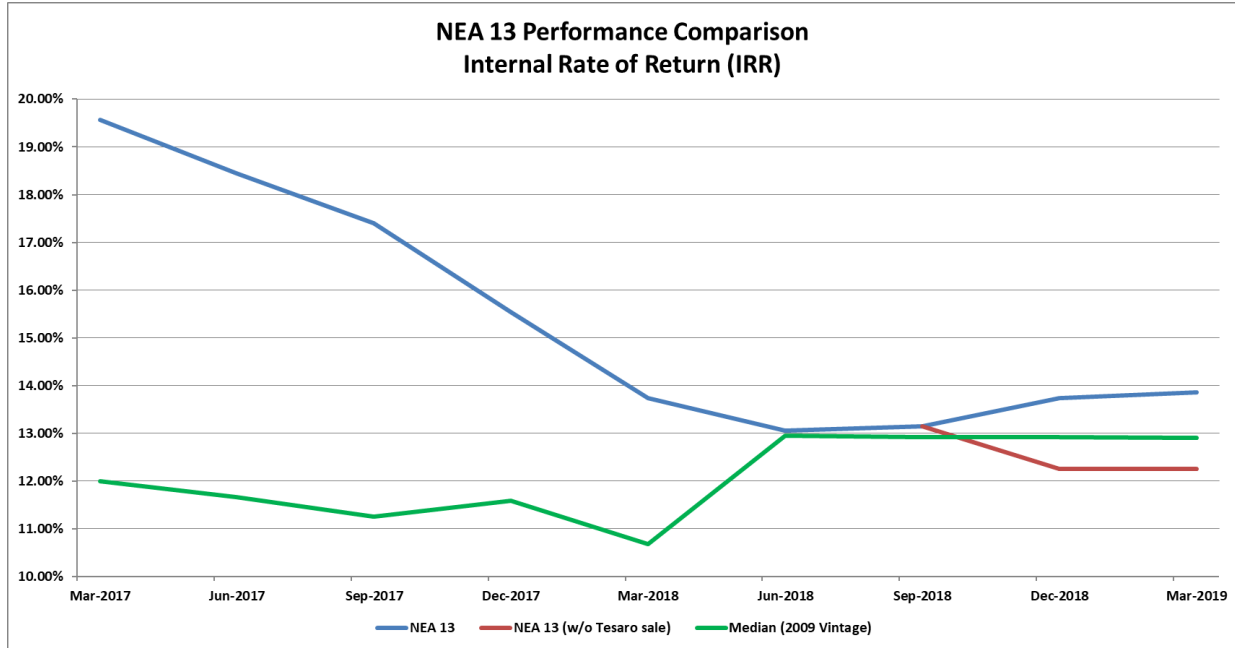
fund, to be run by NEA's COO, Viswanthan, that paid [REDACTED] for NEA's stakes in 31 late-stage portfolio companies. The idea behind the new spin-out fund was to provide liquidity to current investors in older funds (such as NEA 13) without forcing untimely, unattractive exits on NEA's portfolio companies. Delivering [REDACTED] of liquidity for current investors in NEA funds would also provide comfort to prospective investors that NEA was focused on generating liquidity.

100. Another part of NEA's strategy involved generating returns and liquidity for NEA 13, the critical fund that limited partners would evaluate during fundraising. That necessarily involved a focus on Tesaro, [REDACTED] Put [REDACTED] simply, Tesaro was the investment that would move the needle for NEA 13's results during 2018.

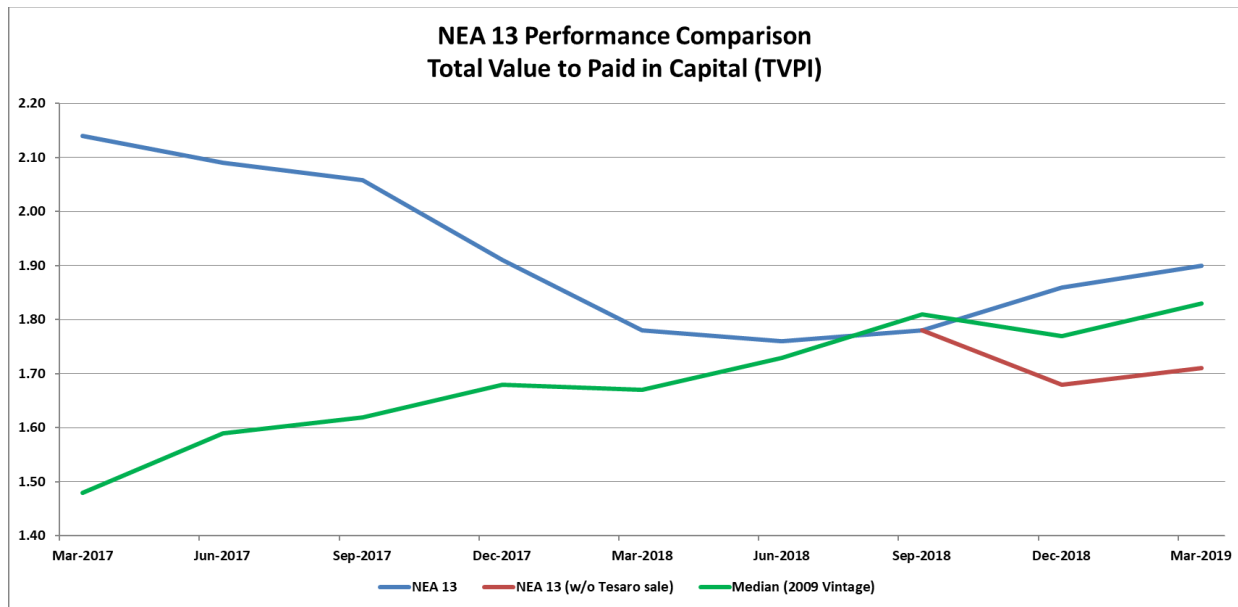
101. The problem for NEA was that Tesaro's stock price (and thus NEA 13's performance) declined precipitously during 2018. By the fall of 2018, NEA 13 had dropped from a well above median, almost top quartile fund as of year-end 2017 to a fund that was on track to be a below median fund as of year-end 2018, absent an event that would increase Tesaro's stock price before year-end.

102. The following charts show the decline in NEA 13's IRR and TVPI performance metrics compared to the median 2009 vintage venture capital fund as

Tesaro’s stock price declined in 2017 and 2018. The charts also demonstrate the impact of announcing the sale of Tesaro before year-end 2018.²



² The NEA 13 metrics are based on publicly available reports from various pension funds. The 2009 vintage median metrics are based on Cambridge Associates’ US Venture Capital Index and Selected Benchmark Statistics. The without Tesaro sale metrics are estimates based on the assumption that Tesaro’s stock price would remain at the November 15, 2018 unaffected price of \$26.59 per share.



103. Allen Latta, managing director of Campton Private Equity Advisors, has observed that limited partners consider a third quartile fund, as NEA 13 would have been absent the sale of Tesaro, to have “poor performance”:

Metric	Performance	Notes
Top Decile	Top 10%	Better than 90% of funds. These funds are the very best performers of their vintage.
Top Quartile (Upper Quartile)	Top 25%	Better than 75% of funds. Solid returns.
Second Quartile	Between Median and Upper Quartile	Better than 50% of funds but less than the top quartile funds. Not terrible, but not very good.
Third Quartile	Between Lower Quartile and Median	Poor performance
Bottom Quartile	Below the Lower Quartile metric	Terrible performance

104. As year-end 2018 approached, Mott and NEA’s general partners knew that the only realistic way to ensure NEA 13 stayed above median performance

(i.e., the green line in the above performance charts) was to announce a sale of Tesaro. A sale of Tesaro at \$75 per share would also generate over \$727 million in liquidity for the 9,681,039 Tesaro shares held by NEA 13. A sale would thus enable NEA to reinforce to its limited partners the firm's focus on providing liquidity for them and give limited partners a cash return that they could reinvest in NEA 17.

105. The economic incentives for Mott and NEA's general partners were stark. NEA would have had no realistic chance to charge super-premium carry if NEA 13's performance dropped below median as of the year-end 2018 results, given that NEA 13's poor performance would be on the minds of limited partners when NEA began fundraising NEA 17 in early 2019. NEA would also likely have struggled to raise the then-largest venture capital fund. Assuming that, without a sale of Tesaro, NEA could still raise \$3.6 billion for NEA 17 and assuming a 2x to 3x net performance for that fund, the loss of super-premium carry would cost NEA's general partners approximately \$640 million to \$1.3 billion in lost carry.³ If NEA could only raise \$2.5 billion for NEA 17 (still one of the largest venture

³ A 3x net multiple is the industry standard target for a venture capital fund. A 2x net multiple is a more common actual result for a decent venture capital fund. The calculations assume that instead of charging [REDACTED] flat carry, NEA 17 would only be able to charge the industry standard carry of 20%.

capital funds in history), the decreased fund size and loss of super-premium carry would cost NEA's general partners approximately \$900 million to \$1.8 billion in lost carry. In addition, the reduced fund size would result in the loss of management fees of at least another [REDACTED]

106. By contrast, waiting to sell Tesaro in a non-rushed, value maximizing process would be worth far less to NEA and its general partners. For example, if NEA waited to sell Tesaro for \$100 per share instead of \$75 per share, the additional carry to NEA and its general partners would only be approximately \$78 million. At \$125 per share, the value of the additional carry would be approximately \$156 million. To break even on the decision not to sell Tesaro by year-end 2018 and the resulting impact on NEA's new fund, NEA would have needed to sell Tesaro for approximately \$280 per share to \$650 per share (to make approximately \$640 million to \$1.8 billion in additional carry).

107. From the perspective of NEA's *general partners*, engineering a near-term sale of Tesaro was profit-maximizing, even if a feasible alternative strategy for Tesaro was to finance the Company on a stand-alone basis and sell it for a significantly greater price at a later date. A well-known strategy among venture capital firms is to "exit and fundraise." Brad M. Barber and Ayako Yasuda, *Interim Fund Performance and Fundraising in Private Equity*, 124 J. FIN. ECON.

172 (2017). That is what NEA did. Locking in a premium sale of Tesaro, regardless of the price, helped NEA raise \$3.6 billion for NEA 17 and charge investors a [REDACTED] carry. Prospective general partner returns from NEA 17 created a perverse incentive for Mott to use his influence on the Board to drive a near-term sale of the Company, without regard for the value of other strategic alternatives available to Tesaro or maximization of the sale price through a longer sale process.

NEA Uses the Sale of Tesaro to Facilitate Fundraising NEA 17

108. On December 3, 2018, Tesaro publicly announced the Acquisition. That same day, NEA publicly announced the successful closing of the “spin out” fund that NEA had engineered to monetize unrealized investments. The timing was not a coincidence. In fact, the “spin out” fund, known as NewView Capital, had actually closed in October 2018. The simultaneous announcement was a message to NEA’s current and future limited partners that NEA would deliver nearly [REDACTED] in liquidity in advance of fundraising NEA 17.

109. The public launch of fundraising efforts for NEA 17 was on March 1, 2019. NEA’s stated goal was to raise \$3.6 billion and charge investors [REDACTED] super-premium carry. NEA ultimately achieved that goal due in material part to the sale of Tesaro shortly before NEA officially launched fundraising of NEA 17.

110. NEA’s pitchbook for NEA 17, attached hereto as Exhibit A, shows the significance of selling Tesaro to NEA’s efforts fundraise NEA 17. The pitchbook highlights as NEA’s first core strength that it has sustained “top tier returns”:

NEA: A Winning Platform Built on Core Strengths



CONSISTENCY

Top tier returns sustained over 40 years and multiple market cycles

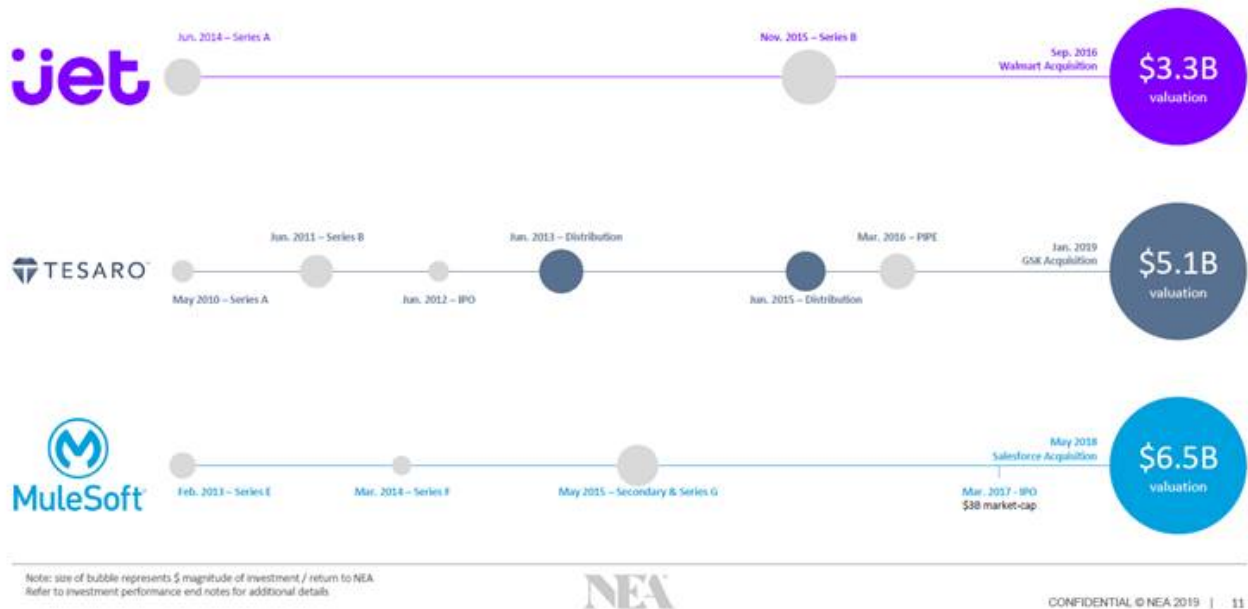
NEA could not have made the same statement absent the sale of Tesaro. In fact, what would be fresh on the minds of limited partners was that NEA 13 had declined from a top tier fund to a below median fund.

111. The pitchbook discusses how NEA’s investment strategy is to use its expertise to provide “Proprietary and Outsized Opportunity for ‘Conviction’ Capital,” which entails investing additional capital over time in a “few concentrated positions.” Tesaro exemplified that investment strategy for NEA. NEA remained invested in the Company six years after its 2012 IPO, invested additional capital in 2016, and cultivated a dominant position on the Board. But that strategy, which looked so successful in 2017, risked looking like a bust in early 2019, in light of the subsequent slide in Tesaro’s stock price. Harvesting Tesaro’s gains by engineering a sale to GSK at a premium to the market price was critical to demonstrating the apparent success of NEA’s investment strategy.

112. A separate page of the NEA 17 pitchbook touted how NEA generates “DISTRIBUTIONS: maintain focus on and enhance ‘liquidity engine.’” Accomplishing a near-term sale of Tesaro by year-end 2018 manifested NEA’s claimed “liquidity engine.” In other words, the sale of Tesaro provided limited partners with a cash return that they could reinvest into NEA 17. The National Venture Capital Association’s How Venture Capital Works graphic (*see* paragraph 82 above) demonstrates the “liquidity engine” by showing the flow of cash from the “returns” stage to the “reinvestment” stage and back around to the “fundraising” stage.

113. Another page of the NEA 17 pitchbook featured Tesaro as one of three examples of how “NEA’s Early, Growth, and Conviction Investing Lead to Big Outcomes and Meaningful Impact Across Sectors”:

NEA's Early, Growth, and Conviction Investing Lead to Big Outcomes and Meaningful Impact Across Sectors



NEA could not have touted its investment in Tesaro in the March 2019 pitchbook for NEA 17 if Tesaro had remained independent, with its stock price languishing during the pendency of Zejula’s clinical trial at a small fraction of its stock price in 2017.

Tesaro’s Main Products

114. At the time of the Acquisition, Tesaro’s primary product was Zejula, the brand name for Niraparib, a cancer medicine that interferes with the growth and spread of cancer cells. Zejula is a PARP inhibitor—a group of pharmacological inhibitors of the enzyme poly ADP ribose polymerase. PARP

inhibitors inhibit DNA repair in cancer cells that are damaged through radiation therapy.

115. Niraparib was approved by the FDA in March 2017 for epithelial ovarian, fallopian tube, and primary peritoneal cancer. Zejula became the leading PARP inhibitor in ovarian cancer treatment. PARP inhibitors such as Zejula may also be effective for prostate cancer, and are considered a potential treatment for acute life-threatening diseases, such as stroke and myocardial infarction, as well as for long-term neurodegenerative diseases.

116. Before the Acquisition, Tesaro was focused on maximizing the value of Zejula, particularly with respect to its use as daily maintenance in the form of 200 mg pills at a monthly cost of \$13,168 for each patient. Tesaro marketed Zejula in the United States and in several European Union countries, and had plans to expand into Israel and Canada.

117. Tesaro had numerous pipeline drugs that it anticipated launching in the near term. Tesaro planned to expand its focus to include lung and gynecologic/breast cancers, [REDACTED]

[REDACTED] Zejula was being tested in combination with other anti-cancer agents and Tesaro's proprietary molecule TSR-042 for treatment of ovarian cancer, prostate cancer, lung cancer and breast cancer. TSR-022 was being tested for treatment of

lung cancer. TSR-033 was targeting gynecological and lung cancers. TSR-042 was in testing for treatment of endometrial cancers in combination with other anti-cancer agents. TSR-075 was being developed for a variety of diseases that can be treated by inducing anti-tumor inflammation with cytokines. Tesaro was also

[REDACTED]

Tesaro's LRP

118. Tesaro's standalone operations were guided by its LRP. Tesaro's assumptions for approval, production and commercialization of its products were set forth and incorporated into its LRP. The LRP is a non-public document.

119. The Board approved the LRP in February 2018.

120. On August 1 and 2, 2018, the Board was provided with an extensive, updated presentation of the LRP, which the Board also approved.

121. The August Board presentation included [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

122. The August Board presentation noted that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

123. The August Board presentation predicted [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

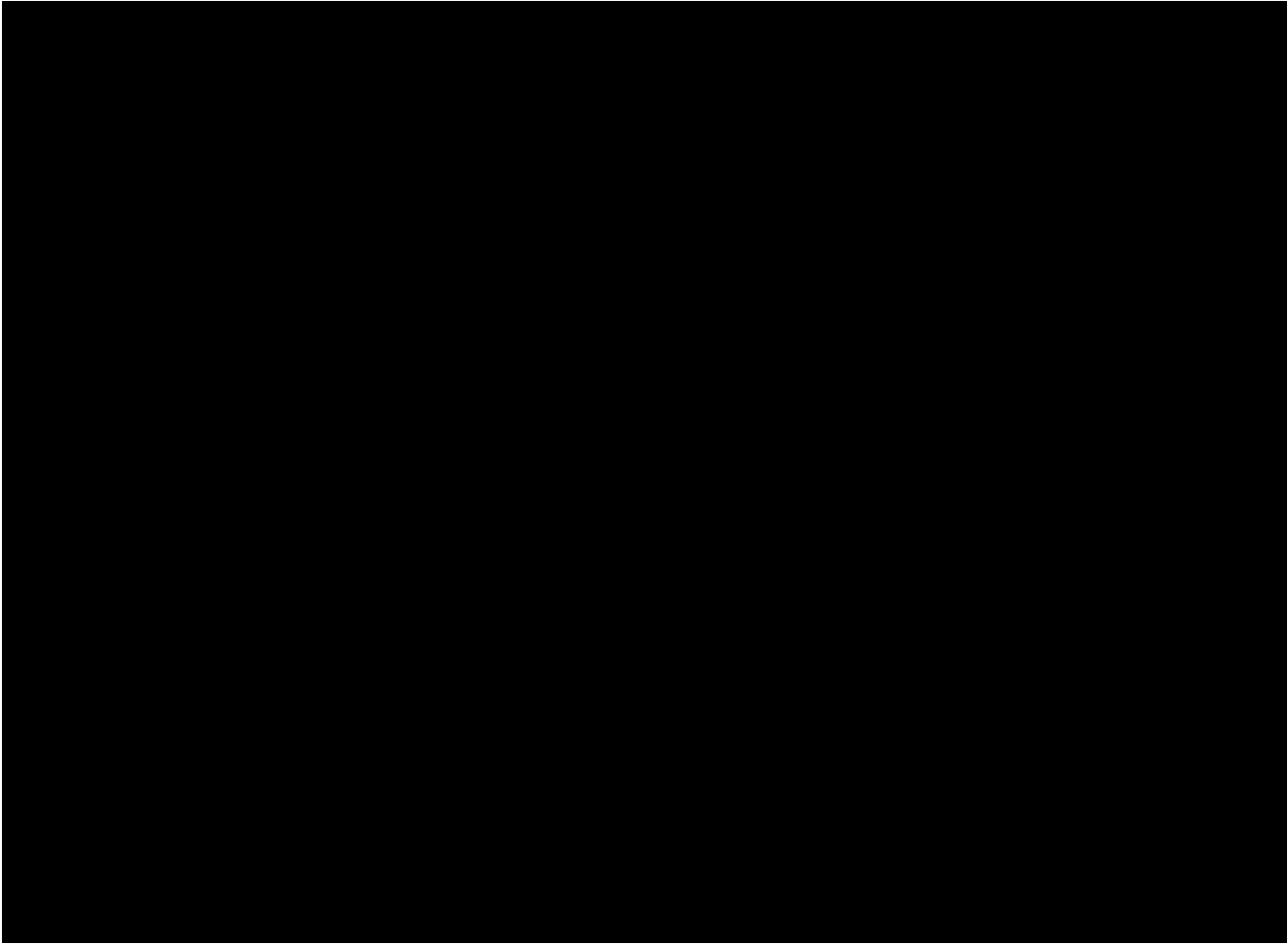
[REDACTED]

124. The August Board presentation highlighted [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



125. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

126. Tesaro management targeted [Redacted]

[Redacted]

[Redacted]

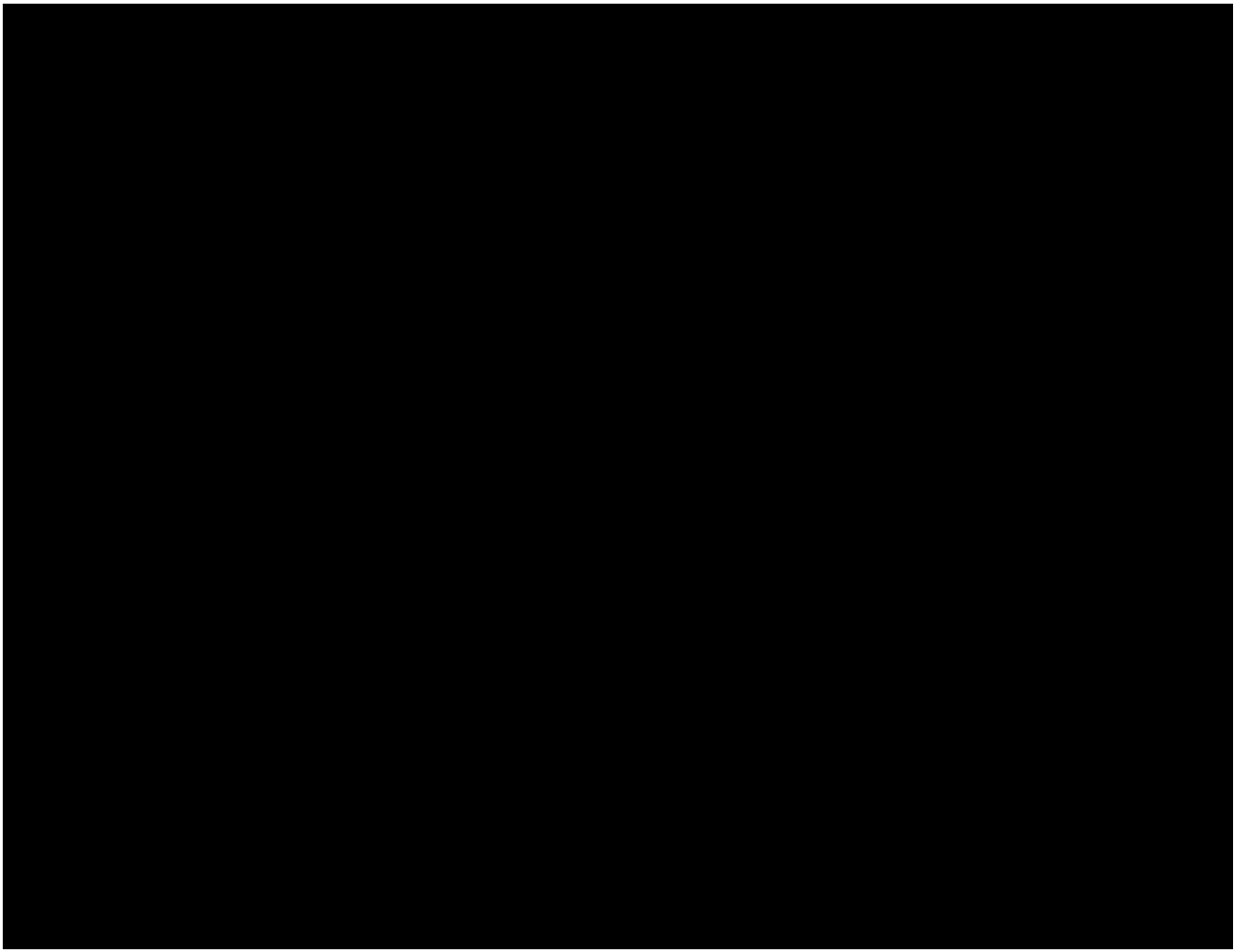
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



127.

[REDACTED]

[REDACTED]

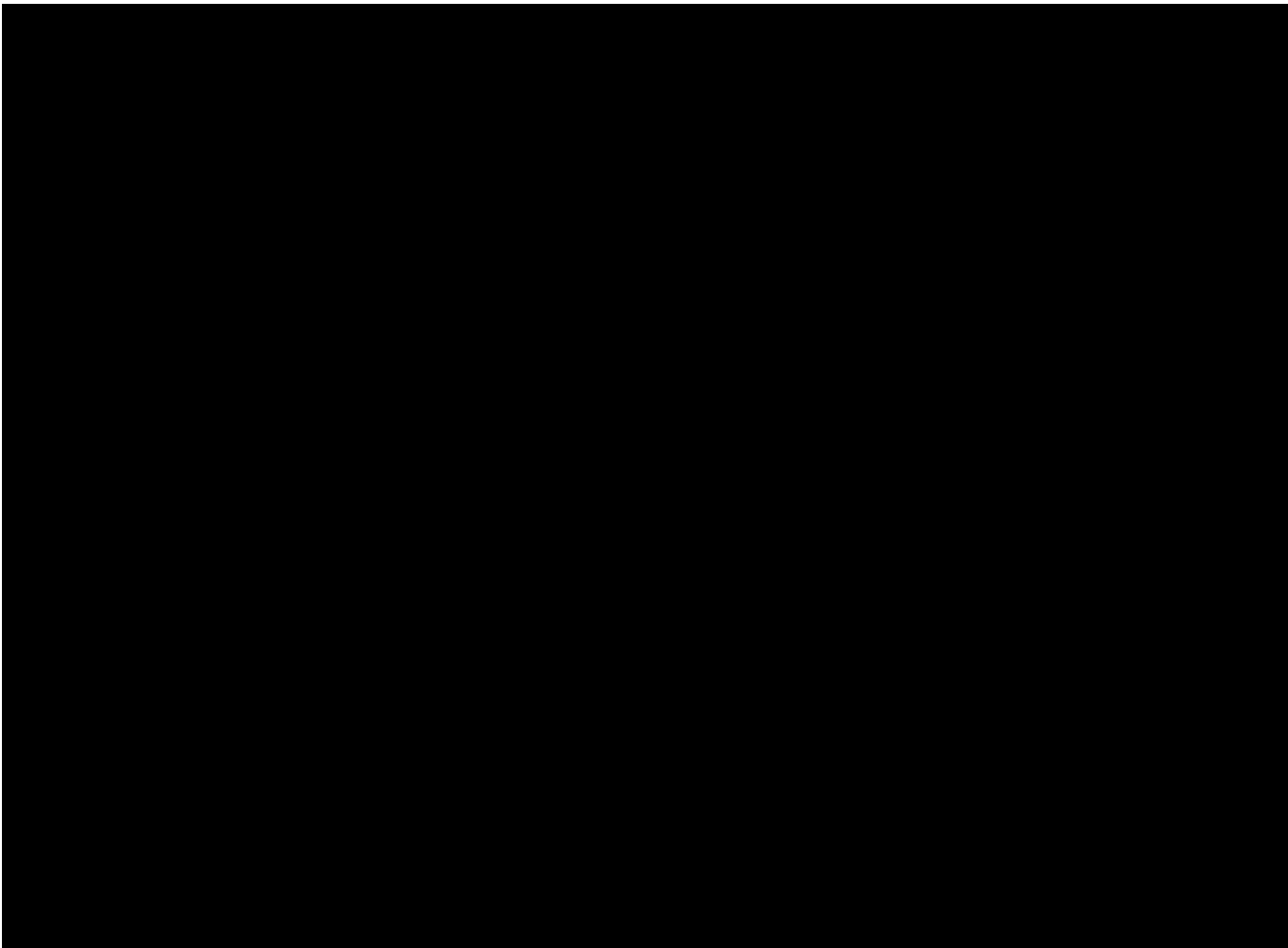
128.

[REDACTED]

[REDACTED]

129.

[REDACTED]



130. [Redacted]



131. The LRP's long-term objectives and expectations were [Redacted]



[REDACTED]

[REDACTED]

132. The LRP provided

[REDACTED]

[REDACTED]

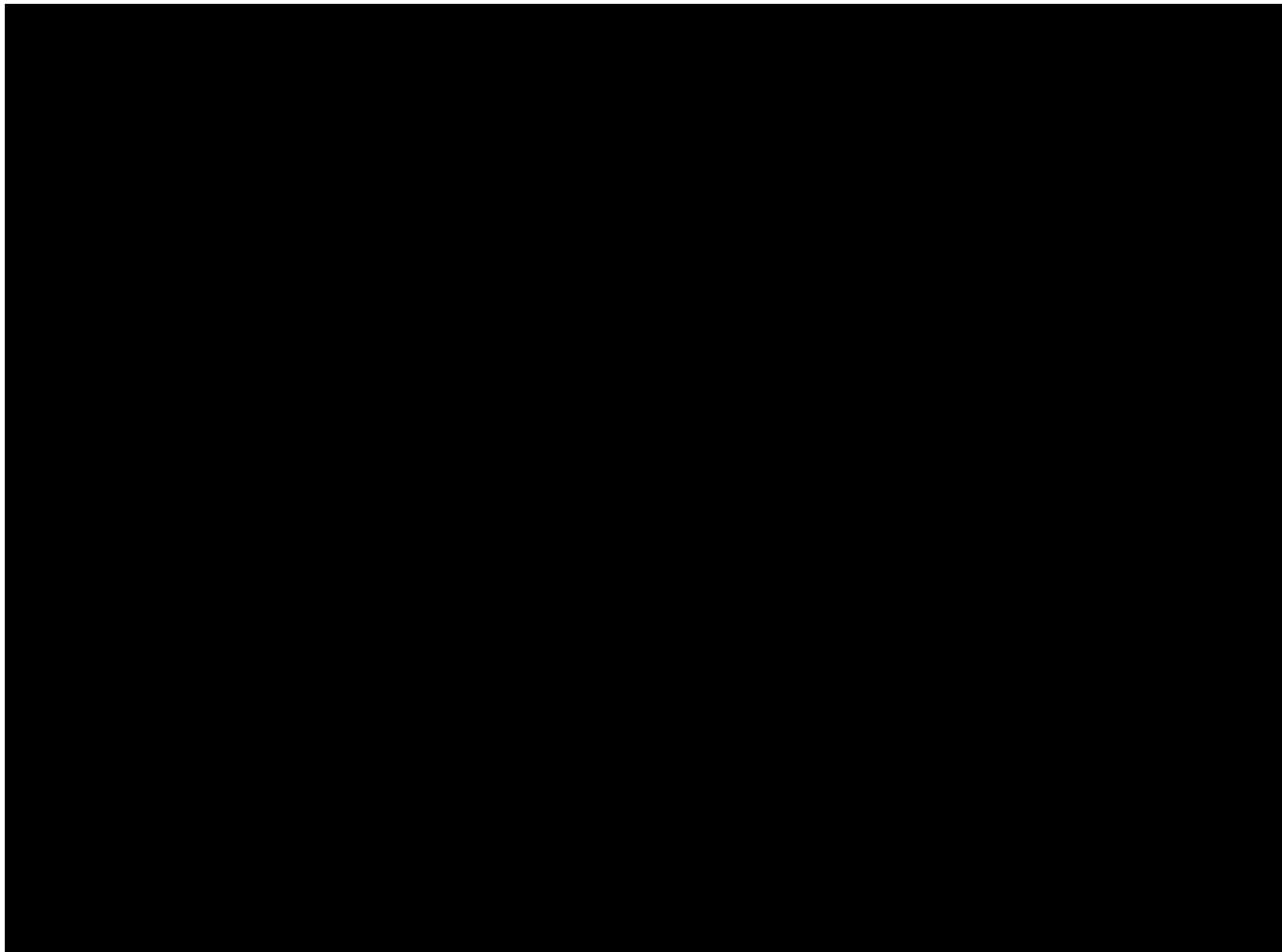
133. The LRP predicted

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



134. On October 20, 2018, Tesaro management presented the Board with a revised outlook for year 2019 of the LRP.

135. Denoted the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

136. The October 2018 revision to the LRP allowed management to declare on December 1, 2018, in Tesaro's Form 10-Q for the third quarter of 2018, that Tesaro believed that its currently available funds, and cash generated from the sale of its products, will be sufficient to fund the Company's operations through at least the next twelve months.

137. The Board was provided with a further revised LRP on November 7, 2018. The November 2018 revision to the LRP [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Pending Clinical Trial for Zejula

138. The ability of Tesaro to fund its operations through 2019 was of critical importance because Tesaro was expecting favorable news in the second half of 2019 from a pending clinical trial. That clinical trial, called the "PRIMA" trial, was evaluating whether Zejula was effective for first line treatment of ovarian cancer for the population of patients beyond those who carried the mutated BRCA gene.

139. Approximately 15% of the population with ovarian cancer carry the BRCA mutation. Of the remaining 85% of the population, 35% consist of patients

who are “HRD positive,” which refers to patients with a Homologous Recombination Defect, and the other 50% do not carry either biomarker. The questions being studied in the PRIMA trial were whether Zejula was effective in treating (i) the HRD positive population and (ii) everyone else. Depending on the outcome of the PRIMA trial, the market for Zejula potentially could be three times or six to seven times the population with the BRCA mutation. Success in the PRIMA trial would also augur well for other potential indications of Zejula apart from ovarian cancer.

140. The LRP [REDACTED] The LRP projected [REDACTED]
[REDACTED]

141. So long as Tesaro could finance itself throughout the duration of the PRIMA trial, Tesaro could await positive results by the end of 2019, and be rewarded at that time by investors and market participants. The problem for Tesaro’s public stockholders is that NEA and Tesaro’s senior officers lacked the patience to wait. For their own reasons, they were keenly incentivized to engineer a sale of Tesaro in the near term.

142. Late 2018 was an especially bad time to sell Tesaro. Not only did market participants lack visibility into the PRIMA clinical trial, the

biopharmaceutical sector was experiencing a sharp decline. The Nasdaq Biotechnology Index fell from 3835.46 on September 28, 2018, to 2,985.33 on December 28, 2018.

The Board Ponders Financing Options That Would Restrict a Future Sale of the Company

143. Tesaro had numerous options in 2018 to finance the LRP, even though Tesaro was not looking to the public equity markets in light of the slide in Tesaro's stock price.

144. CEO Moulder and CFO Pearson stated at separate healthcare conferences on September 5, 2018, that Tesaro was not looking to the public capital markets for additional financing. At the Citi BioTech Conference, Moulder stated:

We intend to finish the year with about \$400 million in cash. We're actively pursuing a path of business development. Now that we have in-house datasets across our 3 immuno-oncology programs, we believe it's the type of data that's compelling for collaborating outside of our core regions of the world, U.S. and Europe, to be able to bring in through licensing transactions, of course, upfront cash but importantly, to offload some of our expenses on our programs in other territories, including Japan, China, Latin America.

As you may recall, we signed a partnership with Takeda for Japan and received \$100 million in upfront cash in that deal. So we think business development is the right way to pursue bringing in non-dilutive cash. And I would say although we don't typically guide on company financing plans, we had no interest in a marketed equity offering at this current share price. That's not what we plan to do.

At the Baird Global Healthcare Conference, Pearson stated:

[A]nother concern is obviously, with a \$400 million cash balance, people are worried about what is our financing strategy going to be. We do not guide to a financing strategy, we're not doing that here. What I will say is at these prices, at today's prices, we're not interested in doing a publicly marketed equity offering. The dilution and share price impact of that isn't palatable, so we are more focused on business development opportunities, looking for ways to leverage our IO portfolio, which again data is just starting to show itself on our IO portfolio. But leveraging that part of our portfolio to do business development, out-licensing, that would provide either upfronts, cost-sharing, et cetera, to help fund ongoing R&D investment.

145. Beginning in March 2018, Tesaro explored co-development/co-promote collaboration opportunities respecting Zejula. Tesaro's business development discussions led to a proposal from [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The [REDACTED]

[REDACTED]

[REDACTED] Before cost sharing, the total consideration associated with these elements was \$2.34 billion. Tesaro would also have obtained a license to [REDACTED] would receive a continuing royalty.

146. Tesaro simultaneously explored a royalty option with [REDACTED]

[REDACTED] The

[REDACTED] transaction would have provided [REDACTED]

[REDACTED]

[REDACTED]

147. Either the [REDACTED] transaction would have provided sufficient financing for the LRP. The 2019 Annual Operating Plan (“AOP”) required an additional [REDACTED] of financing. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

148. On August 17, 2018, the Board’s Financing Committee met and considered [REDACTED]

[REDACTED]

149. The [REDACTED] transaction would have each created significant impediments to a liquidity event.

150. The [REDACTED] would have made a subsequent change-in-control transaction in Tesaro exceedingly difficult by any party other than [REDACTED]

The proposed transaction would effectively create a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] a change-in-control transaction by Tesaro with a third party would be virtually impossible. NEA would have had difficulty extricating itself from Tesaro at a premium to market.

151. The [REDACTED] would also create hurdles to a change in control. The initial [REDACTED] proposal provided for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

152. On May 10, 2018, the Board was presented with a proposal for a “Chinese NewCo” transaction that would provide [REDACTED]. [REDACTED] The proposal contemplated that Chinese NewCo would develop [REDACTED]. [REDACTED] It was projected that [REDACTED]. [REDACTED]

153. On October 20, 2018, the Board authorized management to enter into the Chinese NewCo transaction in its discretion. Board discussion respecting the Chinese NewCo transaction continued at least through November 8.

154. Discussions between the principals respecting the [REDACTED] continued at least through November 5, 2018.

155. Discussions between the principals respecting the [REDACTED] transaction continued at least through November 19, 2018.

Citi’s Hite Arranges the Acquisition and Deceives the Board

156. Citi’s Hite was invited to attend a Tesaro Financing Committee meeting on September 27, 2018, and a Board meeting on September 28, 2018.

157. Hite was the ideal person to broker a near-term sale of Tesaro to GSK. Hite had pursued a sale process for Tesaro in early 2017, and Citi was a regular provider of investment banking services to the Company. Citi was also GSK’s

principal relationship banker. Hite was then in the midst of advising GSK on a prospective joint venture with Pfizer that would create a world leader in consumer healthcare with annual sales of approximately \$12.7 billion, based on results reported in 2017 (the “GSK/Pfizer JV”).

158. Hite had been working behind the scenes on a potential acquisition of Tesaro by GSK. In June 2018, [REDACTED]

[REDACTED] Around this same time, Hedley contacted Dr. Hal Barron, GSK’s Chief Scientific Officer and President, R&D, to discuss a co-development/co-promote with respect to Zejula.

159. Inferably, Mott knew that Tesaro management [REDACTED] [REDACTED] A sale of Tesaro to GSK served NEA’s interest in near-term liquidity, and for that reason was preferable to a financing transaction. Moreover, Mott, NEA, and GSK had longstanding relationships. In July 2018, Adaptimmune, a biopharmaceutical company chaired by Mott, announced that it had completed the transition of a valuable therapy program to GSK, concluding a successful collaboration that had begun in 2014. Scott Gottlieb, a longtime partner of Mott’s in the healthcare practice at NEA’s Silicon

Valley office, had been a longtime external consultant to GSK before his appointment in 2017 as chair of the U.S. Food and Drug Administration.

160. On September 24, 2018, in anticipation of the Tesaro Board meeting, Hite met with GSK CFO Scott Dingemans to discuss GSK making an offer for Tesaro. Until that time, discussions between Tesaro and GSK had focused exclusively on a potential co-development/co-promote collaboration respecting Zejula.

161. On information and belief, GSK's involvement in the Zejula collaboration process was only designed to transfer confidential due diligence about Tesaro. GSK had no oncology platform for a collaboration. Information about Zejula would aid GSK in making a prompt acquisition proposal, before a final decision by Tesaro's Board respecting a financing alternative.

162. At the Financing Committee meeting on September 27, 2018, Hite [REDACTED]

[REDACTED]

[REDACTED] Hite provided the committee with a presentation [REDACTED]

[REDACTED]

Citi's presentation focused on [REDACTED]

[REDACTED] Citi advised that [REDACTED]

[REDACTED]

[REDACTED]

Citi's analysis of a potential sale of the Company assumed [REDACTED]

[REDACTED]

163. On September 28, 2018, Hite informed the Board of his discussions with Dingemans and GSK's desire to make an acquisition proposal. The Board noted [REDACTED]

[REDACTED]

[REDACTED] The Board "authorized management to ... inform [GSK] that the Company would consider an acquisition proposal for the entire company from it."

164. GSK made its initial proposal to acquire Tesaro for \$66 per share on October 24, 2018. Four days earlier, the Board had met to consider each of the three financing alternatives and had approved the Chinese NewCo transaction. The Board had also [REDACTED]

165. GSK's offer made clear that an acquisition would allow [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

166. On October 29, 2018, the Board decided to reject GSK's opening bid and to continue negotiating with [REDACTED]

167. The Board retained Citi and Centerview Partners LLC ("Centerview") to advise on the sale process. Citi's engagement letter contemplated a total payment of \$44 million to Citi in the event of the closing of the Acquisition, with no money owed if Acquisition discussions did not proceed to the fairness opinion stage.

168. Without Board authorization, Citi reached out to seven strategic parties. There is no indication that Citi reached out to [REDACTED] which analysts considered the most logical likely acquiror.

169. Tesaro management informed the Board that on November 8, 2018, management would present an updated LRP and Citi would present two alternate sets of forecasts. At the November 8 Board meeting, CFO Pearson explained that the two alternate sets of projections, Case A and Case B, had been created [REDACTED]

[REDACTED]

As discussed in the section below, Citi used its alternative sets of projections to justify the Acquisition and to ignore the valuation implications of the updated LRP.

170. At the November 8, 2018 meeting, Hite discussed certain of Citi's conflicts. The minutes contain no detail of this discussion.

171. On November 16, 2018, *Bloomberg* published an article stating that Tesaro was in acquisition discussions. Acquisition speculation drove the stock price up by over \$20 per share.

172. Citi reported on November 18, 2018, that no party other than GSK was interested in purchasing Tesaro. On the same day, GSK delivered a revised proposal at \$69 per share and requested a mere two-week exclusive negotiating period to finalize due diligence and negotiate definitive documentation. The Board responded that Tesaro would agree to exclusivity if GSK raised its bid by 15-20%.

173. GSK raised its offer to \$75 per share. The Board agreed to exclusivity on November 21, 2018, and the Acquisition was finalized at that price.

174. Citi never disclosed its contemporaneous conflict respecting the GSK/Pfizer JV. On December 2, 2018, the day the Board voted to approve the Acquisition, Citi provided a relationship disclosure memorandum. The Board was told that [REDACTED]

[REDACTED]

[REDACTED] Citi told the Board that [REDACTED]

[REDACTED]

[REDACTED]

175. On December 19, 2018, GSK announced the GSK/Pfizer JV. Public reports identified Hite as GSK’s “lead adviser” on the GSK/Pfizer JV. The transaction was described as a “megadeal.”

176. Tesaro did not disclose Citi’s and Hite’s lead advisory work for GSK on the GSK/Pfizer JV in advance of the January 18, 2019 expiration of GSK’s tender offer for Tesaro shares.

The Bankers Use Case Projections to Negate the LRP

177. As noted above, CFO Pearson explained at the November 8, 2018 Board meeting that two alternate sets of projections, Case A and Case B, would be used to analyze the Acquisition. Pearson distinguished both cases from the LRP— Tesaro’s actual operating plan. Unlike the November 2018 revision to the LRP, Case A (the supposed base case) [REDACTED]

[REDACTED]

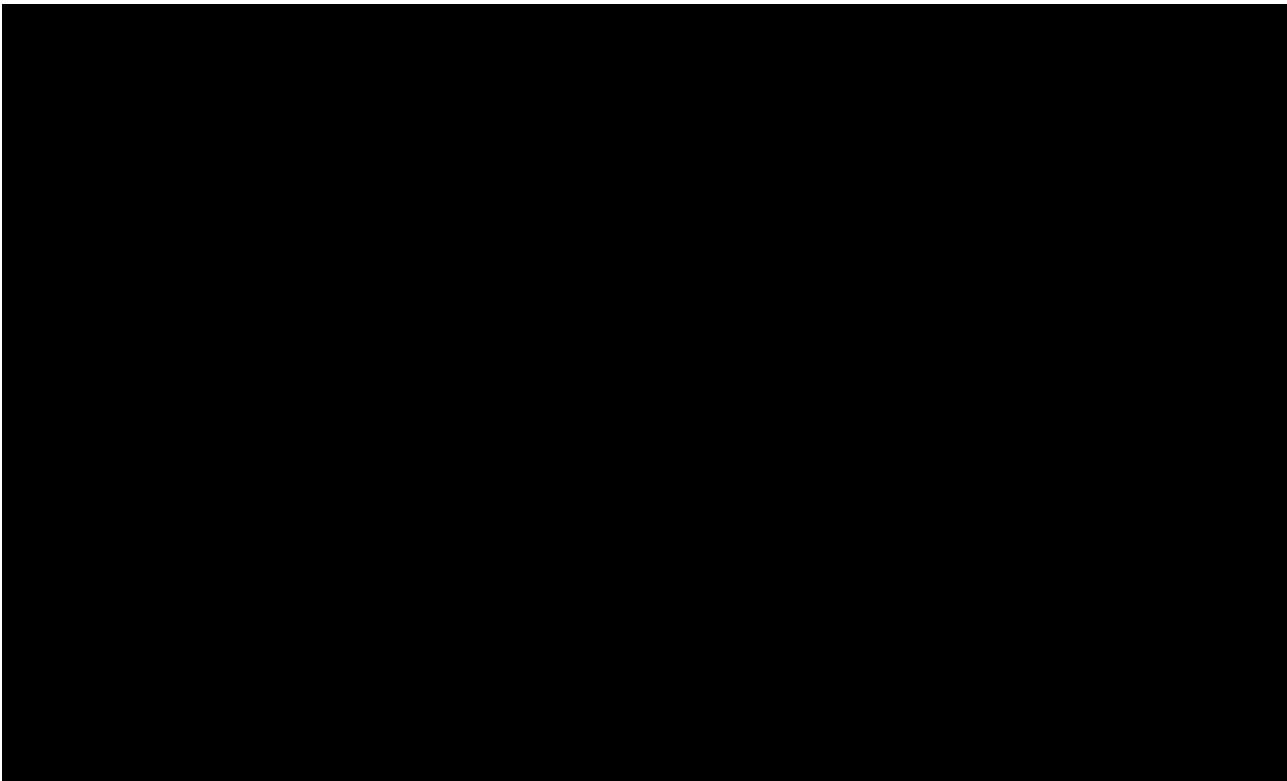
[REDACTED]

[REDACTED]



178.





179. [Redacted]

[Redacted]

[Redacted]

180. Citi assumed that Case A would require \$855 million in financing, and that Case B would require \$1.19 billion in financing. The discrepancy was due to less product development in Case B, which would generate less revenue.

181. Citi assumed for the Case A and Case B projections that Tesaro would issue a convertible note in 2018, and access the capital markets for follow on equity offerings in 2019 and 2020. These assumptions conflicted with the pending financing process and with management's statements to the market. Citi's

assumptions reflected the imperative from NEA that Tesaro not enter into any financing transaction that jeopardized the ability of the Board to sell Tesaro to a third party.

182. Citi and Centerview presented preliminary valuation analyses on November 8, 2018 of the Case A and Case B projections, [REDACTED] By using the bottom of Case B as a low end and the top of Case A as a high end, Citi generated incredibly wide valuation ranges: [REDACTED] per share using a DCF, and [REDACTED] using a sum-of-the-parts analysis (“SOTP”). Citi’s DCF ranges were [REDACTED] for Case A and [REDACTED] for Case B. Centerview derived DCF/SOTP ranges of [REDACTED] for Case A and [REDACTED] for Case B. Had Citi and Centerview valued the November 2018 revision to the current LRP, instead of Case A or Case B, they could not have justified the Acquisition price.

183. Centerview valued the then-current [REDACTED]
[REDACTED] Citi valued the
[REDACTED]
Citi valued the [REDACTED]
[REDACTED]

184. In their ultimate fairness opinion analyses, Citi's DCF values were [REDACTED] \$107.00 for Case A and \$46.38-[REDACTED] for Case B. Centerview's final DCF was \$79.45-\$95.85 for Case A and \$51.95-\$63.95 for Case B. Neither Citi nor Centerview provided any ultimate assessment of the [REDACTED]

Tesaro Issues a Misleading Schedule 14D-9

185. At the December 2, 2018 Board meeting, the Board adopted resolutions under which the Company's officers were authorized and directed to prepare, execute, and file with the SEC a Solicitation/Recommendation Statement on Schedule 14D-9 as well as "any and all amendments and supplements to Schedule 14D-9 ... and to take any and all such further action in connection therewith as any Authorized Officer may deem necessary or appropriate." The books and records produced to Plaintiff in response to his demand do not reflect any further involvement by the Board (other than the Officer Defendants) in the preparation, filing, and dissemination of the 14D-9.

186. On December 13, 2018, the Board approved a further refined version of the 2019 LRP. The minutes designate the 2019 LRP as the AOP for 2019. The Board also approved Tesaro's Short Term Incentive Plan, which suggest that management's compensation was tied to the 2019 AOP.

187. Tesaro filed its 14D-9 with the SEC on December 14, 2018. The 14D-9 states that the Board unanimously recommended that the Company's stockholders tender their shares. Defendant Moulder signed the 14D-9.

188. The 14D-9 (i) failed to disclose Tesaro's LRP projections and misleadingly suggested that the Case A and Case B projections were actually Tesaro's LRP; (ii) misled stockholders about Citi's and Hite's conflicts of interest; (iii) misled stockholders by failing to disclose valuations of [REDACTED] [REDACTED] transaction; and (iv) misled stockholders by failing to disclose Mott and NEA's unique, non-ratable interests in causing a sale of Tesaro before year-end 2018.

A. The LRP Projections

189. The 14D-9 did not disclose the LRP projections, as approved by the Board on November 7, 2018, before the Board agreed to the Acquisition, and then confirmed as Tesaro's actual operating plan on December 13, 2018, after the Board agreed to the Acquisition and the day before the 14D-9 was issued.

190. Neither the Case A nor the Case B projections were the Company's actual operating plan. Tesaro management intended to operate the Company inconsistently with both the Case A and Case B projections. The Board knew that and approved a much different operating plan.

191. The 14D-9 misleadingly suggested that the Case A and Case B projections were an evolution of the LRP:

*In connection with its annual preparation of the Company's long-range plan, the Company's management prepared unaudited non-public prospective financial projections for the Company as a stand-alone company, without giving effect to the Merger, and adjusted for the probability of success of each Company product. **These prospective financial projections were prepared and updated by the Company's management, and reviewed and discussed with the Company Board, from the summer of 2018 to November 2018.** The Company Board used these prospective financial projections to assist in its decision-making process in determining to accept [GSK's] proposal to acquire the Company and were used by the Company's financial advisors in their respective opinions described in "Item 4. The Solicitation or Recommendation—Opinions of the Financial Advisors to the Company Board," which are filed as Annex A and Annex B to this Schedule 14D-9, respectively, and incorporated herein by reference, and certain portions of the prospective financial information were provided to Parent and certain of the other companies with whom the Company engaged in strategic discussions. **We refer to the information in this section generally as the "Forecasts", the cash-flow projections in the chart below labeled "Case A," the "Case A Forecasts," the cash-flow projections in the chart below labeled "Case B," the "Case B Forecasts," and the cash-flow projections in the chart listing products and product candidates, the "Product-Level Forecasts."***

192. Defendants amplified this misrepresentation by stating that the Case A projections were “optimistic,” even though [REDACTED]

[REDACTED]

[REDACTED]

B. Citi's Conflicts of Interest

193. The 14D-9 failed to disclose that in June 2018, Hite [REDACTED]

[REDACTED]

[REDACTED]

194. The 14D-9 omitted the fact, revealed in Citi's relationship disclosure memorandum to the Board, that [REDACTED]

[REDACTED]

[REDACTED]

195. The 14D-9 omitted the fact that Citi's relationship disclosure memorandum to the Board misleadingly stated that [REDACTED]

[REDACTED]

[REDACTED]

196. The 14D-9 omitted the fact, concealed from the Board, that Hite was acting as GSK's lead advisor on the GSK/Pfizer JV throughout Citi's solicitation of interest from GSK, throughout Citi's price negotiations against GSK, and throughout Citi's financial advisory work on behalf of Tesaro.

197. The 14D-9 omitted disclosing the fee Citi stood to receive from GSK for Citi's work on the GSK/Pfizer.

198. If the above facts had been disclosed, Tesaro's stockholders would have had serious reason to question (i) whether Citi was acting in the best interests of Tesaro, (ii) whether Citi was favoring a sale to GSK over all other alternatives, (iii) whether Citi was favoring GSK in the price negotiations, and (iv) whether any Tesaro officers or directors were working with Citi to engineer a near-term sale to GSK for ulterior, personal reasons.

C. Valuations of the [REDACTED]

199. Tesaro expended significant time and resources negotiating the [REDACTED] transaction. Both were in near final form when evaluated by Citi and Centerview on November 8, 2018.

200. Centerview and Citi both created preliminary valuation ranges for the [REDACTED] transaction at that time. The 14D-9, however, omitted these valuations and concealed the fact that they even existed.

201. The fact that Centerview and Citi had performed such valuation work was material. Had stockholders been informed of Tesaro's options to finance its LRP, they may have chosen to remain Tesaro stockholders.

D. Mott and NEA's Interests in Selling Tesaro before Year-End 2018

202. The 14D-9 did not disclose Mott and NEA's unique interests in causing a sale of Tesaro before year-end 2018.

203. The fact Mott and NEA had a unique interest in selling Tesaro before year-end 2018 would have been material to Tesaro's stockholders as it would have raised questions about, among other things, the rushed single-bidder process.

The Merger Agreement Unreasonably Impeded Potential Bidders

204. The Board purportedly considered, as a factor in support of the Acquisition, "that the provisions of the Merger Agreement permit the Company Board in certain circumstances to terminate the Merger Agreement in order to enter into a definitive agreement with respect to an unsolicited superior proposal." In reality, however, the Merger Agreement precluded any realistic opportunity for alternative bids for the Company.

205. The Merger Agreement prohibited Tesaro from soliciting bids.

206. The Acquisition was structured as a tender offer and second-step merger, with the tender offer to be open for only twenty business days, including the weeks of Christmas and New Year's Day. GSK's tender offer expired on January 18, 2019. 25.7% of the Company's common stock was tendered in favor of the Acquisition under terms of tender and support agreements GSK had entered into with NEA, Kleiner Perkins, Moulder, and Hedley.

207. The Board could not enter into any agreement with a potential topping bidder (other than a confidentiality agreement) unless it first determined that the

other party had submitted a “Superior Proposal.” A “Superior Proposal” was defined in part as a written proposal “that is not subject to any due diligence investigation.”

208. The Merger Agreement provided GSK with a four-business-day match right, with unlimited subsequent two-business-day matches, following notice to GSK of the Board’s determination that the alternative bid constitutes a Superior Proposal. If another party navigated this gauntlet, it had to pay a termination fee that was over 3.9% of the equity value of the Acquisition. (The \$162.5 million termination fee divided by (\$75 per share * 55,231,566 shares outstanding) equals 3.923%.)

209. The combination of requirements meant that a potential competing bidder had to make a very expensive bet in a very short timeframe based on limited information. By contrast, GSK, the sole bidder in a non-public sale process, had been receiving confidential information from Tesaro about the prospects of Tesaro’s drug pipeline for nearly four months by the time the Merger Agreement was executed. The disparity of information and economic costs facing a potential bidder made it virtually impossible for a higher bid to emerge.

The PRIMA Trial Pays Off for GSK

210. GSK touted the possibilities of Zejula when announcing the Acquisition on December 3, 2018. Within months, upon the results of the PRIMA trial, GSK was gloating over the Acquisition.

211. In July 2019, GSK announced positive data from the PRIMA trial about the use of Zejula in first line ovarian cancer. That announcement led skeptical analysts to conclude that GSK had been vindicated in buying Tesaro. HSBC stated in an analyst report: “No details, so scrutiny is required, but if it stacks up (we assume so) peak sales increase [for Zejula] from USD2bn to USD3bn.”

212. On September 30, 2019, GSK announced further information from the PRIMA clinical trial and claimed that GSK had obtained insight about Zejula’s prospects during due diligence:

Zejula is uniquely positioned to help patients in first-line maintenance. We’ve demonstrated a PFS benefit in all-comers, including the HIV proficient population ***Early data, which got our attention in due diligence***, as Hal has outlined, ***suggested Zejula has a unique PK properties***, which mean it has a greater tumor brain penetration, which could account for these effects.

213. In an earnings call on February 6, 2020, GSK summarized what had been learned about Zejula in 2019:

So, *to summarize the PRIMA data demonstrates the value of monotherapy of Zejula for all women with ovarian cancer when given in the frontline setting as maintenance therapy.* We have submitted these data in the US, having been chosen to participate in the FDA's real time oncology review pilot program. In 2019, we also received approval for Zejula as treatment in late-stage ovarian cancer based on the QUADRA data, and enrollment started for the pivotal MOONSTONE study investigating Zejula plus dostarlimab for platinum resistant ovarian cancer patients, which will actually read out in 2021. Together, we believe these data will help establish Zejula as the most compelling PARP inhibitor for women with ovarian cancer. In addition, given Zejula's unique PK profile, including its ability to penetrate the blood-brain barrier, we plan to initiate one or two pivotal studies in patients with lung and/or breast cancer by year-end.

CLASS ACTION ALLEGATIONS

214. Plaintiff brings this action individually and on behalf of a class of all former public stockholders of Tesaro as of the closing of the Acquisition (the "Class"). Excluded from the Class are defendants and any directors or officers of Tesaro, as well as the members of their immediate families, and any entity in which any of them has a controlling interest, and the legal representatives, heirs, successors, or assigns of any such excluded party.

215. The members of the Class are so numerous that joinder of all members is impracticable.

216. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class were injured or legally damaged as a result of defendants' wrongful conduct. Plaintiff will fairly and adequately protect

the interests of the members of the Class and has retained counsel competent and experienced in class action and securities litigation.

217. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual members of the Class may be relatively small, albeit significant, the expense and burden of individual litigation makes it virtually impossible for plaintiff and members of the Class individually to seek redress for the conduct alleged. Plaintiff knows of no difficulty to be encountered in the management of this action which would preclude its maintenance as a class action. Relief concerning plaintiff's rights under the laws involved herein and with respect to the Class as a whole would be appropriate.

218. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are whether all or any subset of the director and officer defendants breached their fiduciary duties to the Class, whether all or any subset of the other defendants aided and abetted that breach of fiduciary duties and whether and to what extent members of the Class suffered damages on account of that breach of fiduciary duties and aiding and abetting thereof.

219. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Such inconsistent or varying adjudications would establish incompatible standards of conduct for Defendants and/or would, as a practical matter, be dispositive of the interests of the other Class members not party to the adjudications or substantially impair or impede their ability to protect their interests. In addition, Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final equitable or declaratory relief with respect to the Class as a whole.

COUNT I

Breach of Fiduciary Duty Against the Officer Defendants

220. Plaintiff repeats and realleges each allegation set forth herein.

221. The Officer Defendants, as officers, owed the Company and its stockholders the fiduciary duties of due care, loyalty, and good faith.

222. The Officer Defendants were each personally incentivized to arrange a near-term sale of Tesaro, without regard for value-maximizing alternatives. They engineered the Acquisition without a formal sale process, without a financial analysis of the LRP, without a proper comparison to financing alternatives, with a conflicted lead financial advisor, with unreasonable deal protections, without full disclosure to the Board, and without full disclosure to the public stockholders of

Tesaro. Moulder certified that the information in Tesaro's 14D-9 is true, complete and correct.

223. As a result of the actions of the Officer Defendants, Plaintiff and the Class have been bought out in an underpriced Acquisition following an unreasonable sale process.

COUNT II
Breach of Fiduciary Duty Against the Director Defendants

224. Plaintiff repeats and realleges each allegation set forth herein

225. The Director Defendants, as directors, owed the Company and its stockholders the fiduciary duties of due care, loyalty, and good faith.

226. The Director Defendants were each disabled by conflicts of interest and/or lack of independence from Mott and NEA.

227. The Director Defendants approved of the Acquisition without a formal sale process, without a financial analysis of the LRP, without a proper comparison to financing alternatives, with a conflicted lead financial advisor, with unreasonable deal protections, and without full disclosure to the public stockholders of Tesaro.

228. As a result of the actions of the Director Defendants, Plaintiff and the Class have been bought out in an underpriced Acquisition following an unreasonable sale process.

COUNT III

Aiding and Abetting Breach of Fiduciary Duty Against the NEA Defendants

229. Plaintiff repeats and realleges each allegation set forth herein.

230. The general partners of NEA had powerful, personal incentives to facilitate a near-term sale of the Company to GSK in late 2018. Mott, on behalf of the NEA Defendants, used his personal and professional connections to engineer the Acquisition without a formal sale process, without a financial analysis of the LRP, without a proper comparison to financing alternatives, with a conflicted lead financial advisor, with unreasonable deal protections, without full disclosure to the Board, and without full disclosure to the public stockholders of Tesaro.

231. As a result of the actions of Mott on behalf of the NEA Defendants, Plaintiff and the Class have been bought out in an underpriced Acquisition following an unreasonable sale process.

COUNT IV

Aiding and Abetting Breach of Fiduciary Duty Against the Citi Defendants

232. Plaintiff repeats and realleges each allegation set forth herein.

233. The Citi Defendants had powerful motives to facilitate a near-term sale of the Company to GSK. Citi had a deep, ongoing advisory relationship with GSK, including the soon-to-be-announced the GSK/Pfizer JV. Citi also stood to receive a \$44 million contingent fee from engineering the Acquisition.

234. Hite, on behalf of the Citi Defendants, worked with the Officer Defendants to facilitate a sale to GSK without a formal sale process and without full disclosure to the Board. The Citi Defendants funneled information to GSK, created bogus alternative case projections that did not reflect management's actual operating plan, and misled the Board and Tesaro's stockholders about Citi's conflicts and Tesaro's financial prospects.

235. As a result of the actions of the Citi Defendants, Plaintiff and the Class have been bought out in an underpriced Acquisition following an unreasonable sale process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on Plaintiff's own behalf and on behalf of the Class, prays for judgment as follows:

A. Declaring this action to be a class action under Court of Chancery Rule 23(a) and (b)(1) and (2) on behalf of the Class defined herein;

B. Declaring that the Officer Defendants and the Director Defendants breached their fiduciary duties and that the NEA Defendants and the Citi Defendants aided and abetted breaches of fiduciary duty;

C. Awarding Plaintiff and the other members of the Class damages, to include both compensatory and rescissory damages, in an amount which may be proven at trial, together with interest thereon;

D. Awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

E. Awarding such other and further relief as this Court may deem just and proper, including any extraordinary equitable relief as permitted by law or equity to attach, impound, or otherwise restrict defendants' assets to assure plaintiff has an effective remedy.

FRIEDLANDER & GORRIS, P.A.

/s/ Jeffrey M. Gorris

Joel Friedlander (Bar No. 3163)
Jeffrey M. Gorris (Bar No. 5012)
1201 N. Market Street, Suite 2200
Wilmington, DE 19801
(302) 573-3500

COOCH & TAYLOR, P.A.
R. Bruce McNew (Bar No. 967)
The Nemours Building
1007 N. Orange Street, Suite 1120
P.O. Box 1680
Wilmington, DE 19899-1680
(302) 984-3810

Attorneys for Plaintiff

OF COUNSEL:

ROBBINS GELLER RUDMAN
& DOWD LLP

Randall J. Baron
David Wissbroecker
655 West Broadway, Suite 1900
San Diego, CA 92101
(619) 231-1058

Christopher H. Lyons
414 Union Street, Suite 900
Nashville, TN 37219
(615) 244-2203

BRONSTEIN, GEWIRTZ
& GROSSMAN, LLC
Peretz Bronstein
60 East 42nd Street, Suite 4600
New York, New York 10165
(212) 697-6484

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