THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABBVIE INC.,

Plaintiff,

v.

GENMAB A/S; PROFOUNDBIO US CO.; PROFOUNDBIO (SUZHOU) CO., LTD.; TAE HAN; JULIA GAVRILYUK; and DOES 1-10,

Defendants.

Case No. 2:25-cv-00510-TL

DEFENDANTS' MOTION TO DISMISS

NOTE ON MOTION CALENDAR: August 15, 2025

ORAL ARGUMENT REQUESTED

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Defendants Genmab A/S ("Genmab"), ProfoundBio US Co. and ProfoundBio (Suzhou) Co., Ltd. (collectively, "ProfoundBio"), Dr. Tae Han, and Dr. Julia Gavrilyuk (collectively, "Defendants") respectively move pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff AbbVie Inc.'s ("AbbVie") Complaint in its entirety.

INTRODUCTION

The Complaint concocted by AbbVie is nothing more than an improper attempt to stop competition against an AbbVie product and take a potentially life-saving cancer medication away from the public. Even taking AbbVie's allegations as true solely for purposes of this Motion, the case should be dismissed. AbbVie's allegations fail at the starting gate, as its trade secret claims are time-barred. And even if AbbVie could somehow overcome the statute of limitations issue, the Complaint reveals that AbbVie has no protectable trade secret. It also makes clear that AbbVie is stretching misappropriation theories beyond all plausibility in an attempt to rope in a broader set of defendants and stop development of a promising new cancer drug. Each of those bases warrant dismissal.

The yarn spun in the Complaint is as follows: In 2016, AbbVie acquired Stemcentrx, a company that had been working on certain anti-cancer therapies within a class of medications called antibody-drug conjugates ("ADC"). Compl. ¶ 25. ADCs have three main components: an antibody, a payload (toxin), and a linker. *Id.* ¶ 52. AbbVie/Stemcentrx worked to develop what AbbVie now refers to as "soluble ADC linker technology" ("Soluble Linker Program"), research that included preparation of the so-called "Sugar Scaffold features." *Id.* ¶¶ 57-58. As the Complaint acknowledges, however, that development work ended by April 2018. *Id.* ¶ 57. The work apparently resulted in failure—tellingly, AbbVie does not allege any ADC incorporating the "Sugar Scaffold features" ever found its way into a commercialized AbbVie product, or even entered clinical trials in humans.

According to AbbVie, "[n]o later than July 2021," ProfoundBio—a small clinical-stage biotechnology company—"began to *advertise to the world* that it had developed a '*[n]ext-*

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generation drug linker technology platform' that was 'being developed by industry renowned ADC experts.'" *Id.* ¶ 10 (emphases added). One of those "ADC experts" was Dr. Han, who, according to the Complaint, was a former AbbVie employee and part of AbbVie's ADC program. *See id.* ¶¶ 5, 60, 112; *id.*, Ex. D at 2.

Just five months later, on December 1, 2021, Dr. Gavrilyuk—also a former AbbVie employee, and who allegedly was involved in AbbVie's Soluble Linker Program and had knowledge of the purported AbbVie trade secrets, *id.* ¶¶ 6, 61—was "listed as a coauthor" with "ProfoundBio employees on an abstract and poster presentation given at the AACR-NCI-EORTC Virtual International Conference." *Id.* ¶ 137; *id.*, Ex. N. The title of that abstract and poster presentation was "*Novel hydrophilic drug linkers* enable exatecan-based antibody-drug conjugates with promising physiochemical properties and in vivo activity," and it contained information about the types of linkers ProfoundBio was working on—information that aligns with AbbVie's own description of its alleged trade secrets. *Id.*, Ex. N at 2-3 (emphasis added); *see also id.* ¶ 69; *id.*, Ex. J at [0152]. Indeed, AbbVie acknowledges that the abstract and poster presentation "relate[] to the trade secrets at issue here." *Id.* ¶ 42.

Despite two former AbbVie employees publishing such information less than a year after Dr. Gavrilyuk allegedly left AbbVie, AbbVie did nothing. Ironically, AbbVie now claims that far less informative facts should have put Genmab (which, unlike AbbVie, would not have been familiar with AbbVie's purported trade secrets) on notice that trade secrets had been misappropriated. *See id.* ¶¶ 126, 146, 178, 180, 194-95, 228.

In January 2023, ProfoundBio published a patent application that supposedly included AbbVie's alleged "Sugar Scaffold features" trade secrets. *See id.* ¶¶ 24, 119-21. Despite the publication of its alleged trade secrets in a patent application naming two former AbbVie employees—Drs. Gavrilyuk and Han, *see id.* ¶¶ 24-25, 132—AbbVie again did nothing.

Then, in late 2023—more than five years after AbbVie apparently stopped any development work on its "Sugar Scaffold features"—AbbVie paid over $10 billion to acquire a

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company called ImmunoGen and its ELAHERE® ADC, which was FDA-approved for the treatment of certain types of ovarian, fallopian tube, and primary peritoneal cancer. *Id.* ¶¶ 50, 57; *see AbbVie To Acquire ImmunoGen, Including Its Flagship Cancer Therapy Elahere® (mirvetuximab soravtansine-gynx), Expanding Solid Tumor Portfolio*, ABBVIE (Nov. 30, 2023), https://news.abbvie.com/2023-11-30-AbbVie-to-Acquire-ImmunoGen,-including-its-Flagship-Cancer-Therapy-ELAHERE-R-mirvetuximab-soravtansine-gynx-,-Expanding-Solid-Tumor-Portfolio. AbbVie describes ELAHERE® as "a first-in-class ADC targeting folate receptor alpha (FRα)" for treating the aforementioned cancers. Compl. ¶ 50. AbbVie nowhere alleges that ELAHERE® uses any "Sugar Scaffold features" trade secrets.

Several months later, AbbVie realized that its newly acquired multi-billion-dollar ELAHERE® product was at risk from competition. Specifically, in mid-2024, Genmab—an international biotechnology company that focuses on antibody-based therapeutics to treat cancer—acquired ProfoundBio, along with its ADC in clinical development called Rina-S, which also targets FRα. *See id.* ¶¶ 51, 175. AbbVie claims Rina-S poses a "direct competit[ive]" threat to ELAHERE®. *Id.* ¶ 51. While ELAHERE® supposedly is a "first-in-class" ADC for treating ovarian cancer and other FRα-expressing tumors, Rina-S has the potential to be the "[b]est-in-class" ADC for those indications. *Id.* ¶¶ 19, 51.

Desperate to protect its enormous investment in ELAHERE®, AbbVie apparently mined Genmab's public statements to try to gin up some way of preventing Rina-S from coming to market. *See* Compl., Exs. B-C, G-I (Genmab statements concerning the acquisition of ProfoundBio). The result of that exercise is this lawsuit, where AbbVie's entire case is premised on a structure that AbbVie acknowledges it abandoned years ago. *See id.* ¶ 57.

In short, AbbVie is attempting—after the fact—to put a trade secret label on insignificant, failed development work to try to eliminate competition to ELAHERE®. Indeed, despite multiple references to internal AbbVie documents concerning the so-called "Sugar Scaffold features," not once does the Complaint point to any AbbVie documents that actually referred to the "Sugar

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Scaffold features" as a "trade secret." And if there were any question about AbbVie's intentions here vis-à-vis ELAHERE®, one need look no further than AbbVie's requested relief, which seeks to stop development of Genmab's competing Rina-S product altogether. Compl. at 70 (item 6). (For clarity, Defendants dispute that AbbVie has any factual or legal basis to try to stop such development, but the Court need not resolve that issue for purposes of this Motion.)

The flawed premise for this lawsuit translates into flawed allegations in the Complaint. Even when taken as true for purposes of this Motion, the allegations fail as a matter of law, because they are time barred, allege theories of liability that are not legally cognizable, and fail to plausibly allege a cause of action.

- AbbVie's Defend Trade Secrets Act ("DTSA") claim (Count 1) is time barred. The Complaint alleges that, no later than December 1, 2021, ProfoundBio had "advertise[d] to the world" that it was working on novel hydrophilic ADC linkers, including by publishing and presenting information "related to the trade secrets at issue here" at an international cancer conference. Compl. ¶¶ 10, 42, 69, 137; *id.*, Exs. D, J at [0152], N. The Complaint also makes clear that it was publicly known at least by December 1, 2021, that such technology had been developed with the input of Dr. Han and Dr. Gavrilyuk, two former AbbVie employees allegedly involved in AbbVie's ADC program. *Id.* ¶¶ 5-6, 42, 137; *id.*, Exs. D, N. That information put AbbVie on inquiry notice of potential misappropriation of its alleged trade secrets. Because the DTSA places a three-year time limit on bringing a claim when "by the exercise of reasonable diligence [the alleged misappropriation] should have been discovered," 18 U.S.C. § 1836(d), AbbVie's DTSA claim is time barred. For similar reasons, Counts 2-5 and 8 are likewise time barred.
- Even if not time barred, AbbVie's DTSA claim should be dismissed because the Complaint fails to allege any act of misappropriation against multiple defendants. AbbVie performs gymnastics to try to tie the alleged actions of Dr. Gavrilyuk (who is alleged only to have provided "consulting services" to ProfoundBio, Compl. ¶ 247) to ProfoundBio and Dr.

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Han, and ultimately to Genmab. AbbVie makes that leap because, again, its purpose is to prevent competition against ELAHERE®, and to do so AbbVie needs to somehow pull Genmab and ProfoundBio into this lawsuit. In so doing, AbbVie resorts to theories of liability that are directly contradicted by its own allegations (*e.g.*, there is no vicarious liability for Dr. Gavrilyuk's alleged actions given that AbbVie admits that ProfoundBio "lack[ed] control over" her, *id.* ¶ 178); not cognizable (*e.g.*, conspiracy, *id.* ¶ 107); inadequately supported only by bare recitation of the legal standard; and not plausible because of AbbVie's own internally contradictory allegations.

- AbbVie also fails to allege that it has a protectable trade secret under the DTSA. The Complaint does not allege that AbbVie took reasonable protective measures for its purported trade secrets or that the supposed trade secrets had the requisite independent economic value at the time of the alleged misappropriation. To the contrary, and as detailed below, the Complaint sets forth a series of allegations that undermine AbbVie's ability to plausibly plead those required elements for trade secret protection. AbbVie also fails to provide the requisite specificity for a trade secret. Instead, stretching to try to cover Genmab's competing Rina-S product, AbbVie's supposed trade secrets are amorphous, vague, and undefined.
- The flaws in AbbVie's DTSA claim extend to its other counts. AbbVie's declaratory judgment claim (Count 2) fails to the extent it is based on AbbVie's DTSA claim. AbbVie's tortious interference and inducement of breach claims (Counts 3 and 4) against ProfoundBio and Dr. Han fail because AbbVie does not plausibly allege inducement of any kind.
- AbbVie's breach of contract claim against Dr. Han (Count 5), breach of contract claim against Dr. Gavrilyuk (Count 6), and breach of fiduciary duty claim against Dr. Gavrilyuk (Count 7) fail not only because of AbbVie's pleading failures with regard to the DTSA, but also because AbbVie ignores—and omits from its Complaint—relevant contract

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language and law that limits the scope of Dr. Han's and Dr. Gavrilyulk's purported obligations.

- Finally, AbbVie's unjust enrichment claim against ProfoundBio and Genmab (Count 8) is a square peg in a round hole. Washington law is clear that such a claim only applies where a plaintiff has conferred a benefit on a defendant, not where a defendant allegedly takes the benefit from the plaintiff. Because AbbVie's claims are based entirely on the alleged theft of trade secrets—and not AbbVie freely handing those alleged trade secrets over—the claim fails as a matter of law.

The Complaint should be dismissed.

BACKGROUND[1]

A. ADCs and Genmab's Rina-S ADC

Genmab is focused on developing innovative, therapeutic antibody-based products to transform the treatment of cancer and other serious diseases. This litigation involves Genmab's continued efforts to fight cancer with a new investigational medicine called rinatabart sesutecan ("Rina-S," also called "PRO1184"), which Genmab acquired in 2024 through its purchase of ProfoundBio. Compl. ¶¶ 10, 175.

ProfoundBio was founded by three scientists, Dr. Baiteng Zhao, Dr. Xiao Shang, and Dr. Tae Han. *Id.* ¶¶ 4, 26. Each of these individuals had extensive experience with ADCs at multiple pharmaceutical and biotechnology companies. *See id.*, Ex. D at 3-4. According to the Complaint, ProfoundBio at one point engaged Dr. Julia Gavrilyuk, a former AbbVie/Stemcentrx employee, as an independent contractor to provide "consulting services" to ProfoundBio. *Id.* ¶¶ 1, 247. As the Complaint acknowledges, Dr. Gavrilyuk was never a ProfoundBio employee. *Id.* ¶¶ 60, 114, 167.

[1] While Defendants provide additional context in this section based on publicly available facts, Defendants' arguments do not depend on such facts nor require the Court to judicially notice those facts to grant Defendants' Motion in full.

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Rina-S belongs to a class of medicines called ADCs, which are "cutting-edge cancer targeting agents" that are delivered directly to cancer cells. Compl. ¶ 51. As alleged in the Complaint, ADCs generally have three linked components: (1) "a monoclonal antibody (mAb) that binds selectively to the cancer target"; (2) "a drug payload, which is generally a toxin that destroys the cancer target"; and (3) "a chemical linker that connects the antibody and payload." *Id.* ¶ 52. Also as alleged in the Complaint, "[t]he three key components of ADCs"—*i.e.*, the antibody, the linker, and the payload—work together to seek out cancer cells and deliver anti-cancer drugs to destroy them. *Id.* ¶ 53. As the Complaint further alleges: "The antibody component specifically targets molecules often found on the surface of cancer cells called antigens and binds to the antigens. After binding, the ADC is brought inside the cell, where enzymes digest the antibody and the linker, releasing the anti-cancer payload in the cancer cell." *Id.*

ProfoundBio performed extensive testing on potential ADCs, which led to the development of Rina-S. Rina-S comprises a novel antibody that ProfoundBio invented and developed—and which AbbVie does not allege was derived from any AbbVie work—targeting a protein called FRα, which is often overexpressed in various types of cancers, such as ovarian cancer. *Id.* ¶¶ 19, 51. Rina-S also contains the drug payload exatecan—which AbbVie likewise does not allege is proprietary to AbbVie. *Id.* ¶¶ 12, 110, 119. Finally, to connect the antibody to the drug payload, Rina-S uses a linker that is called sesutecan when combined with the drug payload exatecan. *Id.* ¶¶ 73, 119. The Rina-S linker, which is the linker portion of the linker-drug combination PB038, is the focus of AbbVie's allegations. *Id.* ¶ 71. However, AbbVie does not allege that it conceived of the idea for the PB038 linker. That is because it did not.

As the Complaint acknowledges, Rina-S has received FDA "fast-track" designation and is now under clinical investigation as a "potential best-in-class treatment for ovarian cancer and other FRα-expressing tumors." *Id.* ¶ 19 (capitalization altered).

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B. AbbVie's Acquisitions of Stemcentrx and ImmunoGen

AbbVie has had a tumultuous history with ADCs. The Complaint states that, in 2016, AbbVie bought a company called Stemcentrx, Compl. ¶ 25, which AbbVie reported it acquired for a whopping $5.8 billion. *See AbbVie to Expand Oncology Presence Through Acquisition of Stemcentrx and its Novel, Late-Stage Rova-T Compound for Small Cell Lung Cancer*, ABBVIE (Apr. 28, 2016), https://news.abbvie.com/2016-04-28-AbbVie-to-Expand-Oncology-Presence-Through-Acquisition-of-Stemcentrx-and-its-Novel-Late-Stage-Rova-T-Compound-for-Small-Cell-Lung-Cancer. However, the Complaint elides the fact that Stemcentrx's key asset—an ADC called Rova-T that was being developed for small cell lung cancer—failed. AbbVie officially shut down development of Rova-T in August 2019. *See AbbVie Discontinues Rovalpituzumab Tesirine (Rova-T) Research and Development Program*, ABBVIE (Aug. 29, 2019), https://news.abbvie.com/2019-08-29-AbbVie-Discontinues-Rovalpituzumab-Tesirine-Rova-T-Research-and-Development-Program. That was nearly a year and a half after AbbVie/Stemcentrx stopped any development work on AbbVie's Soluble Linker Program or the purported "Sugar Scaffold features" in April 2018. Compl. ¶ 57. As observed in August 2019 in the preeminent journal *Science*, "AbbVie paid an awful lot of money for Stemcentrx, and in the end they got zilch, zero, zippity-doo-dah in return for nearly six billion dollars in cash." *The Last of Stemcentrx*, SCIENCE (Aug. 30, 2019), https://www.science.org/content/blog-post/last-stemcentrx.

Years later—in late 2023 according to the Complaint, Compl. ¶ 50—AbbVie purchased a company called ImmunoGen and its ELAHERE® ADC for the tidy sum of $10.1 billion. *See supra* pp. 9-10. ELAHERE® had already been developed by ImmunoGen into its "flagship ADC cancer therapy" and had received FDA approval in 2022 "for treating adult patients with FRα positive, platinum-resistant epithelial ovarian, fallopian tube, or primary peritoneal cancer, who have received one to three prior systemic treatment regimens." Compl. ¶ 50. AbbVie does not allege that ELAHERE® contains any "Sugar Scaffold features" because it does not. ELAHERE®

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is not approved for small cell lung cancer, the indication for which Rova-T was being developed. *See id.*

In a transparent attempt to prevent competition against its extraordinarily expensive acquisition of ELAHERE®, *see* Compl. ¶¶ 10, 51, 87, 146, AbbVie now tries to place a post-hoc trade secret label on its earlier failed work from its misbegotten acquisition of Stemcentrx and concocts this trade secret misappropriation case.

LEGAL STANDARD

To survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). However, "[s]ufficient factual matter" necessary to avoid dismissal does not include allegations that are conclusory or speculative or that require the Court to draw unreasonable or unwarranted factual inferences. *Manufactured Home Communities, Inc. v. City San Jose*, 420 F.3d 1022, 1035 (9th Cir. 2005). Further, "[w]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility," and fails to state a claim. *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted).

Similarly, a court "need not accept or attempt to reconcile inconsistent or contradictory factual allegations." *Redcell Corp. v. A.J. Trucco, Inc.*, 2022 WL 683007, at *5, *8 (S.D.N.Y. Mar. 8, 2022); *see also Hover v. Seattle-First Nat'l Bank*, 2019 WL 2103130, at *1, *2 (W.D. Wash. May 14, 2019); *Nguyen v. Bank Am., NA*, 563 F. App'x 558 (9th Cir. 2014). Indeed, inconsistencies in a complaint "highlight the implausibility of [a] plaintiff's allegations" and warrant dismissal. *McFarland v. APP Pharms., LLC*, 2011 WL 2413797, at *3 (W.D. Wash. June 13, 2011); *see also Orellana v. Mayorkas*, 6 F.4th 1034, 1043-44 (9th Cir. 2021) (where plaintiff's own allegations undermine its theory of the case, it renders the complaint implausible); *id.* at 1043 ("[W]here allegations in the complaint were internally inconsistent, the allegations supported 'at best—a "possible" basis to believe plaintiffs' theory, not a "plausible" one.'" (alteration omitted)

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(quoting *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 999 & n.8 (9th Cir. 2014)).

In evaluating a motion to dismiss, courts may "consider documents referenced . . . in the complaint" and "documents that form the basis of the plaintiff's claim," and may take judicial notice of certain public material not contained within the complaint. *Puget Soundkeeper All. v. Total Terminals Int'l, LLC*, 371 F. Supp. 3d 857, 861 (W.D. Wash. 2019); *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam); *Logg v. TIG Ins. Co.*, 2022 WL 3042277, at *3 (W.D. Wash. Aug. 2, 2022); *see also United States v. Ritchie*, 342 F.3d 903, 908-09 (9th Cir. 2003). The Court may take judicial notice of matters of public record, including corporate press releases and other information on a party's website. *See Docklight Brands Inc. v. Tilray Inc.*, 2022 WL 2718125, at *6 (W.D. Wash. May 27, 2022) (screenshot from defendant's website); *City of Roseville Emps.' Retirement Sys. v. Sterling Fin. Corp.*, 963 F. Supp. 2d 1092, 1107 (E.D. Wash. 2013) (public SEC filings, corporate press releases, and documented accounting rules).

ARGUMENT

I. ABBVIE'S DTSA CLAIM IS TIME BARRED (COUNT 1)

The DTSA provides that an action for misappropriation "may not be commenced later than 3 years after the date on which the misappropriation with respect to which the action would relate is discovered or *by the exercise of reasonable diligence should have been discovered*. For purposes of this section, a continuing misappropriation constitutes a single claim of misappropriation." 18 U.S.C. § 1836(d) (emphasis added). Where a plaintiff suspects or should have reason to suspect misappropriation, the plaintiff is said to be on inquiry notice of a potential claim for misappropriation, in which case, the plaintiff is charged with a duty to exercise reasonable diligence to discover facts essential to that claim, and the statute of limitations on the claim begins to run. *See PTP OneClick, LLC v. Avalara, Inc.*, 2020 WL 4729174, at *6, *11-12 (W.D. Wash. May 27, 2020) (denying DTSA claim as time barred based on inquiry notice, explaining that "neither conclusive proof of wrongful conduct nor a smoking gun is required to commence the

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limitations period"); *Alta Devices, Inc. v. LG Elecs., Inc.*, 2019 WL 1924992, at *14 (N.D. Cal. Apr. 30, 2019) (dismissing DTSA claim, finding that breach of a confidentiality agreement provided inquiry notice of trade secret misappropriation more than three years before plaintiff filed suit); *P2i Ltd. v. Favored Tech USA Corp.*, 2024 WL 4294652, at *6 (N.D. Cal. Sept. 24, 2024) (dismissing DTSA claim as time-barred, finding plaintiff was on inquiry notice more than three years before it filed suit); *My Mavens, LLC v. Grubhub, Inc.*, 2023 WL 5237519, at *36 (S.D.N.Y. Aug. 14, 2023) (denying DTSA claim as time barred, explaining that plaintiff need only constructive not actual notice, "i.e., had Plaintiff exercised due diligence, it would have discovered the purported misappropriation").

AbbVie alleges that Dr. Han and Dr. Gavrilyuk are former AbbVie employees, the latter of whom left employment at AbbVie in December 2020, Compl. ¶¶ 4, 60, 114-15, that Dr. Han founded ProfoundBio, "an ADC-focused startup," and that Dr. Gavrilyuk, who "was well-versed in AbbVie's trade secret Sugar Scaffold features and related designs," performed consulting work for ProfoundBio in 2021, *id.* ¶¶ 4-6. The Complaint then admits that, "[n]o later than July 2021, ProfoundBio began to *advertise to the world* that it had developed a '[n]ext-generation *drug linker technology* platform' that was 'being developed by industry-renowned ADC experts,'" including Dr. Han. *Id.* ¶ 10 (emphasis added); *id.*, Ex. D.

AbbVie further admits that, five months later, on December 1, 2021, Dr. Gavrilyuk was "listed as a co-author" with Dr. Han and other ProfoundBio employees "on an abstract and poster presentation" about novel "hydrophilic drug linkers" in ADC technology at an international cancer conference (AACR-NCI-EORTC). *Id.* ¶ 137; *id.*, Ex. N. The publication explains that these novel hydrophilic drug linkers were made with "polyhydroxyl" groups—which as reflected in the Complaint include disaccharides—to improve hydrophilicity. *See id.*, Exs. N, Ex. J at [0152] (disclosing that polyhydroxyl groups include disaccharides). That aligns with AbbVie's own description of the alleged trade secrets in the Complaint: "AbbVie's misappropriated ADC linker trade secrets relate to the use of linkers incorporating disaccharide moieties to improve

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hydrophilicity of ADC structures." *Id.* ¶ 69. Indeed, AbbVie itself connects the abstract and poster presentation to its purported trade secrets, alleging that Dr. Gavrilyuk "coauthor[ed] abstracts and poster presentations with ProfoundBio employees that *related to the trade secrets at issue here*." *Id.* ¶ 42 (emphasis added).

According to the Complaint itself then, AbbVie was plainly on inquiry notice by December 1, 2021 of the alleged trade secret misappropriation. Its own allegations make clear that, no later than December 1, 2021, AbbVie's two former employees—Dr. Han and Dr. Gavrilyuk, both of whom are alleged to have worked on ADCs while at AbbVie, and the latter of whom allegedly had knowledge of AbbVie's purported trade secrets—were working for (Dr. Han) or "collaborating" with (Dr. Gavrilyuk) ProfoundBio, a biotechnology company focused on ADCs, and were involved in ProfoundBio's development of technology that AbbVie claims uses its "Sugar Scaffold features" trade secrets. Compl. ¶¶ 4-6, 25-26, 60-64, 112, 121-22, 223, 227, 247. Despite all of this, AbbVie did nothing.

These 2021 events, which put AbbVie on inquiry notice, occurred more than three years before AbbVie commenced this lawsuit in March 2025 and therefore bar AbbVie's claims. *See RoboticVISIONTech, Inc. v. ABB Inc.*, 726 F. Supp. 3d 364, 370-72 (D. Del. 2024) (dismissing DTSA claim as time barred, finding plaintiff was aware of "red flag[s]" that should have prompted plaintiff to investigate suspected misappropriation when defendant "hired away . . . one of the main architects of [plaintiff's] product" and defendant's subsequent product was similar to plaintiff's (citation omitted)); *PTP OneClick*, 2020 WL 4729174, at *6; *see also MFE Enters., Inc. v. Alphanetics*, 2024 WL 5201216, at *6 (N.D. Okla. Dec. 23, 2024) (denying preliminary injunction for DTSA allegations, finding plaintiff failed to demonstrate a likelihood of overcoming defendant's statute of limitations defense because of publicly available information that "a reasonably diligent person" could have discovered over three years before plaintiff filed suit).

Indeed, AbbVie now claims that far less informative facts should have put Genmab (which, unlike AbbVie, would not have been familiar with AbbVie's purported trade secrets) on notice

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that trade secrets had been misappropriated when Genmab acquired ProfoundBio in mid-2024, *see* Compl. ¶¶ 126, 146, 178, 180, 194-95, 228, and yet AbbVie—actually knowing what those alleged trade secrets are—did nothing in light of the information being presented and published to the world by Dr. Han, Dr. Gavrilyuk, and ProfoundBio.

Relying on AbbVie's own Complaint, AbbVie's DTSA claim is time barred. 18 U.S.C. § 1836(d). Because amendment would be futile, AbbVie's DTSA claim should be dismissed with prejudice. *See Alta Devices, Inc.*, 2019 WL 1924992, at *14 (declining to grant leave to amend in a trade secret misappropriation case when the claim was time barred); *Moddha Interactive, Inc. v. Philips Elec. N. Am. Corp.*, 92 F. Supp. 3d 982, 986, 992–94 (D. Haw. 2015) (same).

II. ABBVIE FAILS TO PLEAD A CLAIM UNDER THE DTSA (COUNT 1)

AbbVie's DTSA claim also fails because AbbVie did not plead the required elements for such a claim. Specifically, AbbVie fails to plead misappropriation, *Bombardier Inc. v. Mitsubishi Aircraft Corp.*, 383 F. Supp. 3d 1169, 1178 (W.D. Wash. 2019); 18 U.S.C. § 1839(5); and fails to plead facts to support a cognizable trade secret, *Blackstone Int'l, Ltd. v. E2 Ltd.*, 2022 WL 16553034, at *8 (W.D. Wash. Oct. 31, 2022).

A. AbbVie Fails To Plead Any Indirect Act of Misappropriation by Genmab, ProfoundBio, or Dr. Han

AbbVie's Complaint focuses on an alleged act of trade secret misappropriation by Dr. Gavrilyuk, *see* Compl. ¶¶ 79-80, 82, 107, 111, 192-93, but even if its claim as to Dr. Gavrilyuk were adequately pled (which it is not, as discussed herein), the Complaint falls far short of ascribing liability to all Defendants. AbbVie's theories of indirect acts of misappropriation fail not only because they have been inadequately pled, but also because they are foreclosed as a matter of law or are implausible.

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1. AbbVie Fails To Plead Any Basis for Vicarious Liability Against Genmab, ProfoundBio, or Dr. Han

AbbVie fails to plausibly allege any basis for vicarious liability on the part of Genmab or ProfoundBio—or by extension Dr. Han due to his affiliation with ProfoundBio—because, as reflected in the Complaint, Dr. Gavrilyuk was never employed by or an agent of any of those entities. A company may be held vicariously liable for the misappropriation of an individual *only* if that individual was the company's employee or agent. *See Bombardier Inc.*, 383 F. Supp. 3d at 1188; *see also Stout v. Warren*, 290 P.3d 972, 976 (Wash. 2012) (en banc) (in contrast to an "agent," a principal is not liable for injuries caused by an "independent contractor").

Here, AbbVie never specifically alleges that Dr. Gavrilyuk was an employee of Genmab, ProfoundBio, or Dr. Han (and in fact she never was). Rather, the Complaint alleges that Dr. Gavrilyuk "provided *consulting services* to ProfoundBio and Dr. Han" during the allegedly relevant timeframe in 2021, years before the Genmab acquisition. Compl. ¶¶ 7, 115, 247 (emphasis added). The Complaint further alleges that, rather than being employed by ProfoundBio or Genmab, Dr. Gavrilyuk was working full time elsewhere, specifically at Deep Valley Labs. *Id.* ¶¶ 60, 114, 167. AbbVie's generic catch-all allegation that "each Defendant was the *agent*, servant, *employee*, joint venture, partner, subsidiary, and/or co-conspirator of each other Defendant," *id.* ¶ 28 (emphasis added), does not suffice to establish an agency or an employment relationship between Dr. Gavrilyuk and Genmab, ProfoundBio, or Dr. Han. *See In re Cray Inc.*, 431 F. Supp. 2d 1114, 1121 n.5, 1126-27 (W.D. Wash. 2006) ("conclusory" and "generic" allegations are insufficient to survive a motion to dismiss).

Nor does the Complaint specifically allege that Dr. Gavrilyuk was an agent of Genmab, ProfoundBio, or Dr. Han. On the contrary, the Complaint alleges facts that rule out the existence of any agency relationship. To determine whether an individual is an agent as opposed to an independent contractor, "the most crucial factor is the [business's] right to *control* the details of the [individual's] work.'" *Wilcox v. Basehore*, 389 P.3d 531, 541 (Wash. 2017) (emphasis added)

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(citation omitted); *see id.* at 540 ("An independent contractor, by definition, is not under the control of the party for whom he works."). Here, AbbVie admits that ProfoundBio did not have control over Dr. Gavrilyuk, asserting that ProfoundBio "appear[ed] to *lack control over*" Dr. Gavrilyuk. *See* Compl. ¶ 178 (emphasis added). That is consistent with AbbVie's failure to allege any facts that would support a principal-agent relationship, *i.e.*, that Genmab, ProfoundBio, or Dr. Han had any right to control Dr. Gavrilyuk's actions. This lack of control—which AbbVie's allegations acknowledge—forecloses, as a matter of law, a principal-agent relationship between ProfoundBio and Dr. Gavrilyuk, and, as such, also forecloses any vicarious liability of ProfoundBio. And if ProfoundBio lacked control over Dr. Gavrilyuk, then the same is necessarily true for (1) Dr. Han, who AbbVie alleges was president and an officer of ProfoundBio, *id.* ¶ 25, and (2) Genmab, which AbbVie alleges acquired ProfoundBio years after Dr. Gavrilyuk's alleged misappropriation, *id.* ¶¶ 3, 116-19.

2. AbbVie's "Conspiracy" Allegations Fail as a Matter of Law

AbbVie alternatively tries to tag Genmab, ProfoundBio, and Dr. Han with liability by alleging a theory of conspiracy. *See id.* ¶¶ 107, 171-72, 174. The allegation fails as a matter of law. The statutory provision in the DTSA that provides for a civil cause of action does not identify conspiracy as a cognizable basis for misappropriation. *See* 18 U.S.C. § 1836. By contrast, *criminal* enforcement of DTSA violations does provide that criminal liability may attach for "conspir[acy]." *Id.* § 1832(a)(5). Following basic principles of statutory interpretation, multiple courts have held that there is no civil liability for conspiracy to misappropriate trade secrets under the DTSA given the express inclusion of a conspiracy theory of criminal liability and the absence of any such theory for civil liability. *See Steves & Sons, Inc. v. JELD-WEN, Inc.*, 271 F. Supp. 3d 835, 840-43 (E.D. Va. 2017); *Arthur J. Gallagher & Co. v. Tarantino*, 2022 WL 4092673, at *18 (N.D. Cal. July 27, 2022); *Fishbaugh v. Bulgadarian*, 2021 WL 3598579, at *4 (C.D. Cal. July 8, 2021).

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B. AbbVie Fails To Plead Any Direct Act of Misappropriation by Genmab, ProfoundBio, or Dr. Han

Unable to ascribe liability to the other defendants based on alleged acts of Dr. Gavrilyuk—which independently fail as discussed herein—AbbVie tries pleading acts of direct misappropriation by Genmab, ProfoundBio, and Dr. Han. Under the DTSA, misappropriation occurs when a defendant: (1) acquires, discloses, or uses a trade secret and (2) knows or has reason to know that (3) the trade secret was acquired through improper means. *See* 18 U.S.C. § 1839(5). "[I]mproper means" include "theft, bribery, misrepresentation, [or] breach or inducement of a breach of a duty to maintain secrecy." *Id.* § 1839(6)(A). AbbVie's allegations fail as a matter of law.

1. AbbVie Fails To Allege an Act of Misappropriation by Genmab

AbbVie nowhere alleges that Genmab was involved in the alleged acts of misappropriation that supposedly took place as of July 2021. Instead, AbbVie alleges that, years later, Genmab misappropriated trade secrets by using them after it acquired ProfoundBio in mid-2024—*i.e.*, by relying on them in continuing the clinical development of Rina-S—allegedly on the basis that Genmab "knew, should have known, or was willfully blind to" the notion that the alleged trade secret had been misappropriated. Compl. ¶ 180. This claim against Genmab fails as a matter of law for at least three independent reasons.

First, AbbVie's own allegations make clear that, at the time Genmab acquired ProfoundBio, Genmab had no reason to know about any alleged misappropriation of AbbVie's trade secrets. AbbVie alleges that, by July 2021, ProfoundBio had been "advertis[ing] to the world" that it had developed its new linker technology, Compl. ¶ 10 (citing Ex. D), and then continued to "tout" such hydrophilic linkers throughout 2023, *id.* (citing Exs. A, E). AbbVie further alleges that ProfoundBio presented abstracts and posters at international cancer conferences in 2021 and 2022 that discuss structural features of the hydrophilic linkers and admittedly "relate[] to the trade secrets at issue here." *Id.* ¶¶ 42, 137; *id.*, Exs. N, O. In other words, information about

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ProfoundBio's hydrophilic ADC linkers had been publicly known *for years* by the time of Genmab's 2024 acquisition of ProfoundBio, yet AbbVie had done nothing, said nothing, and contacted no one about this supposed misappropriation of its trade secrets. Indeed, AbbVie alleges that, prior to the acquisition, "[e]ager to cash out, ProfoundBio *continued to advertise AbbVie's trade secrets as the key distinguishing feature of its pipeline assets*." *Id.* ¶ 2 (emphasis added). Again, however, AbbVie did nothing. Given AbbVie's complete and total silence in the face of years of this public information, Genmab would have no reason to know of or suspect any purported misappropriation from AbbVie.

Second, by the time of Genmab's acquisition of ProfoundBio in mid-2024, AbbVie's alleged trade secrets were no longer trade secrets. For information to qualify as a trade secret, it must not be "generally known." 18 U.S.C. § 1839(3)(B). AbbVie itself alleges its trade secrets were published in a ProfoundBio patent application in January 2023. Compl. ¶¶ 9, 66, 79, 119-20, 122-23, 127-29. (After which, AbbVie again did nothing until two years later when it filed this suit.) Once the alleged trade secrets were published in that patent application—which is not alleged to have occurred through any act of Genmab; and Genmab is not alleged to have had any affiliation with ProfoundBio at the time—they no longer qualified as trade secrets. The law is "well-settled that publication of information in a patent application eliminates any trade secrecy," *Attia v. Google LLC*, 983 F.3d 420, 425-26 (9th Cir. 2020); *see also Group14 Techs., Inc. v. Nexeon Ltd.*, 2024 WL 1283530, at *1 & n.1 (W.D. Wash. Mar. 26, 2024) ("Publication of information in a patent or a patent application eliminates any trade secrecy."), including when the patent application that publicizes the trade secret was not filed by the plaintiff, *see BondPro Corp. v. Siemens Power Generation, Inc.*, 463 F.3d 702, 707 (7th Cir. 2006).

Third, as discussed in detail below, AbbVie fails to plausibly allege that ProfoundBio or Dr. Han knew or had reason to know that Dr. Gavrilyuk allegedly disclosed purported trade secrets. If neither ProfoundBio nor Dr. Han knew or had reason to know such information, then it follows

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that Genmab likewise could not have known or had reason to know of any alleged misappropriation.

2. AbbVie Fails To Allege That ProfoundBio or Dr. Han Knew or Had Reason to Know That Dr. Gavrilyuk Allegedly Disclosed Purported Trade Secrets

AbbVie also tries to accuse ProfoundBio and Dr. Han of misappropriation by claiming they somehow knew or had reason to know that Dr. Gavrilyuk was allegedly misappropriating AbbVie trade secrets "in the April-July 2021 timeframe." Compl. ¶ 115. Those allegations also fail to state a claim.

First, AbbVie alleges ProfoundBio and Dr. Han knew or should have known that Dr. Gavrilyuk was disclosing misappropriated AbbVie trade secrets because they were aware of her "role and responsibilities" at AbbVie as "Senior Principal Research Scientist, Discovery Chemistry and leader of AbbVie's ADC technology development projects." Compl. ¶ 194. Such allegations are legally insufficient. Courts have repeatedly rejected the very inference that AbbVie is asking this Court to draw here—namely, that by engaging with an alleged competitor's ex-employee, a company has reason to know that any information that ex-employee provides is a trade secret. Instead, an employee is generally "free, upon leaving employment, to engage in competitive employment" and in so doing to "freely use general knowledge, skills, and experience acquired under his or her former employer." *Ed Nowogroski Ins., Inc. v. Rucker*, 971 P.2d 936, 941-42 (Wash. 1999) (en banc) ("*Rucker*"); *see Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324, 1337 (9th Cir. 1980) ("Mere solicitation of an employee, under no contract of employment, to leave and associate with a competing firm is not illegal.").

Applying that principle in DTSA cases, courts have found that "merely recruiting another company's employees does not meet the knowledge requirement for trade secret misappropriation." *Bombardier*, 383 F. Supp. 3d at 1182. Put differently, the simple fact of having worked for an alleged competitor does not give a company or individual who subsequently works with a competitor's ex-employee reason to know that information that ex-employee provides is a

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trade secret of her former employer. *Carl Zeiss Meditec, Inc. v. Topcon Med. Sys., Inc.*, 2019 WL 11499334, at *5 (N.D. Cal. Nov. 13, 2019) ("[T]he mere fact that [Defendant] hired former [Plaintiff] employees who allegedly have knowledge of [Plaintiff's] trade secrets is insufficient to demonstrate misappropriation."). Rather, the law reflects a common-sense understanding that there are myriad permissible reasons to seek out an alleged competitor's ex-employee, including to benefit from an individual's expertise in a particular field. *Rucker*, 971 P.2d at 941-42; *see also, e.g.*, *United States v. Liew*, 856 F.3d 585, 599 (9th Cir. 2017) ("[S]omeone . . . is free to leave an employer and use non-trade secret information and skills gained through that employment.").

Second, AbbVie alleges that because Dr. Gavrilyuk did not have her own "research facilities" at the time she was consulting for ProfoundBio, Compl. ¶ 114, ProfoundBio and Dr. Han should have known that "any ADC-related technology from Dr. Gavrilyuk came from AbbVie," *id.* ¶ 115. Even if true, this argument erroneously assumes that the only value Dr. Gavrilyuk could have provided as an independent contractor to ProfoundBio was to perform laboratory work of her own—an assumption that again runs afoul of courts' holdings that a company may permissibly contract with an alleged competitor's ex-employee to benefit from her expertise in a particular field. *See Bombardier*, 383 F. Supp. 3d at 1182; *Rucker*, 971 P.2d at 941-42. As AbbVie alleges, Dr. Gavrilyuk has significant expertise related to ADCs. *See, e.g.*, Compl. ¶¶ 112, 194. The case law endorses the principle that ProfoundBio was permitted to consult with Dr. Gavrilyuk precisely to benefit from such expertise. *See Bombardier*, 383 F. Supp. 3d at 1182; *Rucker*, 971 P.2d at 941-42; *Hollingsworth*, 622 F.2d at 1337.

Given the law and AbbVie's allegations acknowledging Dr. Gavrilyuk's subject-matter expertise, AbbVie has not pled any facts to support its claim that ProfoundBio and Dr. Han somehow "knew or should have known" that Dr. Gavrilyuk allegedly misappropriated AbbVie trade secrets. *See CleanFish, LLC v. Sims*, 2020 WL 1274991, at *10 (N.D. Cal. Mar. 17, 2020) (to satisfy plausibility requirement, plaintiff "must allege facts that . . . tend to exclude an innocent explanation" (internal quotation marks omitted)).

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Third, AbbVie also contends that the allegedly rapid development timeline of ProfoundBio's ADC program after it contracted with Dr. Gavrilyuk should have given ProfoundBio and Dr. Han reason to know that Dr. Gavrilyuk was providing them with misappropriated trade secrets. *See* Compl. ¶¶ 116, 118. In some cases, courts in other jurisdictions have determined that an implausibly fast development timeline may be a basis to infer knowledge or reason to know of another's improper use of trade secrets. *See Wisk Aero LLC v. Archer Aviation Inc.*, 2021 WL 8820180, at *15-16 (N.D. Cal. Aug. 24, 2021). However, such an inference was appropriate only because plaintiff had plausibly alleged a factual basis for the conclusion that defendant's product development timeline was actually suspiciously accelerated—specifically, by comparing defendant's development timeline with plaintiff's own and with that of other alleged competitors. *See id.* (court relying on plaintiff's allegation that defendant's development timeline was "significantly shorter *than it and other competitors have managed*" (emphasis added)); First Am. Compl. ¶ 87, *Wisk Aero LLC v. Archer Aviation Inc.*, No. 3:21-cv-02450-WHO, ECF No. 45 (N.D. Cal.) (alleging that defendant claimed it could "design, manufacture, and certify an aircraft" within three years with a team of 35 engineers, whereas "competitors required many years (often a decade) to independently develop" the same aircraft "with teams of hundreds of engineers and other professionals"). AbbVie's Complaint, by contrast, provides no more than a conclusory allegation that ProfoundBio's ADC development pace supposedly underwent "rapid acceleration," Compl. ¶ 118, without pleading any comparison to an alleged competitor's timeline or to AbbVie's own timeline that would plausibly permit such an inference.

In short, the allegations (or lack thereof) in the Complaint make it implausible that ProfoundBio or Dr. Han should have known that Dr. Gavrilyuk was allegedly providing them with any purported AbbVie trade secrets. For example, AbbVie does not point to any public information reflecting that AbbVie's Soluble Linker Program or the "Sugar Scaffold features" ever produced any marketed ADC or an ADC being tested in humans, let alone as of the time of the

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alleged misappropriation. Put differently, there is nothing to suggest that Dr Han or ProfoundBio knew or should have known that Dr. Gavrilyuk had any AbbVie trade secrets to share in connection with a failed project that AbbVie had abandoned years earlier.

3. AbbVie Fails To Allege That ProfoundBio or Dr. Han Induced the Disclosure of Any Trade Secrets

AbbVie also suggests that ProfoundBio and Dr. Han misappropriated AbbVie trade secrets because they allegedly induced Dr. Gavrilyuk into disclosing them. Compl. ¶¶ 39, 192-93. However, AbbVie makes nothing more than conclusory allegations that ProfoundBio and Dr. Han "encouraged" or "urg[ed]" Dr. Gavrilyuk to breach her confidentiality obligations and disclose AbbVie trade secrets, Compl. ¶¶ 135, 192-93, which as a matter of law do not suffice to state a claim, *see Doe v. U.S. Ctr. for SafeSport, Inc.*, 2024 WL 3924663, at *9 (W.D. Wash. Aug. 23, 2024).

AbbVie bases its theory of inducement on the notion that Dr. Han recruited Dr. Gavrilyuk and "actively collaborat[ed]" with her. Compl. ¶¶ 7, 223. But Washington courts are clear that an employee is generally free to leave her employer and use the expertise she has developed in working for an alleged competitor. *See Rucker*, 971 P.2d at 941-42. For example, the mere recruitment of an alleged competitor's employees does not amount to inducement for purposes of a tortious interference claim—even where the alleged competitor's ex-employees are specifically targeted and sought for their expertise. *See Bombardier*, 383 F. Supp. 3d at 1190. AbbVie's attempt to premise DTSA liability on ProfoundBio's and Dr. Han's "collaboration" with Dr. Gavrilyuk is no different than basing such liability on the recruitment of an alleged competitor's employees: both seek to transform the permissible act of seeking to work with an alleged competitor's employee into unlawful inducement of disclosure of a trade secret under the DTSA. That effectively turns the DTSA into a non-compete requirement—a position that is rejected by the language of the DTSA itself. *See* 18 U.S.C. § 1836(b)(3)(A)(i)(I) (court enforcing DTSA via injunctive relief may not "prevent a person from entering into an employment relationship," and

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injunction may not be based "merely on the information the person knows"). Put differently, *Rucker* and *Bombardier* foreclose, as a matter of law, a theory of inducement that is based merely on collaborating or seeking to collaborate with somebody who has expertise derived from employment with an alleged competitor.

Moreover, AbbVie's inducement allegations are implausible. As discussed above, AbbVie does not and cannot point to any public successes from its Soluble Linker Program or involving the "Sugar Scaffold features." *See supra* pp. 8, 14-15. It is simply not plausible to allege that ProfoundBio and Dr. Han encouraged or urged Dr. Gavrilyuk to disclose to them failed trade secrets from AbbVie if, as the Complaint alleges, the goal was "to get ProfoundBio's ADC program unstuck." Compl. ¶ 8; *see also id.* ¶ 111 (alleging ProfoundBio and Dr. Han "turned to Dr. Han's former AbbVie colleague, Dr. Gavrilyuk, in the hopes of getting their ADC development program off the ground").

4. AbbVie Fails To Allege an Act of Misappropriation by Dr. Han

The Complaint, which is riddled with inconsistencies concerning Dr. Han's supposed involvement in some grand-but-not-legally-cognizable scheme, also does not plausibly allege that Dr. Han misappropriated any trade secrets. *See supra* p. 16 (inconsistencies highlight implausibility and warrant dismissal). For example, on the one hand, the Complaint alleges that ProfoundBio "was co-founded in 2018 by ex-AbbVie employee [Dr. Han]" but "had a problem" in that, "[b]y 2021, ProfoundBio had yet to develop its own viable ADC linker design," Compl. ¶ 4, and that it was only the involvement of Dr. Gavrilyuk "[i]n or around 2021" that "g[o]t ProfoundBio's ADC program unstuck." *Id.* ¶ 8. On the other hand, AbbVie alleges that Dr. Han himself knew and disclosed the trade secrets. *Id.* ¶ 168. Dr. Han allegedly knowing and disclosing alleged trade secrets after his departure from AbbVie/Stemcentrx in 2017 is flatly inconsistent with Dr. Han allegedly needing to have Dr. Gavrilyuk involved at all.

In any event, nowhere does the Complaint allege that Dr. Han took any documents or other materials with him when he left AbbVie in 2017. Indeed, the Complaint does not point to a single

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AbbVie document showing that Dr. Han even knew about the alleged trade secrets while he was at AbbVie. Given the inconsistent and implausible nature of AbbVie's allegations, they fail as a matter of law.

C. AbbVie Fails To Plead the Existence of Any Trade Secrets

In addition to failing to adequately allege misappropriation, AbbVie fails to plausibly allege the existence of any protectable trade secrets. A plaintiff "asserting a trade secret claim bears the burden of proving that legally protectable secrets exist." *Blackstone Int'l, Ltd. v. E2 Ltd.*, 2022 WL 16553034, at *8 (W.D. Wash. Oct. 31, 2022) (internal quotation marks omitted). To meet this burden, AbbVie must plausibly allege that it "has taken reasonable measures to keep [its alleged trade secret] information secret" and that the alleged trade secret "derives independent economic value, actual or potential," from remaining secret. 18 U.S.C. § 1839(3)(A), (B). AbbVie must also identify the alleged trade secret information with "sufficient particularity." *Blackstone Int'l, Ltd.*, 2022 WL 16553034, at *8. The Complaint fails to do so.

1. AbbVie Fails To Plead That It Undertook Reasonable Efforts To Maintain the Secrecy of Its Alleged Trade Secrets

AbbVie does not plead that it undertook reasonable measures to protect its purported trade secrets—a necessary element for a cognizable DTSA claim.

First—and consistent with the notion that AbbVie is trying to retrospectively transform the "Sugar Scaffold features" into trade secrets—AbbVie fails to distinguish its supposed trade secrets from other confidential information. *See IQVIA, Inc. v. Breskin*, 2023 WL 2588450, at *4 (E.D. Pa. Mar. 20, 2023) (DTSA plaintiff must "distinguish between information claimed to be trade secrets and information simply claimed to be confidential"); *Elsevier Inc. v. Dr. Evidence, LLC*, 2018 WL 557906, at *5 (S.D.N.Y. Jan. 23, 2018) ("[C]onfidential information' is not equivalent to 'trade secrets.'"). That deficiency is highlighted by AbbVie's acknowledgement that the lone document it relies upon to show that Dr. Gavrilyuk somehow knew the "Sugar Scaffold features" were trade secrets was marked only "CONFIDENTIAL" (not "Trade Secret"). Compl. ¶ 63.

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AbbVie also treats "trade secrets" and "confidential" or "proprietary" information collectively by repeatedly referring to them together. *See* Compl. ¶ 95 (AbbVie "limits access to [its] ADC Trade Secrets *and* its other confidential and proprietary information to certain employees" (emphasis added)); *id.* ¶ 93 (AbbVie requires "employees to maintain these trade secrets *and* confidential information in confidence" (emphasis added)). Confidential and proprietary information are *not* protected under the DTSA. *See IQVIA, Inc.*, 2023 WL 2588450, at *4; *Elsevier Inc.*, 2018 WL 557906, at *5; *Abrasic 90 Inc. v. Weldcote Metals, Inc.*, 364 F. Supp. 3d 888, 902 (N.D. Ill. 2019).

Second, AbbVie's significant delay in filing this case further reflects a lack of reasonable protective measures. *See Gov't Emps. Ins. Co. v. Nealey*, 262 F. Supp. 3d 153, 170-71 (E.D. Pa. 2017) (eight-month delay in filing suit "evidence[d] [plaintiff's] failure to take reasonable measures to protect the secrecy of its alleged trade secrets"); *Pie Dev., L.L.C. v. Pie Ins. Holdings, Inc.*, 2023 WL 2707184, at *3 (5th Cir. Mar. 30, 2023) (unreasonable to "wait[] two years without sending any cease-and-desist letter or requesting any preliminary injunctive relief" before filing suit). The Complaint reflects that AbbVie was on inquiry notice of any alleged trade secret misappropriation no later than December 1, 2021. *See supra* pp. 17-20. Moreover, the Complaint alleges that ProfoundBio published a patent application in January 2023 that supposedly included AbbVie's alleged "Sugar Scaffold features" trade secrets. *See* Compl. ¶¶ 24, 119-21. However, AbbVie did not file this suit about the supposed trade secret misappropriation until March 2025. Indeed, AbbVie acknowledges that it did not even contact Genmab about any alleged trade secret misappropriation until December 13, 2024. *Id.* ¶ 179. The only reasonable explanation is that these earlier presentations and publications did not disclose information that AbbVie believed was a trade secret or cared to protect.

Taken together, AbbVie's failure to distinguish its supposed trade secrets from generic confidential information, and its failure to protect its supposed trade secrets when they first allegedly were publicly disclosed years ago, demonstrate AbbVie's abject failure (not to mention inability) to plead reasonable efforts to maintain the secrecy of its alleged trade secrets.

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2. AbbVie Fails To Allege the Purported Trade Secrets Had Independent Economic Value at the Time of the Alleged Misappropriation

The Complaint also fails to plausibly allege that AbbVie's supposed trade secrets derived independent economic value at the time of the alleged misappropriation. *See* 18 U.S.C. § 1839(5)(B)(ii)(II) (information must qualify as a trade secret "at the time of disclosure or use"). That legal requirement ensures that a claim for relief is provided only for the misappropriation of information that, by virtue of being kept secret, "confers a competitive advantage on its owner." *Attia*, 983 F.3d at 425-26; *see Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011-12 (1984); *Synopsys, Inc. v. Risk Based Sec., Inc.*, 70 F.4th 759, 771-72 (4th Cir. 2023); *cf. Kische USA, LLC v. Simsek*, 2016 WL 6273261, at *6 (W.D. Wash. June 29, 2016) (insufficient to allege that defendants have "used [information] to their advantage").

The Complaint fails to plausibly allege that the purported trade secrets had the requisite independent economic value at the time of the alleged misappropriation. The timeline as alleged is as follows:

- AbbVie acquired Stemcentrx in 2016. Compl. ¶ 25. Beginning that November, AbbVie scientists at Stemcentrx performed development work on the Soluble Linker Program, which encompassed the "Sugar Scaffold features" that are the subject of AbbVie's trade secret allegations. *Id.* ¶¶ 57-62.
- Development work on the Soluble Linker Program concluded as of April 2018. *Id.* ¶ 57. Notably, the Complaint never alleges that AbbVie used the "Sugar Scaffold features" in any marketed ADC or even in an ADC that entered clinical trials in humans.
- AbbVie alleges that the purported misappropriation by Dr. Gavrilyuk took place in 2021. *Id.* ¶¶ 7, 108-11, 114-17.
- No later than December 1, 2021, ProfoundBio was publicly presenting and publishing information about its novel hydrophilic linker technology that was "related to the trade

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secrets at issue here," and which explicitly named Dr. Han and Dr. Gavrilyuk as coauthors. *Id.* ¶¶ 10, 42, 69, 137; *id.*, Exs. D, J at [0152], N. AbbVie did nothing.

- In January 2023, the alleged "Sugar Scaffold features" were published in a ProfoundBio patent application, which named Dr. Han and Dr. Gavrilyuk as inventors. *Id.* ¶¶ 25, 108-17, 138. AbbVie did nothing.
- Subsequently, in "late 2023," AbbVie acquired ImmunoGen, including its ELAHERE® ADC. *Id.* ¶ 50.

These allegations demonstrate that AbbVie cannot plausibly allege that the purported trade secrets had independent economic value as of the time of the alleged misappropriation in 2021. If they had, not only would AbbVie have taken steps to protect its trade secrets far earlier than it did, but AbbVie would not have had any reason to purchase an entirely different company (ImmunoGen) with an ADC (ELAHERE®) that did not even use such purportedly valuable trade secrets. Put differently, the Complaint reflects that the reason AbbVie claims it never publicly disclosed its "Sugar Scaffold features" is not because they supposedly had the requisite independent economic value; rather, AbbVie's lack of public disclosure is explained by AbbVie's apparent belief that the alleged "Sugar Scaffold features" were worthless.

While in certain cases it can be appropriate to consider the cost and effort necessary to develop the trade secret information as a proxy for competitive advantage, *see United States v. Sing*, 736 F. App'x 184, 185 (9th Cir. 2018), here, AbbVie's allegations of competitive advantage are implausible. AbbVie contends that its purported trade secrets had value because they could be used by others "to save significant time and resources in developing ADCs in order to compete with AbbVie's current and future ADC cancer therapies (*e.g.*, ELAHERE®)." Compl. ¶ 87; *see id.* ¶¶ 84-85. However, AbbVie nowhere alleges that it had any "current" ADC cancer therapy candidates at the time of the alleged misappropriation, let alone an ADC cancer therapy that would compete against Rina-S, which has been developed for "ovarian cancer and other FRα-expressing tumors," not "cancer therap[y]" generally. *See id.* ¶¶ 19, 87. Nor can AbbVie rely on

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ELAHERE®, which does not use the "Sugar Scaffold features," to plausibly establish independent economic value, as that acquisition took place after both the alleged misappropriation and the publication of the alleged "Sugar Scaffold features" in a ProfoundBio patent application—*i.e.*, after the information became public and after any alleged misappropriation could have occurred. *See Cisco Sys., Inc. v. Chung*, 2020 WL 4505509, at *8 (N.D. Cal. Aug. 5, 2020) (holding that plaintiff failed to adequately allege independent economic value where its theory of development efforts was "implausible"); *see also McFarland*, 2011 WL 2413797, at *3; *Redcell Corp.*, 2022 WL 683007, at *5, 8.

The failure of AbbVie to plausibly plead the requisite economic value is reinforced by AbbVie's inconsistent allegations concerning such value. On the one hand, AbbVie alleges that its trade secrets have affirmative value because they are supposedly what "g[o]t ProfoundBio's ADC program unstuck" and led to Rina-S. *See* Compl. ¶¶ 8-9, 87. On the other hand—and in apparent recognition that AbbVie does not use the alleged trade secrets—AbbVie suggests the alleged trade secrets are so-called "negative" trade secrets that "teach companies about dead ends or likely unfruitful pursuits that should be avoided," *e.g.*, "linker design features" that "would prove to be problematic." *Id.* ¶¶ 56, 83; *see Calendar Rsch. LLC v. StubHub, Inc.*, 2020 WL 4390391, at *9 (C.D. Cal. May 13, 2020). The fact that AbbVie, the owner of the purported trade secrets, cannot identify what type of value they have among two polar opposite theories—*i.e.*, do the alleged trade secrets teach companies what they *should do*, or do they teach companies what they *should not do*—"highlight[s] the implausibility of [AbbVie's] allegations." *McFarland*, 2011 WL 2413797, at *3.

3. AbbVie's Attempt To Expand Its Trade Secret Allegations Beyond the Specific Structure Identified in the Complaint Lacks the Required Specificity

The Complaint also fails to identify the alleged trade secrets with the specificity required. Although a complaint "need not spell out the details of the trade secret," it must "identify the trade secret with sufficient particularity to permit the defendant to ascertain at least the boundaries within

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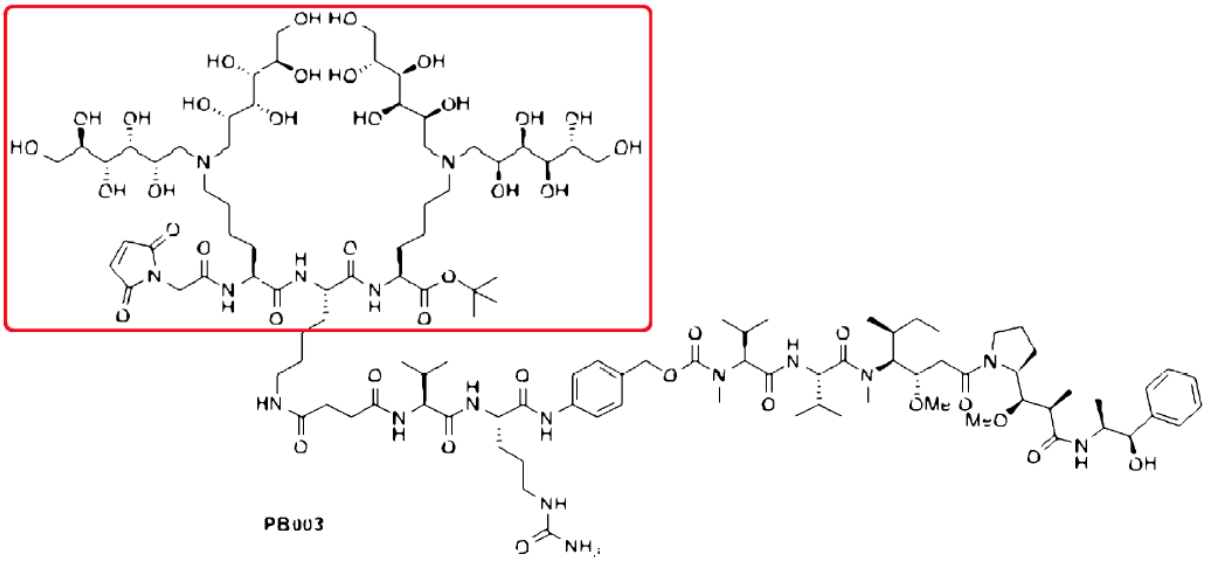
which the secret lies." *Bombardier*, 383 F. Supp. 3d at 1178 (cleaned up); *see also Carl Zeiss Meditec*, 2019 WL 11499334, at *3 (trade secret must be identified "with sufficient particularity to separate it from matters of general knowledge in the trade or of special knowledge of those persons who are skilled in the trade" (citations omitted)). A "vague description" that lacks "identification of what components are protected by trade secrets is insufficient to survive a motion to dismiss." *Blackstone*, 2022 WL 16553034, at *8 (citation omitted).

AbbVie points to a single, partial ADC linker structure—encompassed in a red box on page 40 of the Complaint—that AbbVie alleges comes from its documents and that contains the purported "Sugar Scaffold":



Compl. ¶ 123. That substructure is referred to herein as the "Red Box Structure." It is the only specific structure that AbbVie alleges it made or even considered making.

As reflected in the above figure, the Red Box Structure is a portion of a larger structure referred to as "PB003." PB003 is not, and does not contain, the linker in Rina-S. As a result, to try to pull Rina-S into the scope of its purported trade secrets, AbbVie alleges broad and undefined categories of trade secrets to try to expand the scope of its purported trade secrets far beyond the Red Box Structure. Those categories are listed in the eight subsections of paragraph 69 and use

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open-ended language such as "including" and "examples" to reference generic terms such as "features" (69(i)-(v)); "other features" (69(ii)); "spacers," (69(ii)-(iii); "know-how, scientific information and data" (69(vi)-(vii)); and "compilations and descriptions" (69(viii)).

AbbVie's pleading tactic fails to reasonably put Defendants on notice of what AbbVie actually contends are its trade secrets. If this case were going to be about whether the Red Box Structure is a purported trade secret, that would be one thing, but AbbVie should not be permitted to expand the scope of its alleged trade secrets beyond that specific structure by relying on undefined generic categories of information. *See Bombardier Inc.*, 383 F. Supp. 3d at 1178; *Blackstone*, 2022 WL 16553034, at *8. And this is not a case where AbbVie is somehow constrained for secrecy reasons as to what information it can put into its Complaint because it claims that its supposed trade secrets—including the Red Box Structure—already have been publicly disclosed. Compl. ¶ 122; *see Silver Fern Chem., Inc. v. Lyons*, 2023 WL 8775478, at *5-6 (W.D. Wash. Dec. 19, 2023).

a. AbbVie's Categories (i), (iv), and (v)

Categories (i), (iv), and (v) fail to provide the requisite specificity because they are based on the vague and unlimited phrase "Sugar Scaffold *features*." Category (i) recites the "design of the *Sugar Scaffold features*," and categories (iv) and (v) recite "[m]ethods of synthesizing ADC linkers that include *Sugar Scaffold features*" and "structure and synthesis of . . . ADC designs[] that include a linker comprising *Sugar Scaffold features*," respectively. Compl. ¶¶ 69(i), (iv)-(v). While AbbVie appears to define what it means by the "Sugar Scaffold" itself, *id.* ¶ 6, AbbVie nowhere provides any definition for "Sugar Scaffold *features*." And AbbVie does not explain how its alleged "Sugar Scaffold" trade secret translates to a larger set of purported "Sugar Scaffold *features*." Instead, AbbVie treats "Sugar Scaffold features" as an unlimited class of structures, alleging that what is set forth in paragraph 69(i) is only "*an example of* [what] the misappropriated trade secret *Sugar Scaffold features includes*" (emphasis added). Such vague categories cannot sustain a DTSA claim, as they do not "identif[y] . . . what components are protected by trade

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secrets." *Blackstone*, 2022 WL 16553034, at *8-9. Put differently, the categories are without the requisite ascertainable "boundaries." *Bombardier Inc.*, 383 F. Supp.3d at 1178 (citation omitted).

b. Categories (ii)-(iii)

Categories (ii)-(iii) likewise fail to provide the requisite specificity. Not only do they rely on the unlimited class of "Sugar Scaffold features," which causes them to fail for the reasons discussed above, but they also seek to combine that undefined class with *additional* undefined structures.

Category (ii) is directed to "Sugar Scaffold features" combined with generic "other features" in an ADC. Compl. ¶ 69(ii). While the category attempts to provide examples of such "other features," it is expressly not limited to such examples: "The Sugar Scaffold features can be *combined in a variety of ways, including, but not limited to*, the structures indicated with colors below." *Id.* (emphasis added). That renders the categories insufficiently specific. *See Blackstone*, 2022 WL 16553034, at *8-9; *Bombardier Inc.*, 383 F. Supp. 3d at 1178.

Category (iii) fares no better. It is directed to a "Sugar Scaffold feature" and one or more other structures, one of which is a generic molecular "spacer." Compl. ¶ 69(iii). AbbVie nowhere defines the "spacer"—*e.g.*, how big it is, what it is made of, what properties it has—which prevents one from "ascertain[ing] . . . the boundaries within which the secret lies," rendering the category insufficiently specific. *Bombardier Inc.*, 383 F. Supp.3d at 1178 (citation omitted).

c. Categories (vi)-(viii)

The final three categories of purported trade secrets, categories (vi)-(viii), cover broad categories of "know-how, scientific information and data" and "compilations and descriptions" related to ADCs generally or unidentified AbbVie candidates and discoveries. Compl. ¶¶ 69(vi)-(viii). Courts have repeatedly found such allegations to be inadequate.

In *Cascade Designs Inc. v. Windcatcher Technology LLC*, a court in this district dismissed a trade secret claim for inadequate specificity where the pleadings generically characterized the alleged trade secrets as "confidential and proprietary scientific, technical, and business information

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concerning devices and methods for rapidly inflating and deflating inflatable products, including sleeping pads for outdoor or recreational use." 2016 WL 374564, at *2 & n.2 (W.D. Wash. Feb. 1, 2016) (citation omitted). Rather than "point[ing] to general categories," the court explained that the counterclaim plaintiff needed "to clarify what *specific components* of the AirPad [its inflatable sleeping pad product] design, manufacture, and sale are protected by trade secrets." *Id.* (emphasis added). Similarly, in *Olson Kundig, Inc. v. 12th Avenue Iron, Inc.*, a trade secret defined as "information or trade secrets in designing, fabricating, and manufacturing all products that brought the Tom Kundig Collection to market" was deemed insufficiently specific without "clarify[ing] what *specific components* of the design, fabrication, and manufacture of the Tom Kundig Collection line products were protected by trade secrets." 2022 WL 4534422, at *7-8 (W.D. Wash. Sept. 28, 2022) (emphasis added) (citations omitted); *P2i Ltd. v. Favored Tech. USA Corp.*, 2024 WL 4294652, at *4 (N.D. Cal. Sept. 24, 2024) ("specific chemical identity of reaction precursors," "operational parameters," "internal and proprietary knowhow," and "research and development efforts" insufficiently specific (citations omitted)); *Space Data Corp. v. X*, 2017 WL 5013363, at *2 (N.D. Cal. Feb. 16, 2017) ("data on the environment in the stratosphere" and "data on the propagation of radio signals from stratospheric balloon-based transceivers" insufficiently specific (citations omitted)).

AbbVie's categories (vi)-(viii) are no different. Category (vi) recites "know-how, scientific information and data regarding how specific modifications to each of the ADC component designs and combinations thereof affect, positively or negatively, the pharmacological properties of an ADC." Compl. ¶ 69(vi). As defined, that category is not limited to any particular chemical structures and is broad enough to cover nearly all research and development relating to ADCs at any company. Likewise, for categories (vii) and (viii), nothing in AbbVie's Complaint provides an identification of what specific information related to "AbbVie's ADC candidates" and "AbbVie's discoveries relating to the pharmacological properties of ADC designs" is a trade

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secret. Compl. ¶¶ 69(vii)-(viii). These generic descriptions of broad swaths of scientific information cannot satisfy AbbVie's burden to identify concrete trade secrets.

III. ABBVIE'S DECLARATORY JUDGMENT CLAIM IS IMPROPER (COUNT 2—NO LAW IDENTIFIED)

AbbVie has not adequately pleaded a claim for declaratory relief. Declaratory judgment is not a free-standing cause of action—rather, "[t]he availability of relief under the Declaratory Judgment Act 'presupposes the existence of a judicially remediable right.'" *City of Reno v. Netflix, Inc.*, 52 F.4th 874, 878-79 (9th Cir. 2022) (per curiam) (quoting *Schilling v. Rogers*, 636 U.S. 666, 677 (1960)); *see also In re MCG Health Data Sec. Issue Litig.*, 2023 WL 3057428, at *16 (W.D. Wash. Mar. 27, 2023) ("The Declaratory Judgment Act 'only creates a remedy.'" (citation omitted)). While AbbVie does not identify what substantive cause of action forms the basis for its declaratory judgment claim, presumably it is based on one of its other alleged causes of action, such as AbbVie's DTSA claim. Because those counts should be dismissed, so too should the declaratory judgment claim. *See Netflix, Inc.*, 52 F.4th at 878-79 (plaintiffs may not "rely on the Declaratory Judgment Act to obtain affirmative relief where no cause of action otherwise exists").

IV. ABBVIE FAILS TO PLEAD A CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACT BY PROFOUNDBIO OR DR. HAN (COUNT 3—WASHINGTON LAW)

AbbVie's claim for tortious interference against ProfoundBio and Dr. Han—which alleges that they intentionally induced Dr. Gavrilyuk into breaching her employment agreement with AbbVie—likewise fails and should be dismissed. Under Washington law, the statute of limitations for tortious interference with a contract is three years. *nPRO, Inc. v. Cent. Puget Sound Reg'l Transit Auth.*, 2010 WL 3214555, at *1 (Wash. Ct. App. Aug. 16, 2010) (citing Wash. Rev. Code § 4.16.080(2)). As described above in Section I, AbbVie's allegations make clear that it knew or should have known of the alleged tortious interference no later than December 1, 2021, which is more than three years before it commenced this lawsuit. This claim is therefore time barred.

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Furthermore, AbbVie fails to plead the required elements of such a claim. Under Washington law, to state a claim for tortious interference, plaintiff must allege, *inter alia*, "an intentional interference inducing or causing a breach or termination of the relationship or expectancy." *Wilson Aerospace LLC v. Boeing Co.*, 2025 WL 821904, at *14 (W.D. Wash. Mar. 14, 2025) (citation omitted); *see also Leingang v. Pierce Cnty. Med. Bureau, Inc.*, 930 P.2d 288, 300 (Wash. 1997) (en banc). Here, AbbVie has failed to allege facts sufficient to show that ProfoundBio or Dr. Han did something to "induc[e] or caus[e]" a breach of Dr. Gavrilyuk's employment agreement. *Wilson Aerospace*, 2025 WL 821904, at *14 (citation omitted). Specifically, AbbVie effectively relies on the same type of allegations to support the inducement prong of this claim that it did for purposes of its inducement theory for an act of misappropriation under the DTSA. *See supra* pp. 27-29; *see also* Compl. ¶¶ 135, 136, 192-93 (conclusory allegations that ProfoundBio and Dr. Han "encourage[d]," "entice[d]," and "urg[ed]" Dr. Gavrilyuk to breach her contract); *id.* ¶ 223 ("actively collaborated with" Dr. Gavrilyuk). And for the same reasons, the allegations fail a matter of law. *See supra* pp. 27-29; *Bombardier*, 383 F. Supp. 3d at 1191 (dismissing tortious interference claim for failure to plausibly allege inducement); *see also Wilson Aerospace*, 2025 WL 821904, at *14 (same).

V. ABBVIE FAILS TO PLEAD A CLAIM FOR BREACH OF CONFIDENTIALITY OBLIGATIONS BY PROFOUNDBIO OR DR. HAN (COUNT 4—NO LAW IDENTIFIED)

AbbVie also asserts a claim against ProfoundBio and Dr. Han for "inducement of breach of confidentiality obligations." Compl. ¶¶ 226-30. However, AbbVie does not identify the source of law for this claim. To the extent AbbVie intends for Washington law to apply as it did for Count 3, Washington recognizes no cause of action for "inducement of breach of confidentiality obligations" that is distinct from a claim for tortious interference with contract. Indeed, the few allegations asserted in connection with this claim make clear that it has little if any difference from AbbVie's tortious interference claim, and it fails for the same reasons. *See id.* ¶ 230 (claim is premised on alleged "inducement of Dr. Gavrilyuk's breach of her employee agreement").

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VI. ABBVIE FAILS TO PLEAD A CLAIM FOR BREACH OF CONTRACT BY DR. HAN (COUNT 5—ILLINOIS LAW)

AbbVie's allegation that Dr. Han breached Section 8 of his employment agreement with AbbVie, which provides for restrictions on the "use or disclos[ure], or [the] assist[ance] in disclosure to others" of "Confidential Information," Compl. ¶¶ 231-35, also fails as a matter of law. Dr. Han's contract with AbbVie—which AbbVie failed to attach to the Complaint, even though AbbVie purports to quote from it—defines "Confidential Information" as "all information disclosed to, learned by, or known by EMPLOYEE *as a consequence of or through his/her employment by ABBVIE*, about ABBVIE's plans, products, methods, processes, or services . . . ." Breaux Decl., Ex. A, at 3 (emphasis added). In other words, to properly plead a breach of this provision, AbbVie must allege, among other elements, that the supposed trade secrets at issue were something Dr. Han learned about because of his employment with AbbVie (between 2016 and 2017, *see* Compl. ¶¶ 25, 111-16) and then improperly disclosed. *See id.*; *see also Va. Surety Co. v. N. Ins. Co.*, 866 N.E.2d 149, 153-54 (Ill. 2007) (under Illinois law, clear and unambiguous contract language must be given its plain and ordinary meaning).

The Complaint fails to allege any Confidential Information acquired by Dr. Han when AbbVie employed him. For example, AbbVie alleges Dr. Han participated in certain meetings as an AbbVie employee, but identifies no specific information acquired by Dr. Han through such meetings. Compl. ¶¶ 60, 112. This is perhaps unsurprising given that, as discussed above, AbbVie's theory of liability is premised on the notion that Dr. Han did not himself know the alleged trade secrets, but rather that Dr. Han "turned to [his] former AbbVie colleague, Dr. Gavrilyuk, in the hopes of getting [ProfoundBio's] ADC development program off the ground." *Id.* ¶ 111; *see also id.* ¶ 8. AbbVie's theory is inconsistent with the premise that Dr. Han learned the alleged trade secrets "*as a consequence of or through his/her employment*" with AbbVie—otherwise, Dr. Han would not have had any need for Dr. Gavrilyuk to become involved in the first

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place. *See supra* p. 29. Because such inconsistencies render AbbVie's allegations implausible, the breach of contract claim against Dr. Han must be dismissed. *See Nw. Mem'l Hosp. v. Lake Cnty. Bd. of Comm'rs Emp. Health Benefit Plan*, 906 F. Supp. 2d 791, 800, 802 (N.D. Ill. 2012) (dismissing breach of contract claim under Illinois law for failure to plead breach).

VII. ABBVIE FAILS TO PLEAD A CLAIM FOR BREACH OF CONTRACT BY DR. GAVRILYUK (COUNT 6—ILLINOIS LAW)

AbbVie's claim for breach of contract against Dr. Gavrilyuk also fails as a matter of law. AbbVie's claim is predicated on the theory that Dr. Gavrilyuk allegedly disclosed AbbVie's "ADC Trade Secrets" in violation of Sections 4, 5, and 8 of her employee agreement. *See* Compl. ¶¶ 236-42; *see also id.* ¶¶ 69-70. However, AbbVie fails to allege any cognizable trade secret, *see supra* pp. 29-38. That warrants dismissal.

Furthermore, AbbVie seeks to do indirectly what it cannot do directly: prevent Dr. Gavrilyuk, a California resident, from working in her field. Perhaps knowing that any attempt to enforce a restrictive covenant directly would be illegal, *see* Cal. Bus. & Prof. Code § 16600.5, AbbVie bases its contract claim against Dr. Gavrilyuk on overbroad and ill-defined notions of "Confidential Information" and inventorship rights that would effectively bar Dr. Gavrilyuk from using her own expertise in her future employment. Courts routinely reject as prohibited such backdoor attempts to control post-employment inventive work of California employees. *See Whitewater W. Indus., Ltd. v. Alleshouse*, 981 F.3d 1045, 1054-55 (Fed. Cir. 2020) (collecting cases). Illinois courts have likewise invalidated employment agreements containing overbroad confidentiality provisions, which "amount[] in effect to a post-employment covenant not to compete which is completely unrestricted in duration or geographical scope. This type of covenant is unreasonable and will not be enforced." *Serv. Ctrs., Inc. v. Minogue*, 180 Ill. App. 3d 447, 455 (1989) (citation omitted).

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VIII. ABBVIE FAILS TO PLEAD A CLAIM FOR BREACH OF FIDUCIARY DUTY BY DR. GAVRILYUK (COUNT 7—WASHINGTON LAW)

AbbVie's claim for breach of fiduciary duty against Dr. Gavrilyuk also fails. Curiously, AbbVie alleges that Count 7—which stems from an alleged breach of Section 8 of her employment agreement, Compl. ¶ 245—arises under Washington law, whereas the alleged breach of Section 8 in Count 6 allegedly arises under Illinois law, *see id.* ¶ 237. If Count 7 were evaluated under Illinois law, it should be dismissed because the Illinois Trade Secrets Act (ITSA) preempts AbbVie's breach of fiduciary duty claim, irrespective of whether AbbVie has brought an ITSA claim. *See Nextpulse, LLC v. Life Fitness, LLC*, 2024 WL 1376213, at *4 (N.D. Ill. Mar. 31, 2024) ("Courts have considered whether ITSA preemption applies at the motion to dismiss stage, even when the plaintiff has not brought independent [ITSA] claims . . . ."); *see also* 765 Ill. Comp. Stat. Ann. 1065/8 (ITSA "displace[s] conflicting tort, restitutionary, unfair competition, and other laws of [Illinois]"). Such claims are preempted by the ITSA when they are premised directly on the misappropriation of confidential information and trade secrets, as AbbVie alleges here. *Opus Fund Servs. (USA) LLC v. Theorem Fund Servs., LLC*, 2017 WL 4340123, at *5 (N.D. Ill. Sept. 29, 2017).

Even if AbbVie's claim were not foreclosed under the ITSA, its breach of fiduciary duty claim still fails. AbbVie alleges that Dr. Gavrilyuk breached her fiduciary duty by "misappropriating the AbbVie ADC Trade Secrets." Compl. ¶ 246. However, any alleged fiduciary duty breach based on misappropriation of purported trade secrets fails for the reasons discussed *supra* in Section VI. Moreover, in both Illinois and Washington, any fiduciary duty of loyalty terminates upon resignation, *Dames & Moore v. Baxter & Woodman, Inc.*, 21 F.Supp.2d 817, 823 (N.D. Ill. 1998); *Steven Cole Salon, LLC v. Salon Lotus*, 2009 WL 309196, at *5 (Wash. Ct. App. Feb. 9, 2009), and AbbVie alleges that the supposed misappropriation here occurred in 2021, which is after AbbVie alleges Dr. Gavrilyuk resigned from AbbVie in December 2020. *See*

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Compl. ¶ 7, 108-111, 114-117. Activities that allegedly occurred after Dr. Gavrilyuk's departure cannot form the basis of a fiduciary duty claim.

AbbVie also claims breach because Dr. Gavrilyuk allegedly "accept[ed] employment and/or consulting work with Deep Valley Labs as a 'Co-Founder-in-Residence' in April 2020, while still employed by AbbVie." *Id.* ¶ 247. However, that allegation does not line up with the contractual language that AbbVie relies upon for the existence of a fiduciary duty, which applies only specifies that any such duty is "with respect to Confidential Information and Inventions," not employment generally. *Id.* ¶¶ 245-46. AbbVie does not allege that Dr. Gavrilyuk disclosed any "Confidential Information" or "Inventions" to Deep Valley Labs. As such, AbbVie provides no basis to support its claim of breach of fiduciary duty.

IX. ABBVIE FAILS TO PLEAD A CLAIM FOR UNJUST ENRICHMENT AGAINST GENMAB OR PROFOUNDBIO (COUNT 8—WASHINGTON LAW)

AbbVie's claim for unjust enrichment against Genmab and ProfoundBio under Washington law should likewise be dismissed. As an initial matter, a claim for unjust enrichment under Washington law has a limitations period of three years. *See* Wash. Rev. Code § 4.16.080(3). AbbVie's claim is thus time barred. As discussed in Section I, the Complaint makes clear that AbbVie knew or should have known of the alleged unjust enrichment no later than December 1, 2021, which is more than three years before it brought this lawsuit.

Furthermore, to adequately plead an unjust enrichment claim, AbbVie must allege facts that support, *inter alia*, that it conferred a benefit on ProfoundBio or Genmab. *See NC Interactive, LLC v. Amber Studio S.A.*, 2024 WL 1832951, at *4-5 (W.D. Wash. Apr. 26, 2024). However, "as a matter of law" a plaintiff "[can]not satisfy the first element of unjust enrichment" when the defendant allegedly takes the benefit at issue. *Lavington v. Hillier*, 22 Wash. App. 2d 134, 144 (2022) (affirming dismissal of unjust enrichment claim where "it is undisputed that [the plaintiff] did not confer any benefit on the [defendants]" because the defendants "simply took the benefit"). That legal standard forecloses AbbVie's claim. AbbVie nowhere alleges that it conferred any

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benefit on Genmab or ProfoundBio. That would be contrary to the entire theory of AbbVie's case, which is that AbbVie's supposed trade secrets were allegedly "stolen." *See* Compl. ¶¶ 3, 9, 254. "[A]s a matter of law" such allegations do not and cannot support the conferral of a benefit. *Lavington*, 22 Wash. App. 2d at 144.

CONCLUSION

Defendants respectively request that AbbVie's Complaint be dismissed.

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I certify that this memorandum contains 12,596 words, in compliance with the Local Civil Rules.

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CERTIFICATION OF CONFERRAL

Undersigned counsel certifies, consistent with Judge Lin's Chambers Procedure II(D), that the parties have met and conferred before Defendants filed this Motion to Dismiss. Undersigned counsel identified the anticipated bases for dismissal, and Plaintiff's counsel confirmed that they would maintain their claims.

s/ Vanessa Soriano Power
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