

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ABBVIE INC., et al.,

Defendants.

Case Number: 2:14-CV-5151-HB

**[PROPOSED] FINAL JUDGMENT AND
ORDER FOR EQUITABLE MONETARY RELIEF**

Plaintiff Federal Trade Commission filed its Complaint for Injunctive and Other Equitable Relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b). (Dkt. 1.) The Court dismissed Count II of the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. 82.) The Court also dismissed Count I of the Complaint to the extent Count I was premised on the agreements that resolved *Abbott Products Inc. v. Teva Pharmaceuticals USA, Inc.*, Civil Action No. 11-384 (D. Del.). (Dkt. 82.) Subsequently, the Court ruled that the patent infringement lawsuits the AbbVie Defendants and Besins filed against Teva Pharmaceuticals USA, Inc. and Perrigo Company were objectively baseless and entered summary judgment in favor of the FTC on this issue. (Dkt. 301.) The case then proceeded to trial. Following trial, the Court issued its Findings of Fact and Conclusions of Law and found that the AbbVie Defendants and Besins violated section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), by filing sham litigation against Teva Pharmaceuticals USA, Inc. and Perrigo Company to maintain their monopoly power with respect to AndroGel. (Dkt. 439.)

I. Definitions

THEREFORE, IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. "Plaintiff" or "Commission" means the United States Federal Trade Commission.
- B. "Abbott" means Abbott Laboratories and its successors and assigns.
- C. "AbbVie" means AbbVie Inc. and its successors and assigns.
- D. "AbbVie Defendants" means AbbVie, Abbott, and Unimed, as defined herein, individually, collectively, or in any combination.
- E. "Besins" means Besins Healthcare, Inc. and its successors and assigns.
- F. "Unimed" means Unimed Pharmaceuticals, LLC and its successors and assigns.

II. Findings

IT IS FURTHER ORDERED that:

- A. The Court has jurisdiction over this matter under 15 U.S.C. §§ 45(a) and 53(b) and under 28 U.S.C. §§ 1331, 1337(a), and 1345.
- B. Venue is proper in this Court under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and under 15 U.S.C. § 22 and 28 U.S.C. §§ 1391(b) and (c).
- C. The AbbVie Defendants and Besins violated section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), by filing sham litigation against Teva Pharmaceuticals USA, Inc. and Perrigo Company to maintain their monopoly power with respect to AndroGel.

III. Equitable Monetary Relief

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of \$448,000,000 is entered in favor of the Commission and against the AbbVie Defendants and Besins as equitable monetary relief. The Commission is also entitled to \$72,085,171 in prejudgment interest on this award, calculated at the rates set by the Internal Revenue Service for underpayments. *See* 26 C.F.R. § 301.6621-1.
- B. Liability is apportioned between the AbbVie Defendants and Besins according to the royalty rates agreed between the AbbVie Defendants and Besins in their license agreements, which were 8% from June 2013 through March 2015 and 5% from April 2015 through August 2017.

C. The AbbVie Defendants and Besins shall satisfy the judgment as follows:

1. Within 14 days of entry of this Order, the AbbVie Defendants shall pay the Commission \$486,446,631, which includes \$419,317,201 as equitable monetary relief and \$67,129,430 as prejudgment interest. The AbbVie Defendants shall pay the Commission by electronic fund transfer in accordance with instructions provided by a representative of the Commission to counsel for the AbbVie Defendants.
2. Within 14 days of entry of this Order, Besins shall pay the Commission \$33,344,137, which includes \$28,388,396 as equitable monetary relief and \$4,955,741 as prejudgment interest. Besins shall pay the Commission by electronic fund transfer in accordance with instructions provided by a representative of the Commission to counsel for Besins.
3. The AbbVie Defendants and Besins shall deposit all money to be paid pursuant to this Final Judgment and Order for Equitable Monetary Relief into an account to be designated by the Commission and administered by the Commission or its designee as a fund for equitable relief, including consumer and other purchaser redress and any attendant expenses for the administration of the fund (the “Redress Fund”). The money in the Redress Fund shall be held in escrow, and shall not be disbursed, until this case has been finally resolved, including any appeals. The Commission shall develop a plan of administration for the Redress Fund to identify valid claims and equitably distribute redress to consumers or other purchasers injured by the AbbVie Defendants’ and Besins’s anticompetitive conduct. After a period of 5 years following the final resolution of this case, including any appeals, the Court will determine, following a recommendation from the Commission, how to administer any remaining money in the Redress Fund not disbursed. The AbbVie Defendants and Besins shall have no right to contest the manner of distribution chosen by the Commission.
4. No later than 30 days after receiving a written request by the Commission, the AbbVie Defendants and Besins, at their own cost and expense, shall provide to the Commission information and data in their possession, custody, or control relevant to facilitate distribution of the money paid under this Final Judgment and Order for Equitable Monetary Relief, including but not limited to the name, last known contact information, and prescription and purchasing data of AndroGel customers and consumers.

IV. Injunctive Relief

IT IS FURTHER ORDERED that the injunctive relief the Commission requested against the AbbVie Defendants and Besins is denied.

V. Change of Corporate Control

IT IS FURTHER ORDERED that the AbbVie Defendants and Besins, only on behalf of themselves, shall notify the Commission at least 30 days prior to a change that may affect

their respective compliance obligations arising out of this Final Judgment and Order for Equitable Monetary Relief, including any proposed dissolution, acquisition, merger, or consolidation.

VI. Retention of Jurisdiction

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this matter for purposes of construction, modification, and enforcement of this Final Judgment and Order for Equitable Monetary Relief.

SO ORDERED this ____ day of _____, 2018

The Honorable Harvey Bartle, III
United States District Judge