



of Toxicology, Inc. d/b/a AIT Laboratories (“AIT Laboratories”) and AIT Bioscience, LLC (“AIT Bioscience”).

3. In addition to Defendant PBI Bank, this action is filed against Dr. Michael A. Evans, who was the 88 percent owner and majority selling shareholder, CEO and sole member of the Board of Directors of AIT Holding and AIT Laboratories and who was responsible for appointing and overseeing PBI Bank.

4. As alleged more fully below, Defendant PBI Bank violated its fiduciary duties by causing the ESOP to vastly overpay for stock purchased from Defendant Evans and others for \$90 million on June 30, 2009.

5. By failing to monitor Defendant PBI Bank, a fiduciary he appointed, Defendant Evans is liable for Defendant PBI Bank's violations of ERISA as a co-fiduciary.

6. Defendant Evans was unjustly enriched through the June 30, 2009 stock purchase because he knew, or should have known, that he and other selling shareholders were being vastly overpaid for their stock by the ESOP in the June 30, 2009 stock purchase and he knowingly participated in the fiduciary violations and the non-exempt prohibited transactions described below.

7. This complaint describes how Defendant PBI Bank obtained a June 22, 2009 valuation of AIT Holding that Defendants PBI Bank and Evans knew, or should have known, was unreliable for a number of reasons. Problems with the valuation that should have been readily apparent to Defendants PBI Bank and Evans included the valuation's failure to account for increasing competition in the industry from vastly larger competitors and increasing negative price pressures from AIT Holding's major sources of revenue: Medicare, Medicaid and private insurance companies. Defendants PBI Bank and Evans knew, or should have known, that the

increased competition and potential negative price pressures were likely to decrease AIT Holding's profitability substantially in future years. Moreover, the valuation improperly gave a disproportionate weighting to AIT Holding's projections for one year with almost no consideration of its historical performance.

8. Additionally, the June 22, 2009 valuation specifically, and incorrectly, assumed that the stock being purchased for \$90 million by the ESOP included a controlling interest in AIT Holding and its subsidiaries. Defendant PBI Bank knew that the ESOP was not actually obtaining control of AIT Holding and its subsidiaries on June 30, 2009, because PBI executed an agreement on behalf of the ESOP requiring the ESOP to vote its shares to elect individuals designated by Defendant Evans to a greater than two-thirds majority of the Board of Directors (five of the seven directors) after the June 30, 2009 stock purchase. Thus, Defendant PBI Bank should not have accepted the valuation as providing a fair market valuation of AIT Holding when it knew the valuation was substantially based on this false assumption.

9. Defendant Evans' control of AIT Holding was not simply a formality. Instead, it was the lever by which Defendant Evans was ultimately able to wrest control of AIT Holding from the ESOP only a few short years after the ESOP ostensibly purchased a 100% equity interest in the company. Indeed, by the end of 2013, Defendant Evans – after pocketing millions of dollars on the sale of his company stock to the ESOP – used his control of AIT Holding's Board of Directors to take back ownership of AIT Holding from the ESOP and to leave the ESOP, its participants and beneficiaries with a fraction of the company (the ESOP now only owns 10% of AIT Holding, which no longer owns AIT Bioscience).

10. Defendants PBI Bank and Evans also knew that AIT Laboratories and other selling shareholders reported in tax filings with the Internal Revenue Service a \$5.2 million fair

market value for the company in 2008, based on a valuation by a different appraisal firm – a value dramatically lower than the \$90 million that Defendant PBI Bank caused the ESOP to pay. Defendant Evans never considered how it could be prudent, loyal or appropriate for AIT and other selling shareholders to report one amount for personal income tax purposes and then require the ESOP and its participants to pay him many multiples of that reported amount.

11. By causing the ESOP to purchase AIT Holding stock at an inflated price and without a good faith investigation, Defendant PBI Bank violated ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B). Defendant PBI Bank also caused the ESOP to engage in transactions prohibited by ERISA §§ 406(a)(1)(A) and (D), 29 U.S.C. §§ 1106(a)(1)(A) and (D), because the purchase was from Defendant Evans and other selling shareholders, all of whom were parties in interest with respect to the ESOP pursuant to ERISA § 3(14), 29 U.S.C. § 1002(14). Because the purchase was not for “adequate consideration” as that term is defined by ERISA § 3(18), 29 U.S.C. § 1002(18), the purchase was not exempt from ERISA’s prohibited transaction provisions pursuant to ERISA § 408(e), 29 U.S.C. § 1108(e).

12. Defendant Evans is also liable for failing to monitor PBI Bank and provide accurate forecasts while knowingly providing grossly inflated financial projections, and liable as a co-fiduciary under ERISA §§ 405(a)(1)-(3), 29 U.S.C. §§ 1105(1)-(3), for PBI Bank's violations of ERISA. As set forth above and more fully below, Defendant Evans knew, or should have known, of the fiduciary breaches and prohibited transactions described herein and that the ESOP purchased the AIT Holding stock from him and other selling shareholders on June 30, 2009 at an inflated price. Thus, by knowingly participating in the ERISA violations described herein, Defendant Evans is additionally liable for appropriate equitable relief pursuant to ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5).

### **JURISDICTION AND VENUE**

13. AIT Holding established the ESOP effective January 1, 2009, for the benefit of its eligible employees. The ESOP is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), and subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a).

14. This court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). Venue of this action lies in the Southern District of Indiana, pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the ESOP was administered in Indianapolis, Indiana, within this district.

### **DEFENDANTS AND PARTIES IN INTEREST UNDER ERISA**

15. The ESOP is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

16. AIT Holding is a Subchapter S corporation incorporated in Indiana on December 11, 2008, as a holding company of AIT Laboratories and AIT Bioscience.

17. Prior to March 31, 2008, Defendant Evans was the sole shareholder and sole member of the Board of Directors of AIT Laboratories. After March 31, 2008, Defendant Evans was Chief Executive Officer and, until June 26, 2009, the sole member of the Board of Directors of AIT Holding.

18. Effective March 31, 2008, AIT Laboratories awarded restricted stock grants to Todd Pedersen ("Pedersen"), Eric Orme ("Orme") and Ronald Thieme ("Thieme"), giving each approximately a 3% ownership interest in AIT Laboratories. After AIT Holding was formed, the grants became subject to automatic vesting as restricted stock grants of AIT Holding.

19. On or around June 26, 2009, Evans, Orme and Thieme became members of the Board of Directors of AIT Holding and all of the stock grants held by them immediately vested in full. Andrea Terrell ("Terrell"), Evans's wife, also became a member of the Board of AIT Holding on June 26, 2009, was the only other Board member as of June 30, 2009, and also received a 3% ownership interest in AIT Laboratories.

20. Defendant Evans, along with AIT Holding and AIT Laboratories, appointed and retained Defendant PBI Bank as the ESOP's trustee. Defendant Evans was the sole member of the Board of Directors and the sole shareholder at that time. As the ESOP's trustee, Defendant PBI Bank received an engagement fee of \$30,000 and additional annual fees.

21. The Board of Directors of AIT Holding, by resolution, exercised its authority to confirm PBI Bank's appointment as the ESOP's trustee effective June 30, 2009. Defendant Evans, as well as Orme, Thieme, Pedersen and Terrell were members of the Board of Directors who signed the resolution.

22. Defendant PBI Bank was the named trustee of the ESOP, a fiduciary to the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and a party in interest with respect to the ESOP within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

23. AIT Laboratories was a plan sponsor of the ESOP, a fiduciary to the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and a party in interest with respect to the ESOP within the meaning of ERISA §§ 3(14)(A), (C) and (G), 29 U.S.C. §§ 1002(14)(A), (C) and (G).

24. AIT Holding was a plan sponsor of the ESOP, a fiduciary to the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and a party in interest with respect to

the ESOP within the meaning of ERISA §§ 3(14)(A), (C) and (G), 29 U.S.C. §§ 1002(14)(A), (C) and (G).

25. Defendant Evans was AIT Laboratories' and AIT Holding's Chief Executive Officer and, until June 26, 2009, sole member of the Board of Directors, and was a fiduciary with respect to the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Defendant Evans owned 87.976% of AIT Holding from June 26, 2009 to June 30, 2009; and was a party in interest with respect to the ESOP within the meaning of ERISA §§ 3(14)(A) and (H), 29 U.S.C. §§ 1002(14)(A) and (H).

26. Orme was Vice President and Chief Operating Officer of AIT Laboratories, and was a fiduciary with respect to the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Orme owned 3.006% of AIT Holding from at least June 26, 2009 to June 30, 2009, and was a party in interest with respect to the ESOP within the meaning of ERISA § 3(14)(A) and (H), 29 U.S.C. §§ 1002(14)(A) and (H).

27. Thieme was Vice President and Chief Information Officer of AIT Laboratories, owned 3.006% of AIT Holding from at least June 25, 2009 to June 30, 2009, and was a party in interest with respect to the ESOP within the meaning of ERISA § 3(14)(H), 29 U.S.C. § 1002(14)(H).

28. Pedersen was Vice President of Corporate Development of AIT Laboratories, owned 3.006% of AIT Holding from at least June 26, 2009 to June 30, 2009, and was a party in interest with respect to the ESOP within the meaning of ERISA § 3(14)(H), 29 U.S.C. § 1002(14)(H).

29. Terrell, Defendant Evans' wife, was the Vice President and Chief Science Officer of AIT Laboratories, owned 3.006% of AIT Holding from June 26, 2009, to June 30, 2009, and

was a party in interest to the ESOP within the meaning of ERISA §§ 3(14)(F) and (H), 29 U.S.C. §§ 1002(14)(F) and (H).

## **GENERAL ALLEGATIONS**

### **I. AIT Laboratories' and AIT Holding's Business**

30. At the time of the June 30, 2009 stock purchase, AIT Laboratories was AIT Holding's primary operating subsidiary and only subsidiary with value. AIT Laboratories operated a full-service reference laboratory providing pharmaceutical drug identification and quantification services for medical, clinical and forensic purposes. From 2000 to 2009, AIT Laboratories' business was primarily composed of testing samples (e.g. urine samples, blood samples) for one of three purposes: clinical, forensic, or pain management purposes.

31. AIT Laboratories and AIT Holding had no patents on any testing processes or on any equipment they used to conduct their business.

### **II. Earlier Valuations of AIT Laboratories**

32. On or around February 5, 2008, City Securities Corporation ("City Securities") prepared a valuation of AIT Laboratories as of December 31, 2007, valuing AIT Laboratories at \$6,534,000. Because the valuation was prepared with respect to non-control, minority, restricted stock grants to be issued to Orme, Pedersen and Thieme, City Securities then applied a 20% minority discount that resulted in a final value of \$5,226,844.

33. Effective March 31, 2008, Pedersen, Orme and Thieme received restricted stock grants. Pedersen, Orme, and Thieme elected to make IRC Section 83(b) filings in connection with those grants, reporting to the IRS that their restricted stock in AIT Laboratories was worth

\$156,952.68, or \$47.56 per share. This value was based on City Securities' December 31, 2007 valuation.

34. On or around March 12, 2009, City Securities prepared a second valuation for AIT Laboratories as of December 31, 2008, valuing AIT Laboratories, again on a non-control, minority basis at \$17,142,000. City Securities' March 12, 2009 valuation was provided to Defendant Evans, along with Orme and Pedersen.

### **III. AIT Holding Forms the ESOP**

35. In early 2009, Defendant Evans initiated plans to establish an employee stock ownership plan ("ESOP") to purchase AIT Holding's stock.

36. On May 1, 2009, BKD, LLP prepared a feasibility study ("BKD Feasibility Study") with regard to the establishment of an ESOP and the structure by which the ESOP would purchase AIT Holding stock from its shareholders. The BKD Feasibility Study assumed that AIT Holding had a value of \$90,000,000.

37. On or around May 11, 2009, Defendant PBI Bank retained Stoll, Keenon, Ogden PLLC ("Stoll Keenon") to provide legal services with regard to PBI Bank's fiduciary duties and to provide due diligence with regard to the ESOP's purchase of AIT Holding stock.

### **IV. The June 22, 2009 Valuation**

38. On May 18, 2009, Defendant PBI Bank, in conjunction with AIT Laboratories, retained Moss Adams, LLP ("Moss Adams"), to prepare a fair market valuation of AIT Laboratories and to provide a fairness opinion with regard to the ESOP's purchase of AIT Laboratories stock. The engagement letter required the "Client" (PBI Bank) and the "Company" (AIT Laboratories) to do the following with respect to Moss Adams' engagement:

- Make all management decisions and perform all management functions in connection with the services and information provided resulting from this engagement;
- Designate an individual with suitable skill, knowledge, and/or experience to oversee [Moss Adams'] services;
- Evaluate the adequacy and results of the services performed;
- Accept responsibility for the results of the services performed; and
- Establish and maintain internal controls, including monitoring ongoing activities.

39. On June 22, 2009, Moss Adams opined that the value of AIT Holding (not AIT Laboratories), as of April 30, 2009 (two months prior to the June 30, 2009 stock purchase), was \$106,200,000 (“June 22, 2009 Valuation”).

40. On June 30, 2009, Moss Adams opined in a “Bridge Letter” that AIT Holdings’ value, as determined by the June 22, 2009 Valuation, was still \$106,200,000.

41. Moss Adams’ June 22, 2009 Valuation was unreliable for a number of reasons. Most significantly, Moss Adams employed inflated multiples and used inflated projections provided by AIT Laboratories and its officers for purposes of the valuation, resulting in an unreasonably high value for AIT Holding. These projections were substantially above the projections that, just a few months previously, City Securities had used for the valuation it had prepared in connection with Orme, Pedersen and Thieme’s tax filings.

42. The June 22, 2009 Valuation also disregarded industry analysis utilized by Moss Adams that predicted increased competition in the industry and lower reimbursement rates. Defendant PBI Bank failed to question Moss Adams’ decision to ignore the predicted negative change in reimbursement rates for AIT Holding’s pain management business (its primary source of revenue) and the predicted increase in competition in the pain management business. Moss

Adams failed to account for the substantial and foreseeable negative impact from these anticipated changes and, consequently, overstated AIT Holding's value.

43. In the June 22, 2009 Valuation, Moss Adams opined that AIT Laboratories had a "competitive advantage" because it had a business model of adopting "leading edge technology." Moss Adams reported that AIT Laboratories' capital expenditures on this "leading edge technology" as a percent of sales averaged 12% for 2005 to 2008. Notwithstanding AIT Laboratories' business model requiring leading edge technology and AIT Laboratories' practice of incurring significant capital expenditures in the years prior to the June 30, 2009 stock purchase to implement that business model (again, averaging 12% of its sales), Moss Adams utilized projections assuming the percentage would only be 0.9% after the June 30, 2009 stock purchase. Moss Adams, thereby, overstated the future earnings that would be available to the ESOP as an equity investor. Defendant PBI Bank failed to question Moss Adams' use of these unreasonably low projections of future capital expenditures as a percent of sales in its calculations of AIT Holding's value.

44. Further, in the June 30, 2009 Valuation, Moss Adams valued AIT Holding on a control basis. Defendant PBI Bank knew that this assumption was incorrect because the ESOP purchase agreement, which Defendant PBI Bank had signed on behalf of the ESOP in connection with the June 30, 2009 ESOP stock purchase, guaranteed Defendant Evans the power to select a majority of the Board of Directors and, thereby, keep control of the company after the June 30, 2009 stock purchase. Despite this knowledge, Defendant PBI Bank never directed Moss Adams to consider the effect of the ESOP's lack of control on the valuation of AIT Holdings and, instead, accepted a valuation of the company on a control basis.

45. In addition to imprudently failing to question these major errors by Moss Adams, Defendant PBI Bank also failed to act in good faith when it failed to question the reasonableness of other aspects of Moss Adams' June 22, 2009 Valuation including, but not limited to:

- a. Unreasonable assumptions regarding AIT Holding's projected sales growth, profit margins, and capital expenditures;
- b. Absence of alternative, foreseeable scenarios under the income approach;
- c. Unreasonably high projected return on assets for AIT Holding when compared to its historical return on assets and when compared to similar ratios for its peer companies;
- d. The lack of complete data for comparable companies, the adjustments to the multiples for comparable companies and the use of the projections for 2009 as representative of AIT Holding under the market approach; and
- e. The failure to incorporate the cost to the company and the dilutive effect on the ESOP's ownership interests that would foreseeably result from Incentive Stock Options issued to Orme, Pedersen, Thieme and Terrell as part of the ESOP transaction providing them with a 20% ownership of the company in the future.

**V. The June 30, 2009 Stock Purchase**

46. On June 29, 2009, Defendant PBI Bank, as ESOP trustee, adopted a resolution to have the ESOP purchase all of the outstanding shares of AIT Holding from Orme, Thieme, Pedersen, Terrell and Defendant Evans for \$90,000,000.

47. On June 30, 2009, Stoll Keenon provided a memorandum to Defendant PBI Bank summarizing the due diligence procedures the firm performed with regard to AIT Holding's history and operations. Stoll Keenon's memorandum identified the existence of the two

appraisals of AIT Laboratories prepared by City Securities in 2008 and 2009 for the purpose of Internal Revenue Code (“IRC”) Section 83(b) elections.

48. Moss Adams, Defendant PBI Bank and Defendant Evans knew, or should have known, that the City Securities’ valuations were vastly lower than Moss Adams’ valuation, and that the 2008 and 2009 City Securities’ valuations used substantially more conservative financial projections of AIT Laboratories than the ones used by Moss Adams in the June 22, 2009 Valuation. When Moss Adams performed the June 22, 2009 Valuation, it had possession of the IRC Section 83(b) elections and AIT Laboratories’ financial statements for 2008 – both of which indicated that AIT Laboratories considered itself to be worth \$5.22 million on March 31, 2008.

49. On June 30, 2009, Defendant PBI Bank executed the Share Purchase and Redemption Agreement on behalf of the ESOP. As part of this Agreement, the ESOP agreed to purchase 100% of AIT Holding’s stock. The ESOP’s purchase of AIT Holding stock was financed by a \$90,000,000 loan from AIT Holding to the ESOP (“Plan Loan”) to be paid off in annual installments over the next thirty (30) years. As part of the Share Purchase and Redemption Agreement, Defendant PBI Bank caused the ESOP to agree that, as long as money was owed to Defendant Evans, the ESOP would elect five persons selected by Defendant Evans to the Board of Directors and not permit the total number of persons appointed to the Board of Directors to be greater than seven.

50. In exchange for the Plan Loan, the ESOP received, among other consideration, \$11,000,000 in cash from AIT Holding – an amount that was financed by AIT Holding borrowing \$15,000,000 from M&I Marshall & Ilsley Bank (“M&I Bank”) through two notes (the remaining \$4,000,000 was used by AIT Holding to refinance preexisting corporate debt). AIT Holding also borrowed \$79,004,000 from Defendant Evans (“Defendant Evans Loan”) and

provided credit to the ESOP for use in purchasing Defendant Evans' shares. The terms of the Defendant Evans Loan required quarterly payments over a ten-year period, with the final payment due on June 30, 2019.

51. As part of the June 2009 stock purchase, the minority shareholders of AIT Holding (Terrell, Pedersen, Orme and Thieme) each received cash payments of \$2,705,459.51. As part of the June 2009 stock purchase, Defendant Evans, the majority shareholder of AIT Holding, received a cash payment of \$174,161.96 and a note for \$79,004,000.

**VI. AIT Holding and the ESOP from 2010 to 2013**

52. In June and October 2010, Defendant Evans received accelerated payments on his note to AIT Holding that totaled \$16.1 million. AIT Holding raised the money to pay these amounts by amending its notes with M&I Bank to obtain additional financing of \$16.1 million.

53. In 2011, reimbursement rates for pain management testing were reduced by approximately 40% and AIT Holding's profit margins decreased substantially.

54. On December 31, 2011, with Defendant PBI Bank's approval, AIT Holding sold 90% of AIT Bioscience to an entity owned by Defendant Evans for \$3.1 million. Defendant PBI Bank did not obtain a valuation of AIT Bioscience before the sale in December 2011.

55. In December 2011, AIT Holding was in violation of its covenants under the notes with M&I Bank that AIT Holding obtained for the ESOP's stock purchase. Because of AIT Holding's violations of the covenants and its faltering financial position, M&I Bank soon insisted that AIT Holding accept M&I Bank's selection of a turn-around specialist to run AIT Holding. In 2012 and 2013, AIT Holding's finances continued to deteriorate.

56. The Plan reported on its Form 5500 Annual Report that it had 306 participants and assets of \$1.2 million as of December 31, 2012.

57. In October 2013, Defendant Evans exercised his rights under the Share Purchase and Redemption Agreement, which Defendant PBI Bank had signed on behalf of the ESOP, to cause the recapitalization of AIT Holding so that Defendant Evans again became the majority shareholder of AIT Holding and the ESOP's ownership interest was reduced to a small percentage. As a result, after recapitalizing and forgiving debt associated with the ESOP and Defendant Evans, AIT Holding had a value of approximately \$16 million. After the recapitalization in October 2013, Defendant Evans owned 100% of AIT Bioscience and 90% of AIT Holding, and the ESOP owned only 10% of AIT Holding.

58. Thus, a little more than 4 years after ostensibly buying 100% of AIT Holding for \$90 million, the ESOP was left with only a 10% interest in AIT Holding (and without any interest in AIT Bioscience) worth approximately \$1.6 million. At the same time, by the end of 2013 and after receiving tens of millions of dollars in cash on his sale of all of his stock to the ESOP, Defendant Evans owned everything else.

### **VIOLATIONS**

59. Paragraphs 1 through 58 above are hereby re-alleged and incorporated herein.

60. Defendant PBI Bank acted imprudently and disloyally and engaged in transactions prohibited by ERISA when it improperly caused the ESOP to purchase AIT Holding stock from Thieme, Orme, Pedersen, Terrell and Defendant Evans at a price that it knew, or should have known, was far in excess of fair market value on June 30, 2009.

61. By the actions and failures to act as described above, Defendant PBI Bank:

- (a) failed to discharge its duties with respect to the ESOP solely in the interest of the ESOP's participants and beneficiaries and for the exclusive purpose of providing

benefits to the ESOP's participants and beneficiaries in violation of ERISA §404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

(b) failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B);

(c) caused the ESOP to engage in transactions that Defendant PBI Bank knew, or should have known, constituted direct or indirect sales or exchanges, or leasing, of any property between the ESOP and a party in interest, in violation of ERISA §406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A); and,

(d) caused the ESOP to engage in transactions that Defendant PBI Bank knew, or should have known, constituted direct or indirect transfers of the ESOP's assets to, or use of the ESOP's assets by or for the benefit of parties in interest, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

62. As a result of the conduct described above, Defendant PBI Bank caused losses to the ESOP for which it is liable pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

63. Defendant Evans failed to monitor the fiduciary he appointed, Defendant PBI Bank, in violation of ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B). As a result of these imprudent and disloyal acts and omissions, Defendant Evans caused losses to the ESOP for which he is jointly, severally and personally liable pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

64. Pursuant to ERISA §§ 405(a)(1) through (3), 29 U.S.C. §§ 1105(a)(1) through (3), Defendants PBI Bank and Evans are liable for the breaches of their co-fiduciaries as described

above because they knowingly participated in or concealed an act or omission of their co-fiduciaries, knowing that such act or omission was a breach; they enabled their co-fiduciaries to commit a breach by breaching their own fiduciary duties under ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1); and they had knowledge of a fiduciary breach by their co-fiduciaries and did not make reasonable efforts under the circumstances to remedy it.

65. As a result of the conduct described above, Defendant Evans knowingly participated in the breaches of fiduciary duty described herein and is subject to such appropriate equitable relief to redress the violations in which he knowingly participated and which caused the ESOP to pay more than adequate consideration for stock and by which he was unjustly enriched and is liable thereby pursuant to ERISA § 502(a)(5), 29 U.S.C. § 1132(a)(5).

#### **PRAYER FOR RELIEF**

WHEREFORE, the Secretary prays that this Court enter an Order:

- A. Requiring Defendants PBI Bank and Evans to restore all losses caused to the ESOP as a result of their fiduciary breaches, plus interest;
- B. Requiring Defendant PBI Bank to disgorge all fees and costs, including legal fees that it or its agents received from AIT Holding, AIT Laboratories, the ESOP or any other source for all services related to the ESOP and any litigation related to its fiduciary breaches alleged herein;
- C. Requiring Defendant Evans to rescind and undo the prohibited transactions in which he participated and disgorge any and all profits and financial benefits he received as a result of his knowing participation in the violations described herein, plus interest;
- D. Removing Defendant Evans from all fiduciary or service provider positions he may now have in connection with the ESOP;

- E. Appointing an Independent Fiduciary to distribute all recoveries made to the ESOP and requiring Defendants PBI Bank and Evans to pay for all fees and expenses related to such appointment;
- F. Awarding the Secretary the costs of this action; and
- G. Ordering such further relief as is appropriate and just.

Respectfully submitted,

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Dated: August 29, 2014

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