The Paycheck Protection Program Was Supposed To Give Small Businesses A Lifeline – But Public Companies With Access To Capital Have Used The Funds To Enrich Executives

SUMMARY: The Paycheck Protection Program (PPP) was intended as a lifeline for small businesses struggling amid the COVID-19 pandemic. Yet the administration is awarding PPP aid to some large, publicly-traded companies. And a number of them have abused the funds, using it to enhance executive pay and participate in stock buybacks. Examples include:

- **RumbleOn, Inc.** received $5.1 million in PPP funding on May 1, 2020. At the end of the month, the company essentially used the money to keep executive salaries high, directly crediting the receipt of PPP funds with the decision to reverse salary reductions for employees making over $75,000 (including the company CEO and CFO).

- **RW Holdings NNN REIT** received $517,000 in PPP funding in April 2020. On April 20, 2020, the company authorized share repurchase programs, or “stock buybacks” – criticized by the Harvard Business Review as benefitting executives without strong benefit to the firm. In a later earnings call, the company directly credited the receipt of PPP funds with enabling the stock repurchases.

- **OncoCyte** received $1.14 million in PPP funding on April 23, 2020. Just one day later, the company announced a $10.7 million cash infusion from investment firm Blackrane Capital – and one week later, the company announced that their Board of Directors could defer their compensation and receive as much as 10-percent in interest on the deferred amount. The Treasury Department provided guidance that it was “unlikely” a public company with access to capital markets could certify a PPP loan was taken in good faith.

- **Sonoma Pharmaceuticals** announced the closure of a California facility, with the manufacturing work being moved to Guadalajara, Mexico, on April 20, 2020. Eleven days later, on May 1, the company received a $1.3 million PPP loan. And at the end of May, the company announced the closure of an office in Seattle, as well as a payout of an executive vice president to the tune of over $230,000 – while keeping the same VP as a consultant at a rate of $200/hour.

- **Agenus Inc.** held a cash balance of $92.3 million on March 31, 2020; the previous year, Agenus’ CEO alone received $9.9 million in compensation. Yet the company received a $6.2 million PPP loan in May 2020.

RumbleOn, Inc. Received $5.1 Million In PPP Funding - Then Credited The Loan For Enabling A Reversal Planned Salary Reductions For Company Officers And High-End Employees

May 1, 2020: RumbleOn, Inc. Received $5,176,845 In Paycheck Protection Program Funding. "On May 1, 2020, RumbleOn, Inc. (the ‘Company’), and its wholly-owned subsidiaries Wholesale, Inc. and Wholesale Express, LLC (together, the ‘Subsidiaries,’ and with the Company, the ‘Borrowers’), each entered into loan agreements and related promissory notes (the ‘SBA Loan Documents’) to receive U.S. Small Business Administration Loans (the ‘SBA Loans’) pursuant to the Paycheck Protection Program (the ‘PPP’) established under the Coronavirus Aid, Relief, and Economic Security Act (the ‘CARES Act’), in the aggregate amount of $5,176,845.00 (the ‘Loan Proceeds’) The Borrowers received the Loan Proceeds on May 1, 2020." [SEC - RumbleOn, Inc. 8-K, 5/7/20]

Following The Receipt Of A PPP Loan, RumbleOn, Inc. Said It Removed Plans To Implement Salary Reductions For Employees Making Over $75,000 - Including Its CEO And CFO. "On April 9, 2020, the Company reported that it would implement temporary salary reductions for those employees whose annual salaries exceed $75,000, including, in consultation with the Compensation Committee of the Company's Board of Directors, the salaries of our Chief Executive Officer and Chief Financial Officer. As a result of the Company's approval of Paycheck Protection Program funds on May 1, 2020, the Company has determined that these salary reductions are not needed at this time and such reductions were not implemented." [SEC - RumbleOn, Inc., 10-K, 5/29/20]

RW Holdings NNN REIT Credited The Receipt Of PPP Loan For Opening Up Cash Resources For A "Small Amount Of Share Repurchases"

RW Holdings NNN REIT Inc. Received $517,000 In PPP Funding

RW Holdings NNN REIT Inc. Received $517,000 In Paycheck Protection Program Funding. "We have received a question pertaining to NNN REIT's ability to apply for a PPP loan under the CARES Act? Yes, our subsidiary was eligible for the Paycheck Protection Program, commonly referred to as PPP, so we applied and our subsidiary was approved for a loan of $517,000." RW Holdings did not specify the exact date the loan funds were received in their SEC filings. [SEC - RW Holdings NNN Reit Inc. 8-K (EX-99.1), 5/28/20]

Following The Receipt Of PPP Funds, RW Holdings Announced The Money Enabled A Small Amount Of Stock Buybacks – Criticized By Harvard Business Review As Only Benefitting Executives And Not The Company

RW Holdings NNN REIT Said PPP Funds To A Subsidiary Had Allowed The Company To Use Cash Resources For "A Small Amount Of Share Repurchases Last Month." "We have received a question pertaining to NNN REIT's ability to apply for a PPP loan under the CARES Act? Yes, our subsidiary was eligible for the Paycheck Protection Program, commonly referred to as PPP, so we applied and our subsidiary was approved for a loan of $517,000. […] This loan helped offset reduced rent collections and allowed us to use other cash resources for mortgage payments and a small amount of share repurchases last month." [SEC - RW Holdings NNN Reit Inc. 8-K (EX-99.1), 5/28/20]

- **April 20, 2020: RW Holdings NNN REIT Announced Amended Share Repurchase Programs For Shares Of Its Class C And Class S Common Stock.** "RW Holdings NNN REIT, Inc. (the 'Company') maintains share repurchase programs (the 'SRPs') to provide limited liquidity to holders of shares of the Company's Class C and Class S common stock. Notwithstanding these SRPs, real estate programs, such as the Company, represent an illiquid asset class and there is no guarantee that liquidity will be available, particularly over the short term. On April 20, 2020, the Company's board of directors approved amended and restated SRPs for shares of its Class C and Class S common stock." [SEC - RW Holdings NNN Reit Inc. 8-K, 4/20/20]

Harvard Business Review: Stock Buybacks Have No Productive Impact On A Firm's Capabilities As Benefits Go To Top Shareholders. "Even as the United States continues to experience its longest economic expansion since World War II, concern is growing that soaring corporate debt will make the economy susceptible to a contraction that could get out of control. The root cause of this concern is the trillions of dollars that major U.S. corporations have spent on open-market repurchases — aka 'stock buybacks' — since the financial crisis a decade ago. […] Stock buybacks made as open-market repurchases make no contribution to the productive capabilities of the firm. Indeed, these distributions to shareholders, which generally come on top of dividends, disrupt the growth dynamic that links the productivity and pay of the labor force. The results are increased income inequity, employment instability, and anemic productivity." [Harvard Business Review, 1/7/20]

After Receiving A PPP Loan, OncoCyte Went On To Raise $10.7 Million From Investors – And Offered Executives 10-Percent Interest On Deferred Compensation

One Day After Receiving A $1.14 Million PPP Loan, OncoCyte Announced A $10.7 Million Investment From An Investment Firm

April 23, 2020: OncoCyte Entered Into Agreement For $1.14 Million Under The Paycheck Protection Program. "On April 23, 2020, Oncocyte entered into a U.S. Small Business Administration ("SBA") Paycheck Protection Program ('PPP') promissory note in the principal amount of $1,140,930 payable to Silicon Valley Bank (the 'Bank') evidencing a PPP loan from the Bank. The PPP loan will bear interest at a rate of 1% per annum." [OncoCyte 8-K, filed 4/29/20]

April 24, 2020: OncoCyte Announced $10.7 Million In Institutional Investment From Blackcrane Capital Among Other Firms, Leading To "Strengthened Balance Sheet" For "Now…A Commercial Stage Company, As We Work To Grow Our Market." "Oncocyte Corporation (NYSE American: OCX), a molecular diagnostics company with a mission to provide actionable answers at critical decision points across the cancer care continuum, today announced that it has entered into definitive agreements with, among other institutional investors, Blackcrane Capital, LLC, an investment management company employing an unconstrained, change-oriented investment approach, to purchase approximately $10.7 million of Oncocyte's common shares in a registered offering priced "at market", which was the closing price immediately preceding the offering. This offering was completed directly with the institutional investors and the Company incurred no placement agent fees. 'Our strengthened balance sheet will facilitate our continued progress and execution, now as a commercial stage company, as we work to grow our market and further expand our offerings in lung and beyond.'" [OncoCyte press release, 4/24/20]

Treasury Department: "Unlikely" That A Public Company With Substantial Market Value And Access To Capital Markets Can Certify A PPP Loan Was Taken In Good Faith. "Under new Treasury guidance issued Thursday, PPP borrowers must certify 'in good faith' that they absolutely need the loans to keep operating. That includes taking into account aspects such as business activity and their ability to access other sources of capital. 'It is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to Small Business Administration, upon request, the basis for its certification,' according to the Treasury guidance released Thursday." [CNN, 4/23/20]

A Week After Receiving PPP Funds, OncoCyte Announced The Board Of Directors Could Defer Compensation – With As Much As 10-Percent Interest

April 29, 2020: OncoCyte Filing Announced Board Of Directors, Execs Could Defer Portion Of Their Compensation And Accrue As Much As 10-Percent Interest On Deferred Amount. "Our Board of Directors has approved a compensation deferral program to enhance Company liquidity in response to COVID-19 related economic uncertainty. Under the deferral program, certain Company executives may defer a portion of their salaries and bonuses, and Company directors may defer a portion of their director fees, beginning in May 2020 through December 2020. Deferred amounts will bear interest up to 10% per annum, and we will pay all amounts deferred, plus accrued interest (combined, "the deferral amount"), by December 31, 2020. The deferral amount to be paid may be settled with cash, Oncocyte common stock, or a combination of both. If the executive or director requests that all or a portion of the balance be paid in Oncocyte common stock at the end of the deferral period, the stock shall be issued at the then current market price in lieu of cash, subject to approval by the Compensation Committee of the Board of Directors." [SEC - OncoCyte 8-K, filed 4/29/20]

- **CEO Deferred 30% Of Base Salary Plus $186K Bonus At Interest Rate Of 10%; CFO and Chief Scientific Officer Deferred 20% Of Base Salary At Interest Rate Of $6%.** "Ronald Andrews, our Chief Executive Officer, has agreed to defer 30% of his base salary, and $186,240 of a discretionary bonus that otherwise would have been payable in cash. Mr. Andrews' deferred salary amounts will bear interest at 10% per annum, and his deferred bonus will bear interest at 6% per annum. Mr. Andrews has also agreed to accept restricted stock units ("RSUs") for 106,221 shares of common stock under our 2018 Equity Incentive Plan (the "Incentive Plan") in lieu of $279,360 in cash as part of his discretionary bonus, without application of the deferred payment and interest provisions of his Deferral Agreement so that the RSUs will not be part of his "deferral payment" described below. The 106,221 shares of RSUs were determined based on the cash payable value of $279,360 divided by the $2.63 per share closing price of Oncocyte common stock as quoted on the NYSE American on May 7, 2020. The RSUs will vest on May 7, 2021, the anniversary of the grant date. Mitchell Levine, our Chief Financial Officer, and Lyndal Hesterberg, our Chief Scientific Officer, each agreed to defer 20% of his base salary, which will bear interest at 6% per annum." [SEC - OncoCyte 8-K, filed 5/12/20]

Sonoma Pharmaceuticals Closed An American Facility To Mexico 11 Days Before Receiving $1.3 Million In PPP Funding – And Proceeded To Arrange A $230,000 Payout For A Top Executive By The End Of The Month

Sonoma Pharmaceuticals Closed A California Facility To Move Manufacturing To Mexico On April 20, 2020 – On May 1, 2020, They Received $1.3 Million In PPP Funding

April 20, 2020: Sonoma Pharmaceuticals Announced It Was Closing California Facility, Transferring Remaining Manufacturing Work To Guadalajara, Mexico. "Sonoma Pharmaceuticals Inc. will close its Petaluma headquarters and production plant this summer, as the company shifts the remainder of local manufacturing to its Mexican operation. The publicly traded company, which was founded in 1999 and produces treatments for people with chronic skin conditions, has been evaluating its business operations since early 2019 to find a way to become profitable, according to an April 20 filing with the Securities and Exchange Commission. The company said in the filing closing the Petaluma plant will result in 'significant savings' and its work for customers in the United States could be done at its plant in Guadalajara, which serves international customers. Sonoma Pharmaceuticals will move some of its corporate functions to an existing office in Woodstock, Georgia." [Press-Democrat, 4/28/20]

- **Headline: Press-Democrat: "Sonoma Pharmaceuticals Plans To Close In Petaluma And Transfer Work To Its Mexican Plant."** [Press-Democrat, 4/28/20]

- **As Of March 2019, Sonoma Pharmaceuticals Employed 62 Full-Time Employees In The US And Netherlands; 191 Contract Employees In Mexico.** "The company's last annual report said it had 62 full-time employees and one part-time employee in the United States and the Netherlands, as of March 31, 2019. It also had 191 employees in Mexico that were contracted through an employment agency." [Press-Democrat, 4/28/20]

May 1, 2020: Sonoma Pharmaceuticals Received A $1.3 Million PPP Loan. "On May 1, 2020, we received loan proceeds in the amount of $1.3 million under the Paycheck Protection Program, or PPP, from Coastal States Bank, Georgia. The PPP, established as part of the Coronavirus Aid, Relief and Economic Security Act, or CARES Act, provides for loans to qualifying businesses for amounts up to 2.5 times of the average monthly payroll expenses of the qualifying business. The loans and accrued interest are forgivable after eight weeks as long as we use the loan proceeds for eligible purposes, including payroll, benefits, rent and utilities, and we maintain our payroll levels. The amount of loan forgiveness will be reduced if we terminate employees or reduce salaries during the eight-week period." [Sonoma Pharmaceuticals 8-K, 5/4/20]

One Month After Receiving The PPP Loan, Sonoma Announced The Closure Of Its Seattle Office And A Payout Of Their Executive Vice President

May 29, 2020: Sonoma Pharmaceuticals Announced It Would Close Its Seattle Office And Pay Out Executive VP More Than $230,000 In Cash, While Continuing To Pay His Health Care Fees For Up To A Year And Keeping Him On As Consultant At Rate Of $200/Hour. "As previously announced, at the beginning of 2019 we began to carefully evaluate our business with the goal of achieving and sustaining profitability. As part of this process, we are consolidating most of our corporate functions in our offices in Woodstock, Georgia. In May, we closed our offices in the Seattle, Washington area. As part of this consolidation, on May 29, 2020, Dr. Robert Northey was released as our Executive Vice President of Research and Development. Dr. Northey has agreed to stay on as a consultant to provide continuity in our research and development activities. Dr. Northey has been a critical contributor to many of our product development activities and we thank him for all of his services over the last 17 years. We look forward to ongoing collaboration. In connection with Dr. Northey's termination we entered into a separation and release agreement. Pursuant to the agreement Dr. Northey will receive $204,000 in cash as a separation payment plus $26,600 for accrued paid time off. We will continue to reimburse Dr. Northey for his health care expenses for him and his dependents for twelve months should he so elect. All outstanding time-based equity-based compensation awards granted to Dr. Northey during his employment shall become fully vested and remain exercisable for the remainder of their full term. On May 30, 2020, we entered into a consulting agreement with Dr. Robert Northey. Pursuant to the terms of the agreement, Dr. Northey will provide consulting and advisory services in order to assist with the transition to a new research and development department. We will pay Dr. Northey a fee of $200 per hour." [Sonoma Pharmaceuticals 8-K, filed 6/4/20]

Agenus Inc. – Who Paid Their CEO Nearly $10 Million In 2019, And Had Cash Reserves Of $92.3 Million In March – Accepted A $6.2 Million PPP Loan

Agenus CEO Received $9,937,038 In Compensation In 2019. [Agenus DEF14A, filed 4/28/20]

As Of March 31, 2020, Agenus Had Cash Balance Of $92.3 Million. "We ended the first quarter of 2020 with a cash balance of $92.3 million as compared to $61.8 million at December 31, 2019. For the first quarter ended March 31, 2020, we reported a cash burn from our operations of $32 million. Net loss for the quarter was $45 million or $0.31 per share which included non-cash expenses of $16 million. We generated net income for the same period in 2019 of $17 million or $0.14 per share. In the first quarter of 2019 we recognized revenue of $80 million which included revenue related to the upfront license fee from our transaction with Gilead in addition to non-cash royalties earned. For the same period in 2020 we recorded revenue of $15 million primarily related to non-cash royalties earned." [Agenus press release, 5/7/20]

May 2020: Agenus Received $6.2 Million PPP Loan. "In May 2020, we issued promissory notes in the aggregate principal amount of approximately $6.2 million ("PPP Loan") pursuant to the Paycheck Protection Program of the Coronavirus Aid, Relief and Economic Security Act of 2020 (the "CARES Act"). Under the current terms of the CARES Act, our PPP Loan is eligible for forgiveness if the proceeds are used for covered payroll costs, rent and utilities during the 8-week period immediately following receipt of the proceeds. However, the CARES Act regulations are still being written, and the interim regulations have been revised multiple times since they were initially published in March 2020. Our PPP Loan may not qualify for forgiveness under the final regulations of the CARES Act, and we may be required to repay the PPP Loan in full, with interest." [Agenus Inc 10-Q, filed 5/11/20]

NBC Boston HEADLINE: "These Mass. Companies Paid CEOs Millions Before Taking Small Business Loans." [NBC Boston, 6/2/20]

- **Agenus Took $6.2 Million PPP Loan, Paid Its CEO Nearly $10 Million In 2019.** "Agenus Inc., a biotech headquartered in Lexington that develops new cancer drugs, took out a $6.2 million PPP loan last month, according to records it filed with the U.S. Securities and Exchange Commission. SEC records also show Agenus paid its CEO a compensation package of nearly $10 million last year, including cash, stock and options to buy more shares in the company in the future, though he later forfeited about $1.9 million of stock awards, according to the company's filings." [NBC Boston, 6/2/20]

- **Sen. Warren Slammed Large Companies Like Agenus Taking PPP As "Fundamentally Wrong."** "U.S. Sen. Elizabeth Warren, who has criticized flaws in the design and implementation of the Paycheck Protection Program, said the small business loans were never intended for large corporations. "For those folks to be coming over and sucking money out of the help that was made available for small businesses is fundamentally wrong," the Massachusetts Democrat said." [NBC Boston, 6/2/20]