

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

SAM CARLISLE,)	
)	
Plaintiff,)	Case No. _____
v.)	
)	COMPLAINT FOR VIOLATIONS OF
AERPIO PHARMACEUTICALS, INC.,)	THE FEDERAL SECURITIES LAWS
CALEY CASTELEIN, CHERYL COHEN,)	
ANUPAM DALAL, PRAVIN DUGEL,)	
JOSEPH GARDNER, and STEVEN)	JURY TRIAL DEMANDED
PRELACK,)	
)	
Defendants.)	

Plaintiff Sam Carlisle (“Plaintiff”), by and through his undersigned counsel, for his complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action against Aerpio Pharmaceuticals, Inc. (“Aerpio” or the “Company”) and the members of Aerpio’s Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. § 240.14a-9. By the action, Plaintiff seeks to enjoin the vote on a proposed transaction, pursuant to which Aerpio will merge with Aadi Bioscience, Inc. (“Aadi”) through Aerpio’s subsidiary Aspen Merger Subsidiary, Inc. (“Merger Subsidiary”) (the “Proposed Transaction”).¹

¹ Non-party Aadi is a clinical-stage biopharmaceutical company focused on precision therapies for genetically defined cancers with alterations in mTOR pathway genes. Aadi’s lead drug candidate,

2. On May 17, 2021, Aerpio and Aadi jointly announced their entry into an Agreement and Plan of Merger dated May 16, 2021 (the “Merger Agreement”). Under the terms of the Merger Agreement, each share of Aadi common stock will be converted into the right to receive approximately 4.9152 shares of Aerpio’s common stock (the “Merger Consideration”).

3. On July 8, 2021, Aerpio filed a Schedule 14A Definitive Proxy Statement (the “Proxy Statement”) with the SEC. The Proxy Statement, which recommends that Aerpio stockholders vote in favor of the Proposed Transaction, omits or misrepresents material information necessary and essential to that decision. The failure to adequately disclose such material information constitutes a violation of Sections 14(a) and 20(a) of the Exchange Act as Aerpio stockholders need such information in order to make a fully informed decision whether to vote in favor of the Proposed Transaction.

4. It is imperative that the material information omitted from the Proxy Statement is disclosed to the Company’s stockholders prior to the forthcoming stockholder vote so that they can properly exercise their corporate suffrage rights.

5. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to the Company’s stockholders or, in the event the Proposed Transaction is consummated.

ABI-009 (FYARROTM, nab-sirolimus), is a form of sirolimus bound to albumin. Sirolimus is a potent inhibitor of the mTOR biological pathway and inhibits downstream signaling from mTOR, that can promote tumor growth. Aadi is evaluating ABI-009 in cancers with known mTOR pathway activation, including tumor agnostic indications targeting specific genomic alterations that activate the mTOR pathway. Non-party Merger Sub is a Delaware corporation and wholly-owned subsidiary of Aerpio.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

7. This Court has jurisdiction over the defendants because each defendant is either a corporation that conducts business in and maintains operations within this District or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because defendants are found or are inhabitants or transact business in this District.

THE PARTIES

9. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Aerpio.

10. Defendant Aerpio is a Delaware corporation, with its principal executive offices located at 9987 Carver Road, Suite 420, Cincinnati, Ohio 45242. Aerpio is a biopharmaceutical company focused on developing compounds that activate Tie2 for indications. Aerpio's shares trade on The Nasdaq Capital Market under the ticker symbol "ARPO."

11. Defendant Caley Castelein ("Castelein") has been a director of the Company since March 2017.

12. Defendant Cheryl Cohen ("Cohen") and has been a director of the Company since June 2018.

13. Defendant Anupam Dalal (“Dalal”) has been a director of the Company since November 2011.

14. Defendant Pravin Dugel (“Dugel”) has been a director of the Company since March 2017.

15. Defendant Joseph Gardner (“Gardner”) is President and Principal Executive Officer of the Company, and has been a director since 2011. Defendant Gardner previously served as the Company’s Chief Executive Officer (“CEO”) from December 2011 until December 2017.

16. Defendant Steven Prelack (“Prelack”) has been a director of the Company since March 2017.

17. Defendants identified in paragraphs 11-16 are referred to herein as the “Board” or the “Individual Defendants

SUBSTANTIVE ALLEGATIONS

The Proposed Transaction

18. On May 17, 2021, Aerpio and Aadi jointly announced in relevant part:

CINCINNATI and PACIFIC PALISADES, Calif., May 17, 2021 (GLOBE NEWSWIRE) -- Aerpio Pharmaceuticals, Inc. (“Aerpio”) (Nasdaq: ARPO), a biopharmaceutical company focused on developing compounds that activate Tie2, and Aadi Bioscience, Inc. (“Aadi”), a privately-held biopharmaceutical company focusing on precision therapies for genetically-defined cancers with alterations in mTOR pathway genes, announced their entry into a definitive merger agreement. Following the proposed merger, Aerpio will change its name to “Aadi Bioscience, Inc.” and the combined public company will focus on advancing Aadi’s lead product candidate, FYARROTTM (sirolimus albumin-bound nanoparticles for injectable suspension; nab-sirolimus; ABI-009).

In support of the merger, Aerpio has entered into subscription agreements to raise \$155 million in a Private Investment in Public Equity (PIPE) financing led by Acuta Capital Partners and KVP Capital and including Avoro Capital Advisors; Avoro Ventures; Venrock Healthcare Capital Partners; BVF Partners, L.P.; Vivo Capital; Alta Bioequities, L.P.; Rock Springs Capital; RTW Investments, LP; Acorn Bioventures; and Serrado Capital LLC as well as other undisclosed institutional investors.

The PIPE financing is expected to be consummated concurrently with the closing of the merger. Proceeds from the PIPE financing are intended to be used for commercialization of FYARRO in advanced malignant PEComa and a planned tumor-agnostic registrational trial in solid tumors harboring inactivating alterations in the mTOR pathway genes TSC1 and TSC2 expected to be initiated by the end of 2021. Aadi's first indication, advanced malignant PEComa, is an ultra-rare sarcoma enriched in TSC1 and TSC2 alterations. Aadi has received Orphan designation, Fast Track designation and Breakthrough Therapy designation from the FDA for FYARRO for the treatment of patients with advanced malignant PEComa. Together with the cash expected from both companies at closing, the net proceeds of the PIPE financing are expected to fund the company into 2024, enabling potential approval and commercial launch in PEComa as well as completion of a registrational trial in tumors harboring TSC1 or TSC2 inactivating alterations.

Caley Castelein, a board member of Aerpio and the proposed chairman of the combined company stated, "Aerpio's board of directors diligently undertook a comprehensive strategic review and has concluded that the proposed transaction with Aadi is in the best interest of our shareholders. We believe Aadi's late-stage development program may offer significant medical benefit to PEComa patients and important potential for patients with tumors harboring TSC1 or TSC2 inactivating alterations."

Dr. Neil Desai, founder and chief executive officer of Aadi, added, "FYARRO met its safety and efficacy endpoints in our study in patients with advanced malignant PEComa2 and this finding supports our approach of targeting mTOR pathway altered cancers with FYARRO. We are excited about the next chapter of growth for Aadi, thankful for the support of our investors, and are energized to continue to develop important new treatment options for our patients."

Anupam Dalal, chief investment officer of Acuta Capital Partners stated, "Together with a group of renowned institutional investors, we are excited to partner with Aadi as it advances FYARRO and strives to unlock the potential of mTOR as a therapeutic target."

Upon closing of the transaction, the combined company will be led by Aadi's chief executive officer, Neil Desai, and headquartered in Los Angeles, California. Aadi's board members Neil Desai and Richard Maroun; Aadi's board observer Karin Hehenberger; and current Aerpio board members Anupam Dalal and Caley Castelein will be members of the board of directors of the combined company. In addition, Behzad Aghazadeh, managing partner of Avoro Capital Advisors and Avoro Ventures, will also join the board of the combined company upon the closing of the transaction.

About the Proposed Transaction

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