

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

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|------------------------------------|---|------------------------------------|
| ANTHONY MORGAN, |) | |
| |) | |
| Plaintiff, |) | Case No. _____ |
| v. |) | |
| |) | COMPLAINT FOR VIOLATIONS OF |
| KINDRED BIOSCIENCES, INC., LYNDON |) | THE FEDERAL SECURITIES LAWS |
| LIEN, NANXI LIU, HERBERT D. |) | |
| MONTGOMERY, RAYMOND TOWNSEND, |) | |
| ERVIN VESZPREMI, DENISE M. BEVERS, |) | JURY TRIAL DEMANDED |
| RICHARD CHIN, and JOSEPH S. |) | |
| MCCRACKEN, |) | |
| |) | |
| Defendants. |) | |

Plaintiff Anthony Morgan (“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 THE ACTION

1. Plaintiff brings this action against Kindred Biosciences, Inc. (“Kindred” or the “Company”) and its corporate directors for violating 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 Kindred will merge with Elanco Animal Health Incorporated (“Elanco”) through Elanco’s subsidiary Knight Merger Sub, Inc. (“Merger Sub”) (the “Proposed Transaction”).¹

¹ Non-party Elanco is an Indiana corporation with its principal executive offices located at 2500 Innovation Way, Greenfield, IN 46140. Elanco’s common shares trade on the New York Stock Exchange under the symbol “ELAN.” Non-party Merger Sub is a Delaware corporation and wholly owned subsidiary of Elanco.

2. On June 16, 2021, Kindred and Elanco jointly announced their entry into an Agreement and Plan of Merger dated June 15, 2021 (the “Merger Agreement”) to sell Kindred to Elanco. Under the terms of the Merger Agreement, each Kindred stockholder will receive \$9.25 in cash for each share of Kindred common stock they own (the “Merger Consideration”).²

3. On July 21, 2021, Kindred filed a Schedule 14A Definitive Proxy Statement (the “Proxy Statement”) with the SEC. The Proxy Statement, which recommends that Kindred 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 violates Sections 14(a) and 20(a) of the Exchange Act as Kindred stockholders need such information to make a fully informed decision whether to approve 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.

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

² The approximate value of the Proposed Transaction is \$440 million.

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 Kindred.

10. Defendant Kindred is a Delaware corporation, with its principal executive offices located at 1555 Bayshore Highway, Suite 200, Burlingame, California 94010. The Company is a biopharmaceutical company focused on developing novel pet therapeutics. Kindred's common stock trades on The Nasdaq Global Select Market under the ticker symbol "KIN."

11. Defendant Lyndon Lien ("Lien") has been a director of the Company since February 5, 2021.

12. Defendant Nanxi Liu ("Liu") has been a director of the Company since February 5, 2021.

13. Defendant Herbert D. Montgomery ("Montgomery") has been a director of the Company since April 15, 2016.

14. Defendant Raymond Townsend ("Townsend") has been a director of the Company since November 11, 2013.

15. Defendant Ervin Veszprémi ("Veszprémi") has been a director of the Company since February 15, 2013.

16. Defendant Denise M. Bevers ("Bevers") is a co-founder of the Company and has been a director since October 19, 2018. Defendant Bevers previously served as the Company's Chief

Operating Officer (“COO”) from October 2012 to July 31, 2020, Secretary from November 2013 to July 31, 2020, and President from October 19, 2018 to July 31, 2020.

17. Defendant Richard Chin (“Chin”) is a co-founder of the Company, has been Chief Executive Officer (“CEO”) since October 2012, President from October 2012 to October 2018, and since July 31, 2020, and is and has been a director of the Company at all relevant times.

18. Defendant Joseph S. McCracken (“McCracken”) has been a director of the Company since April 20, 2018.

19. Defendants identified in paragraphs 11-18 are referred to herein as the “Board” or the “Individual Defendants.”

SUBSTANTIVE ALLEGATIONS

The Proposed Transaction

20. On August 5, 2020, Kindred and Elanco jointly announced, in relevant part:

GREENFIELD, Ind. and SAN FRANCISCO (June 16, 2021) – Elanco Animal Health Incorporated (NYSE: ELAN) and Kindred Biosciences, Inc. (KindredBio, NASDAQ: KIN) today announced the parties have entered into a definitive agreement for Elanco to acquire KindredBio, a biopharmaceutical company focused on developing novel pet therapeutics based on validated human targets. The acquisition further accelerates Elanco’s expansion in the attractive pet health market, particularly advancing Elanco’s presence in the fast-growing billion-dollar dermatology category.

KindredBio brings three potential dermatology blockbusters expected to launch through 2025, as well as a number of additional R&D programs for other chronic disorders and unmet needs, including canine parvovirus. KindredBio’s innovative pipeline – added to Elanco’s own organic efforts – meaningfully augments Elanco’s ability to launch products, gain share, and grow in the dermatology market through fully accretive revenue dollars. Elanco anticipates the combination will add approximately \$100 million to its previously stated innovation revenue expectation of \$500 million to \$600 million by 2025, with significant opportunity beyond the period.

“This highly complementary combination is focused in one of the most exciting spaces in pet health, and one where we see a strategic imperative to build a differentiated competitive offering,” said Jeff Simmons, president and CEO of Elanco. “It further accelerates our mix shift into pet health and advances our IPP strategy. Ultimately, we believe the combination positions Elanco to bring innovative solutions to veterinarians and pet owners in areas of unmet or under-served medical needs, fueling

continued growth in the exciting pet therapeutic category and creating sustainable long-term value for shareholders.”

The acquisition agreement builds on Elanco’s existing relationship with KindredBio, which began with licensing the global commercial rights of KindredBio’s late-stage treatment for canine parvovirus, and continues Elanco’s proven approach as an innovation partner of choice.

“From the beginning, we have been focused at KindredBio on bringing the best medicines to our animal family members. With this transaction with Elanco, a widely respected leader in veterinary medicine with global reach, we will maximize the impact our innovative pipeline will have on improving the lives of pets,” said Richard Chin, CEO and co-founder of KindredBio.

“This announcement is validation of KindredBio’s achievements as one of the world’s first veterinary biopharmaceutical companies, recognizing our track record in drug development and remarkably talented team,” added Denise Bevers, Board director and co-founder of KindredBio. “KindredBio looks forward to continuing our mission to transform veterinary medicine as part of the Elanco family.”

The deal will expand Elanco’s omnichannel leadership complementing the company’s e-commerce and retail position by increasing its veterinary clinic presence in a leading therapeutic category and keeping the veterinarian at the center. This continues Elanco’s work to be a conduit for pet owners to the veterinarian. Dermatologic symptoms such as scratching and allergies are the number one reason pet owners visit the veterinarian today.

Transaction Details

Under the terms of the agreement, Elanco will acquire all outstanding stock of Kindred Biosciences at a price of \$9.25 per share, or approximately \$440 million, a premium of 52% based on the 30-day average. Elanco intends to fund the acquisition with pre-payable debt. Elanco expects to extend its leverage objective of under three times net leverage to Adjusted EBITDA by three months, from the end of 2023 to the end of the first quarter of 2024.

Elanco expects to unlock upside to its long-term growth algorithm, with the potential to add a full percentage point of consistent annual revenue growth, starting in 2024, and further expand the company’s margin potential over time. Transaction and operating costs will be slightly dilutive to Elanco’s reported and adjusted earnings per share in 2021, with the impact expected to be concentrated in the fourth quarter, and also slightly dilutive to the full year 2022.

“Kindred Biosciences’ monoclonal antibody pipeline and capabilities are additive and complementary to what we’ve built within Elanco,” said Aaron Schacht, executive vice president Innovation, Regulatory and Business Development at Elanco. “This combination will bolster our opportunity for leadership in atopic dermatitis and allow

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