Not for Publication

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re AURORA CANNABIS, INC. SECURITIES LITIGATION	Civil Action No. 19-20588 (JMV) (JBC) **OPINION**

John Michael Vazquez, U.S.D.J.

In this putative class action, Plaintiffs, purchasers of Aurora Cannabis, Inc.'s ("Aurora") stock between October 23, 2018 and February 6, 2020 (the "Class Period"), allege that Aurora and seven of its officers[1] engaged in securities fraud violations. Currently pending before the Court is Defendants' motion to dismiss Plaintiffs' Second Amended Complaint (the "SAC") pursuant to Federal Rule of Civil Procedure 12(b)(6). D.E. 55. The Court reviewed all the submissions in support and in opposition[2] and considered the motion without oral argument pursuant to Federal Rule of Civil Procedure 78(b) and Local Civil Rule 78.1(b). For the reasons discussed below, Defendants' motion is **GRANTED**.

[1] The officers are Defendants Terry Booth, Stephen Dobler, Glen Ibbott, Cameron Battley, Michael Singer, Jason Dyck, and Allan Cleiren. *See* SAC ¶¶ 23-29. The parties and the Court refer to these Defendants collectively as the Individual Defendants.

[2] The Court refers to Defendants' brief in support of their motion as "Defs. Br.," D.E. 55-1; Plaintiffs' opposition brief as "Plfs. Opp.," D.E. 57; and Defendants' reply brief as " Defs. Reply," D.E. 61.

I. FACTUAL BACKGROUND[3] & PROCEDURAL HISTORY

For purposes of the instant motion, the Court does not retrace this case's full factual and procedural history. This Court's July 6, 2021 opinion granting Defendants' motion to dismiss the First Amended Complaint (the "MTD Opinion") includes a detailed recounting of the factual background of this matter. D.E. 42. To the extent relevant to the instant motion, the Court incorporates the factual and procedural history from the MTD Opinion.

Briefly, Aurora manufacturers and produces cannabis products. It operates in more than 25 countries and purports to be one of Canada's leading licensed producers. SAC ¶¶ 2, 22. Plaintiffs allege that Defendants touted the growing demand for consumer cannabis in Canada and Aurora's priority to increase production and capacity in response. *Id.* ¶ 3. Plaintiffs further allege that Defendants unrealistically projected that Aurora would have positive earnings before interest, taxes, depreciation, and amortization ("EBITDA") for its fourth fiscal quarter of 2019 ("4Q19"). *Id.* Aurora missed its 4Q19 EBITDA projection, posting a loss of more than $11 million. *Id.* ¶ 10. Plaintiffs allege that Defendants engaged in securities fraud by misleading investors on numerous fronts, including profitability and consumer demand. *Id.* ¶ 11. Defendants' alleged false statements and omissions largely pertain to Aurora's ability to meet its 4Q19 projection.

In the First Amended Complaint ("FAC"), Plaintiffs identified three factors that Defendants allegedly knew, or recklessly disregarded, would impact Aurora's 4Q19 projection: (1) an over-production of cannabis by Aurora and other Canadian licensed producers; (2) the limited number of retail stores in Ontario and Quebec; and (3) competition from the cannabis black market. MTD Opinion at 6. In the SAC, Plaintiffs still allege that Aurora's sale of cannabis in

[3] The factual background is taken from the SAC. D.E. 49. When reviewing a Rule 12(b)(6) motion to dismiss, the Court accepts as true all well-pleaded facts in the pleading. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009).

Canada, and therefore its EBITDA projection, was "severely constrained by at least" the overproduction of cannabis by Aurora and other Canadian licensed producers and the limited number of retail stores in Ontario and Quebec. SAC ¶ 56. Plaintiffs continue to allege that Defendants knew, or recklessly disregarded, these factors. *Id.* Plaintiffs, however, no longer emphasize black market competition.

Plaintiffs also include new allegations about an alleged sham transaction with Radient, an affiliated entity. Plaintiffs allege that Defendants entered into the transaction to inflate Aurora's financials. Radient was formed in 2001 to pursue commercial opportunities in extraction technology. *Id.* ¶ 113. In January 2017, Aurora and Radient entered into a joint venture research agreement, through which the parties agreed to research the extraction of materials from cannabis. In November 2017, Aurora and Radient entered into a Master Services Agreement ("MSA"), whereby Radient agreed to process cannabis biomass from Aurora into extracts, distillates, concentrates, or oils for a fee. *Id.* ¶ 114.

The MSA also includes an Investor Rights Agreement that provides Aurora with the ability to appoint a director to Radient's board and participate in Radient equity offerings. *Id.* ¶ 116. As of March 31, 2019, Aurora owned approximately 14% of Radient's issued and outstanding common shares, and Defendant Cleiren served as a member of Radient's board from February 2019 through December 2020. *Id.* ¶ 118. Aurora's CEO, Defendant Booth, was a member of Radient's board from 2017 to February 2019. *Id.* ¶ 118 n.10. In addition, "certain of Radient's public disclosures from July 8, 2019 state: Aurora and its affiliates will have access to material confidential information respecting the Company [Radient]." *Id.* Plaintiffs allege that these factors enabled Aurora to exert significant control over Radient when the alleged sham transaction occurred. *Id.* ¶ 119.

Turning to the transaction, in June 2019, Plaintiffs allege that Radient purchased $21.7 million of dried cannabis biomass from Aurora. *Id.* ¶ 109. Plaintiffs claim that although Aurora never relinquished control of the product, it "repurchased" the biomass from Radient for $18 million. Aurora recorded Radient's purchase as revenue. *Id.* ¶¶ 131-32, 141. Plaintiffs allege that there was no business reason for this transaction, and it was simply an orchestrated "round-trip" transaction to boost Aurora's financials. *Id.* ¶ 131. Plaintiffs continue that Aurora needed to inflate its financial picture to continue its acquisition and expansion strategy. Using Aurora stock, Aurora acquired five separate entities between November 2018 and August 2019. *Id.* ¶ 274. Plaintiffs assert that Defendants' statements about Aurora's positive 4Q19 EBITDA projection were false because they knew that the Radient transaction was fraudulently engineered to boost Aurora's sales. *Id.* ¶ 208. Plaintiffs add that Defendants made material omissions in SEC filings by failing to disclose the Radient transaction as a related-party transaction and for recognizing revenue. *Id.* ¶¶ 160-63.

Plaintiffs continue that through of a series of partial disclosures beginning in September 2019, when Aurora's 4Q19 financial results were released, the value of Aurora's common stock declined. In addition, Plaintiffs address several analyst articles that subsequently disclosed Aurora's misconduct. Plaintiffs contend that these articles also caused declines in Aurora's common stock price. *Id.* ¶ 278.

Plaintiff William Wilson filed the initial class action Complaint in this matter on November 21, 2019. D.E. 1. On July 23, 2020, this Court entered an order granting Wilson's motion to consolidate his case with another case filed by Plaintiff Andrew L. Warren. D.E. 16. Plaintiffs filed the FAC on September 21, 2020. The FAC alleged two counts: (1) violation of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 ("Count One"); and

(2) violation of Section 20(a) of the Exchange Act against the Individual Defendants ("Count Two"). FAC ¶¶ 216-223. Defendants moved to dismiss the FAC, D.E. 32, which the Court granted. In dismissing Plaintiffs' Section 10(b) and Rule 10b-5 claim, the Court explained that Plaintiffs failed to allege sufficiently any actionable misrepresentations or omissions. MTD Opinion at 23-27. The Court also noted that Plaintiffs' allegations as to scienter appeared lacking, *id.* at 30, and addressed potential shortcomings with Plaintiffs' allegations of loss causation, *id.* at 32. Finally, because Plaintiffs failed to state a Section 10(b) claim, the Court also dismissed the Section 20(a) control person liability claim. *Id.* at 32-33.

In granting Defendants' motion to dismiss, the Court provided Plaintiffs with leave to file an amended pleading to address the identified deficiencies. D.E. 43. Plaintiffs filed the SAC on September 7, 2021. D.E. 49. On December 6, 2021, Defendants filed the instant motion. D.E. 55.

II. LEGAL STANDARDS

A. Federal Rule of Civil Procedure 12(b)(6)

To withstand a motion to dismiss under Rule 12(b)(6), a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint is plausible on its face when there is enough factual content "that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although the plausibility standard "does not impose a probability requirement, it does require a pleading to show more than a sheer possibility that a defendant has acted unlawfully." *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 786 (3d Cir. 2016) (internal quotation marks and citations omitted). As a result, a plaintiff must "allege sufficient

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