

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HAYLEY SMITH,

Plaintiff,

v.

NEOS THERAPEUTICS, INC., GERALD  
MCLAUGHLIN, BRYANT FONG, BETH  
HECHT, ALAN HELLER, JAMES  
ROBINSON, GREG ROBITAILLE, JOHN  
SCHMID, LINDA M. SZYPER, NEUTRON  
ACQUISITION SUB, INC., and AYTU  
BIOSCIENCE, INC.,

Defendants,

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR VIOLATIONS  
OF SECTIONS 14(a) AND 20(a) OF  
THE SECURITIES EXCHANGE  
ACT OF 1934**

**JURY TRIAL DEMAND**

Plaintiff Hayley Smith (“Plaintiff”) alleges the following upon information and belief, including investigation of counsel and review of publicly available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

**NATURE OF THE ACTION**

1. Plaintiff brings action against Neos Therapeutics, Inc. (“Neos” or the “Company”) and its Neos’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, 15.U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, arising out of the Board’s attempt to sell the Company to Aytu BioScience, Inc. through its wholly-owned subsidiary Neutron Acquisition Sub, Inc. (collectively “Aytu”).

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading registration statement (the “S-4”) to be filed with

the Securities and Exchange Commission (“SEC”) on January 27, 2021. The S-4 recommends that Neos stockholders vote in favor of a proposed transaction (the “Proposed Transaction”) whereby Neos is acquired by Aytu. The Proposed Transaction was first disclosed on December 10, 2020, when Neos and Aytu announced that they had entered into a definitive merger agreement (the “Merger Agreement”) pursuant to which Neos stockholders will receive 0.1088 shares of Aytu common stock for each share of Neos common stock they hold (the “Merger Consideration”). The deal is valued at approximately \$40.2 million and is expected to close by the second quarter of 2021.

3. The S-4 is materially incomplete and contains misleading representations and information in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the S-4 contains materially incomplete and misleading information concerning the sales process, financial projections prepared by Neos management, as well as the financial analyses conducted by MTS Securities LLC (“MTS”), Neos’s financial advisor.

4. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction, including filing an amendment to the S-4 with the SEC or otherwise causing an amendment to the S-4 to be disseminated to Neos’s stockholders, unless and until the material information discussed below is included in any such amendment or otherwise disseminated to Neos’s stockholders. In the event the Proposed Transaction is consummated without the material omissions referenced below being remedied, Plaintiff seeks to recover damages resulting from the Defendants’ violations.

#### **PARTIES**

5. Plaintiff is, and has been at all relevant times, the owner of shares of common stock of Neos.

6. Defendant Neos is a corporation organized and existing under the laws of the State of Delaware. The Company's principal executive offices are located at 2940 N. Highway 360, Grand Prairie, Texas 75050. Neos common stock trades on NASDAQ under the ticker symbol "NEOS."

7. Defendant Gerald McLaughlin has been President, CEO and a director of the Company since 2018.

8. Defendant Bryant Fong has been a director of the Company since 2009.

9. Defendant Beth Hecht has been a director of the Company since 2015.

10. Defendant Alan Heller has been a director of the Company since 2009. Defendant Heller also serves as Chairman of the Board.

11. Defendant James Robinson has been a director of the Company since 2019.

12. Defendant Greg Robitaille has been a director of the Company since 2009.

13. Defendant John Schmid has been a director of the Company since 2015.

14. Defendant Linda M. Szyper has been a director of the Company since 2018.

15. Defendants McLaughlin, Fong, Hecht, Heller, Robinson, Robitaille, Schmid and Szyper are collectively referred to herein as the "Board" or "Individual Defendants."

16. Defendant Aytu BioScience, Inc. is a Delaware corporation. Aytu's principal executive offices are located at 373 Inverness Parkway, Suite 206, Englewood, Colorado 80112. Aytu common stock trades on NASDAQ under the ticker symbol "AYTU."

17. Defendant Neutron Acquisition Sub, Inc. is a Delaware corporation and is a wholly owned subsidiary of Aytu BioScience, Inc.

#### **JURISDICTION AND VENUE**

18. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange

Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

19. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

20. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because a significant amount of the conduct at issue took place and had an effect in this District.

## **FURTHER SUBSTANTIVE ALLEGATIONS**

### **A. Background of the Company and the Proposed Transaction**

21. Neos develops extended release medication as orally disintegrating tablet or oral suspension forms. Three of Neos's products are approved to treat ADHD in pediatric patients. The Company also sells a generic cough medicine, and is developing a product to treat chronic sialorrhea.

22. On December 10, 2020, the Company entered into the Merger Agreement with Aytu.

23. According to the press release issued on December 10, 2020 announcing the Proposed Transaction:

**Aytu BioScience and Neos Therapeutics Announce Definitive Merger Agreement, Creating a Combined \$100M Revenue<sup>1</sup> Specialty Pharmaceutical Company**

- **Merger accelerates transformation to profitability, with estimated annualized cost synergies of \$15M beginning FY 2022**

- **Aytu adds Neos' established, multi-brand ADHD portfolio, enhancing Ayту's footprint in pediatrics and expanding its presence in adjacent specialty care segments**
- **Opportunity to leverage and further enhance Neos RxConnect, a best-in-class patient support program, for Ayту's product portfolio of best-in-class prescription therapeutics and consumer health products**
- **Companies to host joint conference call today at 8:30 am ET**

**ENGLEWOOD, CO and GRAND PRAIRIE, TX / ACCESSWIRE / December 10, 2020 /** Ayту BioScience, Inc. (NASDAQ: AYTU), a specialty pharmaceutical company focused on commercializing novel products that address significant patient needs, and Neos Therapeutics, Inc. (NASDAQ: NEOS), a commercial-stage pharmaceutical company developing and manufacturing central nervous system-focused products, today announced that they have entered into a definitive merger agreement pursuant to which Neos will merge with a wholly owned subsidiary of Ayту in an all-stock transaction.

#### **Transaction Details**

Upon the effectiveness of the merger (the "Merger"), Neos stockholders will be entitled to receive 0.1088 shares of common stock of Ayту for each share of Neos common stock held, after taking into account the one-for-ten reverse split of Ayту's common stock that was effected on December 8, 2020. The transaction will result in Neos stockholders owning approximately 30% of the fully diluted common shares of Ayту. The all-stock transaction is valued, on a fully diluted basis, at approximately \$44.9 million based on the 10-day volume weighted average price of Ayту stock for the period ended December 9, 2020.

The boards of directors of both companies have approved the transaction.

#### **Strategic Rationale and Financial Benefits of the Transaction**

The combined entity will have an increased footprint in the prescription pediatric market, an established, growing multi-brand ADHD portfolio addressing the \$8.5 billion ADHD market and significant combined revenue scale. For the 12-month period ending September 30, 2020, Neos generated \$57.0 million in revenues. On a combined pro-forma basis for this same period, Ayту and Neos' aggregate net revenue is over \$100 million. In addition, this Merger facilitates operational and commercial synergies that can be harnessed to accelerate the path to profitability for the combined entity, with estimated annualized cost synergies of approximately \$15.0 million beginning fiscal year 2022.

"This is a truly transformative transaction, elevating the newly combined company to a \$100 million revenue, leading specialty pharmaceutical company positioned for what we expect to be an accelerated path to profitability, continued revenue

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