

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBIN ODACH

Plaintiff,

-against-

AERPIO PHARMACEUTICALS, INC.,
JOSEPH GARDNER, STEVEN PRELACK,
CALEY CASTELEIN, CHERYL COHEN,
ANUPAM DALAL, and PRAVIN DUGEL

Defendants.

CASE NO.: _____

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff Robin Odach (“Plaintiff”), on behalf of herself, by and through his attorneys, 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. This is an action brought by Plaintiff against Aerpio Pharmaceuticals, Inc., (“Aerpio” or the “Company”) and the members of the Company’s board of directors (collectively referred to as the “Board” or the “Individual Defendants” and, together with Aerpio, the “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a) respectively, and United States Securities and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. § 240.14a-9. Plaintiff’s claims arise in connection with the proposed merger of Aadi Bioscience, Inc. (“Aadi”), a privately-held biopharmaceutical company, with Aerpio.

2. On May 16, 2021, Aerpio and entered into an Agreement and Plan of Merger (the

“Merger Agreement”), providing for Aerpio’s acquisition of Aadi, pursuant to a merger between Aerpio and Aadi, through Aerpio’s wholly owned subsidiaries Aspen Merger Subsidiary, Inc. (“Merger Sub”). Pursuant to the Merger Agreement, Aerpio and Aadi will combine through a merger of Merger Sub with and into Aadi with Aadi as the surviving corporation as a wholly owned subsidiary of Aerpio (“Proposed Transaction”). In connection with the merger, Aerpio will change its name to “Aadi Bioscience, Inc.”

3. Pursuant to the terms of the Merger Agreement, Aadi stockholders will receive approximately 5.5096 of Aerpio common stock for each share of Aadi common stock they currently own, without consideration of a proposed reverse stock split, as adjusted due to subsequent financing transactions (“Merger Consideration”). Immediately following the Proposed Transaction, Aadi’s former stockholders are expected to own approximately 66.8% of the combined company, on a fully-diluted basis, and Aerpio’s stockholders will own approximately 33.2% of the combined company.

4. On June 21, May 27, 2021, in order to convince Aerpio’s public common stockholders to vote in favor of the Proposed Transaction, Defendants, together with Aadi took a step forward and authorized the filing of a materially incomplete and misleading Preliminary Proxy Statement on Form 14A (the “Proxy”) with the SEC, in violation of Sections 14(a) and 20(a) of the Exchange Act.

5. In particular, the Proxy contains materially incomplete and misleading information concerning: (i) financial projections for Aadi prepared by Aerpio management; and (ii) the key inputs for the financial analyses performed by Ladenburg Thalmann & Co. Inc. (“Ladenburg”), and to support their fairness opinions.

6. The Proposed Transaction is expected to close early in the third quarter of 2021 and

the special meeting of the Company's stockholders to vote on the Proposed Transaction can be scheduled at any time. It is therefore imperative that the material information that has been omitted from the Proxy is disclosed prior to the special meeting of Aerpio stockholders so Plaintiff can properly exercise her corporate voting rights.

7. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act and Rule 14a-9. 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 Plaintiff and Aerpio's public common stockholders sufficiently in advance of the special meeting of the Company's stockholders or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

9. 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 each Defendant by this Court permissible under the traditional notions of fair play and substantial justice. "Where a federal statute such as Section 27 of the [Exchange] Act confers nationwide service of process, the question becomes whether the party has sufficient contacts with the United States, not any particular state." *Sec. Inv'r Prot. Corp. v. Vigman*, 764 F.2d 1309, 1315 (9th Cir. 1985). "[S]o long as a defendant has

minimum contacts with the United States, Section 27 of the Act confers personal jurisdiction over the defendant in any federal district court.” *Id.* at 1316.

10. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as 28 U.S.C. § 1391, because Defendants are found or are inhabitants or transact business in this District. *See, e.g., United States v. Svoboda*, 347 F.3d 471, 484 n.13 (2d Cir. 2003) (collecting cases). Indeed, Aerpio’s common stock is listed and traded on the Nasdaq Capital Market (“NASDAQ”), which is also headquartered in this District.

PARTIES

11. Plaintiff is, and has been continuously throughout all times relevant hereto, the holder of Aerpio common stock.

12. Defendant Aerpio is a Delaware corporation that maintains its principal place of business at 9987 Carver Road, Cincinnati, OH. Aerpio’s common shares are traded on the NASDAQ under the ticker symbol “ARPO.”

13. Individual Defendant Joseph Gardner, is the President and founder of the Company and has been a Director of Aerpio since 2011.

14. Individual Defendant Steven Prelack has been a Director of Aerpio since 2017.

15. Individual Defendant Caley Castelein, has been a Director of Aerpio since 2017.

16. Individual Defendant Cheryl Cohen has been a Director of Aerpio since 2018.

17. Individual Defendant Anupam Dalal, has been a Director of Aerpio since 2011.

18. Individual Defendant Pravin Dugel has been a Director of Aerpio since 2017.

19. The defendants identified in paragraphs 13 through 18 are collectively referred to herein as the “Individual Defendants” or the “Board.” The Individual Defendants together with Aerpio, are referred to herein as the “Defendants.”

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

20. Aerpio is a biopharmaceutical company focused on developing compounds that activate Tie2 to treat ocular diseases and diabetic complications. In March 2019, the Company announced top line results of the Phase 2b (“TIME-2b”) clinical trial of AKB-9778 for the treatment of non-proliferative diabetic retinopathy (“NPDR”), a disease characterized by progressive compromise of blood vessels in the back of the eye. While the Company initially believed AKB-9778 had the potential to slow down or possibly reverse retinal vascular changes caused by diabetes, the subcutaneous administration of AKB-9778 twice daily did not meet the study’s primary endpoint of increasing the percentage of patients with an improvement of two or more steps in diabetic retinopathy severity score (“DRSS”), in the study eye, compared to placebo. The TIME-2b study, however, supported the reduction of intraocular pressure (“IOP”) seen with subcutaneous AKB-9778 in the previous TIME-2 study. Importantly, IOP is the only identified modifiable risk factor for prevention of vision loss in patients with open angle glaucoma (“OAG”) and ocular hypertension (“OHT”). Based on these findings, Aerpio developed a topical ocular formulation of AKB-9778 and observed in preclinical studies activation of Tie2 in Schlemm’s canal, IOP reduction via enhanced outflow facility and favorable tolerability. In two consecutive trials, TIME-2 and TIME-2b, subcutaneous AKB-9778 showed reduction in Urine Albumin-Creatinine Ratio (“UACR”), a measure of progression of diabetic kidney disease. In a post-hoc analysis of the earlier TIME-2 clinical trial, there was a 21% reduction (geometric mean) in UACR from baseline in the AKB-9778 treatment arms, but an overall increase in UACR in the placebo arm. The prospective UACR analyses from the recently completed TIME-2b trial largely replicated the results from the previous trial and reinforced the

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