

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

GAYLE WEIR,

Plaintiff,

v.

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

Defendants.

Civil Action No.

**COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES  
LAWS**

**JURY TRIAL DEMANDED**

Plaintiff Gayle Weir (“Plaintiff”) by and through her undersigned attorneys, brings this action on behalf of herself, and alleges the following based upon personal knowledge as to those allegations concerning Plaintiff and, as to all other matters, upon the investigation of counsel, which includes, without limitation: (a) review and analysis of public filings made by Aerpio Pharmaceuticals, Inc. (“Aerpio” or the “Company”) and other related parties and non-parties with the United States Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and other publications disseminated by certain of the Defendants (defined below) and other related non-parties; (c) review of news articles, shareholder communications, and postings on the Company’s website concerning the Company’s public statements; and (d) review of other publicly available information concerning Aerpio and the Defendants.

**SUMMARY OF THE ACTION**

1. This is an action brought by Plaintiff against Aerpio and the Company’s Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Section 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, in connection with the proposed merger of Aerpio with Aadi Bioscience’s Inc. (“Aadi”) (the “Proposed Transaction”).

2. On May 16, 2021, the Company entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Aadi. Pursuant to the terms of the Merger Agreement the Company’s shareholders will own approximately 14.7% of outstanding shares following the closing of the merger and the concurrent closing of the PIPE financing.

3. On July 8, 2021, in order to convince the Company’s shareholders to vote in favor of the Proposed Transaction, the Board authorized the filing of a materially incomplete and misleading proxy statement with the SEC (the “Proxy Statement”), in violation of Sections 14(a) and 20(a) of the Exchange Act.

4. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Aerpio and the Board 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 Aerpio shareholders before the vote on the Proposed Transaction or, in the event the Proposed Transaction is consummated, recover damages resulting from the Defendants’ violations of the Exchange Act.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over all claims asserted herein pursuant to Section 27 of the Exchange Act, 15 U.S.C § 78aa, and 28 U.S.C. § 1331, as Plaintiff alleges violations of Sections 14(a) and 20(a) of the Exchange Act.

6. This Court has personal jurisdiction over all of the Defendants because each is either a corporation that conducts business in, solicits shareholders in, and/or maintains operations within, this District, or is an individual who is either present in this District for jurisdictional purposes or has 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.

7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

### **THE PARTIES**

8. Plaintiff is, and has been at all times relevant hereto, the owner of Aerpio shares.

9. Defendant Aerpio is incorporated under the laws of Delaware and has its principal executive offices located at 9987 Carver Road, Cincinnati, Ohio 45242. The Company's common stock trades on the NASDAQ under the symbol "ARPO."

10. Defendant Joseph Gardner ("Gardner") is and has been the President, Chief Executive Officer ("CEO") and a director of Aerpio at all times during the relevant time period.

11. Defendant Steven Prelack ("Prelack") is and has been Chairman of the Board of Aerpio at all times during the relevant time period.

12. Defendant Anupam Dalal ("Dalal") is and has been an Aerpio director at all times during the relevant time period.

13. Defendant Caley Castelein ("Castelein") is and has been a Aerpio director at all times during the relevant time period.

14. Defendant Cheryl Cohen ("Cohen") is and has been a Aerpio director at all times during the relevant time period.

15. Defendant Pravin Dugel (“Dugel”) is and has been a Aerpio director at all times during the relevant time period.

16. Defendants Gardner, Prelack, Dalal, Castelein, Cohen, and Dugel are collectively referred to herein as the “Individual Defendants.”

17. The Individual Defendants, along with Defendant Aerpio, are collectively referred to herein as “Defendants.”

## **SUBSTANTIVE ALLEGATIONS**

### **Background of the Companies**

18. Aerpio is a biopharmaceutical company focused on developing compounds that activate Tie2 for indications in which Aerpio believes that activation of Tie2 may have therapeutic potential. In January 2021, Aerpio announced that it had initiated a process to explore and review a range of strategic alternatives focused on maximizing stockholder value from Aerpio’s clinical assets and cash resources.

### **The Company Announces the Proposed Transaction**

19. On May 17, 2021, the Company jointly issued a press release announcing the Proposed Transaction. The press release stated in 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, FYARRO™ (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.

\* \* \*

### **About the Proposed Transaction**

Under the terms of the merger agreement, shareholders of Aadi will receive shares of newly issued Aerpio common stock. On a pro forma basis, shareholders of Aadi will own approximately 66.8% and shareholders of Aerpio will own approximately 33.2% of the combined company upon the closing of the merger, prior to the additional PIPE financing transaction. Following the closing of the concurrent PIPE financing, Aerpio shareholders will own approximately 14.7% of the combined company. The actual allocation is subject to adjustment based on Aerpio's cash balance at the time of closing.

The terms of the merger agreement contemplate that a non-transferable contingent value right (a "CVR") will be distributed to Aerpio shareholders as of immediately prior to the effective time of the merger, entitling CVR holders to receive net proceeds received by Aerpio, if any, associated with Aerpio's legacy assets. The terms and conditions of the CVRs will be pursuant to a CVR Agreement Aerpio will enter into prior to the closing of the merger (the "CVR Agreement").

The merger agreement has been approved by the boards of directors of both companies. The transaction is expected to close in the third quarter of 2021, subject to approval by Aerpio's shareholders, the completion of the PIPE

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