

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUSAN FINGER,

Plaintiff,

v.

ACCELERON PHARMA INC., HABIB J.
DABLE, TERRENCE C. KEARNEY,
KAREN L. SMITH, LAURA J. HAMILL,
CHRISTOPHER HITE, KEMAL MALIK,
THOMAS A. MCCOURT, FRANCOIS
NADER, and JOSEPH S. ZAKRZEWSKI,

Defendants.

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: Case No. _____
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**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

: JURY TRIAL DEMANDED
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Plaintiff Susan Finger (“Plaintiff”), by and through her undersigned counsel, for her complaint against defendants, alleges upon personal knowledge with respect to herself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action against Acceleron Pharma Inc. (“Acceleron” or the “Company”) and the members of its Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(d)(4), 14(e) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(d)(4), 78n(e), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14d-9, 17 C.F.R. §240.14d-9(d) (“Rule 14d-9”), and to enjoin the expiration of a tender offer (the “Tender Offer”) on a proposed transaction, pursuant to

which Acceleron will be acquired by Merck Sharp & Dohme Corp. (“Merck”), through Merck’s subsidiary Astros Merger Sub, Inc. (“Purchaser”) (the “Proposed Transaction”).

2. On September 30, 2021, Acceleron and Merck issued a joint press release announcing that they had entered into an Agreement and Plan of Merger (the “Merger Agreement”) dated September 29, 2021, to sell Acceleron to Merck. Under the terms of the Merger Agreement, Merck will acquire all outstanding shares of Acceleron for \$180.00 in cash per share of Acceleron common stock (the “Offer Price”). Pursuant to the Merger Agreement, Purchaser commenced the Tender Offer on October 12, 2021. The Tender Offer is scheduled to expire at 5:00 p.m., Eastern Time, on November 10, 2021. The Proposed Transaction is valued at approximately \$11.5 billion.

3. On October 12, 2021, Acceleron filed a Solicitation/Recommendation Statement on Schedule 14D-9 (the “Recommendation Statement”) with the SEC. The Recommendation Statement, which recommends that Acceleron stockholders tender their shares in favor of the Tender Offer, omits or misrepresents material information concerning, among other things: (i) the Company’s financial projections; (ii) the data and inputs underlying the financial valuation analyses performed by the Company’s financial advisors J.P. Morgan Securities LLC (“J.P. Morgan”) and Centerview Partners LLC (“Centerview”); and (iii) the background of the Proposed Transaction. Defendants authorized the issuance of the false and misleading Recommendation Statement in violation of Sections 14(d), 14(e) and 20(a) of the Exchange Act.

4. In short, the Proposed Transaction will unlawfully divest Acceleron’s public stockholders of the Company’s valuable assets without fully disclosing all material information concerning the Proposed Transaction to Company stockholders. To remedy defendants’ Exchange Act violations, Plaintiff seeks to enjoin the expiration of the Tender Offer unless and until such problems are remedied.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act and SEC Rule 14d-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).

6. This Court has jurisdiction over the defendants because each defendant is either a 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.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff's claims arose in this District, where a substantial portion of the actionable conduct took place, where most of the documents are electronically stored, and where the evidence exists. Acceleron's common stock trades on the Nasdaq Global Market, which is headquartered in this District, rendering venue in this District appropriate.

PARTIES

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Acceleron.

9. Defendant Acceleron is a Delaware corporation, with its principal executive offices located at 128 Sidney Street, Cambridge, Massachusetts 02139. Acceleron is a biopharmaceutical company dedicated to the discovery, development and commercialization of therapeutics to treat serious and rare diseases. Acceleron's common stock is traded on the Nasdaq Global Market under the ticker symbol "XLRN."

10. Defendant Habib J. Dable (“Dable”) has been Chief Executive Officer (“CEO”), President, and a director of the Company since December 2016.

11. Defendant Terrence C. Kearney (“Kearney”) has been a director of the Company since July 2014.

12. Defendant Karen L. Smith (“Smith”) has been a director of the Company since November 2017.

13. Defendant Laura J. Hamill (“Hamill”) has been a director of the Company since September 2020.

14. Defendant Christopher Hite (“Hite”) has been a director of the Company since June 2020.

15. Defendant Kemal Malik (“Malik”) has been a director of the Company since January 2020.

16. Defendant Thomas A. McCourt (“McCourt”) has been a director of the Company since July 2016.

17. Defendant Francois Nader (“Nader”) has been Chair of the Board since March 2015, and a director of the Company since December 2014.

18. Defendant Joseph S. Zakrzewski (“Zakrzewski”) has been a director of the Company since 2011.

19. Defendants identified in paragraphs 10 to 18 are collectively referred to herein as the “Board” or the “Individual Defendants.”

OTHER RELEVANT ENTITIES

20. Merck is a New Jersey corporation with its principal executive offices located in Kenilworth, New Jersey. Merck is a global health care company that delivers innovative health

solutions through its prescription medicines, vaccines, biologic therapies and animal health products. Merck's operations are principally managed on a products basis and include two operating segments: the Pharmaceutical and Animal Health segments. The Pharmaceutical segment includes human health pharmaceutical and vaccine products. Human health pharmaceutical products consist of therapeutic and preventive agents, generally sold by prescription, for the treatment of human disorders. Merck sells these human health pharmaceutical products primarily to drug wholesalers and retailers, hospitals, government agencies and managed health care providers such as health maintenance organizations, pharmacy benefit managers and other institutions. The Animal Health segment discovers, develops, manufactures and markets a wide range of veterinary pharmaceutical and vaccine products, as well as health management solutions and services, for the prevention, treatment and control of disease in all major livestock and companion animal species. Merck's common stock trades on the New York Stock Exchange under the ticker symbol "MRK."

21. Purchaser is a Delaware corporation and wholly-owned subsidiary of Merck.

SUBSTANTIVE ALLEGATIONS

Company Background

22. Acceleron is a biopharmaceutical company dedicated to the discovery, development, and commercialization of therapeutics to treat serious and rare diseases. Acceleron's leadership in the understanding of TGF-beta superfamily biology and protein engineering generates innovative compounds that engage the body's ability to regulate cellular growth and repair. Acceleron focuses its research, development, and commercialization efforts in pulmonary and hematologic diseases. In pulmonary, Acceleron is developing sotatercept for the treatment of pulmonary arterial hypertension ("PAH"). Following positive PULSAR Phase 2 results, Acceleron is executing on its Phase 3 development plan to support its long-term vision of

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