

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID KAUFMANN,

Plaintiff,

v.

ARENA PHARMACEUTICALS, INC.,
AMIT D. MUNSHI, GARY A. NEIL, TINA
S. NOVA, JAYSON DALLAS, OLIVER
FETZER, KIERAN T. GALLAHUE,
JENNIFER JARRETT, KATHARINE
KNOBIL, NAWAL OUZREN, and STEVEN
SCHOCH,

Defendants,

Civil Action No. _____

**COMPLAINT FOR VIOLATIONS
OF THE SECURITIES EXCHANGE
ACT OF 1934**

JURY TRIAL DEMAND

Plaintiff David Kaufmann (“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 this action against Arena Pharmaceuticals, Inc. (“Arena” or the “Company”) and Arena’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 Pfizer, Inc. through its wholly-owned subsidiary Antioch Merger Sub, Inc. (collectively “Pfizer”).

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading definitive proxy statement (the “Proxy”) to be filed with the Securities and Exchange Commission (“SEC”) on January 3, 2022. The Proxy recommends that Arena stockholders vote in favor of a proposed transaction (the “Proposed

Transaction”) whereby Arena is acquired by Pfizer. The Proposed Transaction was first disclosed on December 13, 2021, when Arena and Pfizer announced that they had entered into a definitive merger agreement (the “Merger Agreement”) pursuant to which Pfizer will acquire all of the outstanding shares of common stock of Arena for \$100 per share (the “Merger Consideration”). The deal is valued at approximately \$6.7 billion and is expected to close in the first half of 2022.

3. The Proxy is materially incomplete and contains misleading representations and information in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the Proxy contains materially incomplete and misleading information concerning the financial projections prepared by Arena management, as well as the financial analyses conducted by Evercore Group L.L.C. (“Evercore”) and Guggenheim Securities, LLC (“Guggenheim”), Arena’s financial advisors.

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 Proxy with the SEC or otherwise causing an amendment to the Proxy to be disseminated to Arena’s stockholders, unless and until the material information discussed below is included in any such amendment or otherwise disseminated to Arena’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 Arena.

6. Defendant Arena is a corporation organized and existing under the laws of the State of Delaware. The Company’s principal executive offices are located at 136 Heber Avenue, Suite

204, Park City, Utah 84060. Arena common stock trades on the NASDAQ under the ticker symbol “ARNA.”

7. Defendant Amit D. Munshi has been President and Chief Executive Officer (“CEO”) of the Company since May 2016, and a director of the Company since 2016.

8. Defendant Garry A. Neil has been Chair of the Board since February 2021, and a director of the Company since 2017.

9. Defendant Tina S. Nova has been a director of the Company since 2004. Defendant Nova previously served as Chair of the Board from June 2016 to February 2021, and as the Board’s lead independent director from 2015 to 2016.

10. Defendant Oliver Fetzer has been a director of the Company since 2017.

11. Defendant Kieran T. Gallahue has been a director of the Company since 2018.

12. Defendant Jennifer Jarrett has been a director of the Company since 2017.

13. Defendant Katharine Knobil has been a director of the Company since 2020.

14. Defendant Nawal Ouzren has been a director of the Company since February 2021.

15. Defendant Steven Schoch has been a director of the Company since June 11, 2021.

16. Nonparty Pfizer is a corporation organized and existing under the laws of the State of Delaware. Pfizer’s principal executive offices are located at 235 East 42nd Street, New York, NY 10017. Pfizer common stock trades on the New York Stock Exchange under the ticker symbol “PFE.”

17. Nonparty Antioch Merger Sub, Inc. is a Delaware corporation and is a wholly owned subsidiary of Pfizer.

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. Arena is a clinical stage biopharmaceutical company founded in 1997. Arena's therapeutic focus is on the gastroenterology, dermatology, and cardiovascular fields. The Company has developed treatments for Crohn's disease, alopecia areata, atopic dermatitis, eosinophilic esophagitis, acute heart failure, and pain associated with irritable bowel syndrome.

22. On December 12, 2021, the Company entered into the Merger Agreement with Pfizer.

23. According to the press release issued on December 13, 2021 announcing the Proposed Transaction:

Pfizer to Acquire Arena Pharmaceuticals

Proposed acquisition offers potentially new, differentiated best-in-class approach to address unmet need for a broader number of patients with immuno-inflammatory diseases

Expands innovative pipeline potentially enhancing growth through 2025 and

beyond

Transaction valued at \$100 per Arena share in cash, for a total equity value of approximately \$6.7 billion

Pfizer to host analyst and investor call at 10am EST today with Pfizer I&I executives

NEW YORK AND PARK CITY, UTAH, December 13, 2021 – Pfizer Inc. (NYSE: PFE) and Arena Pharmaceuticals, Inc. (Nasdaq: ARNA) today announced that the companies have entered into a definitive agreement under which Pfizer will acquire Arena, a clinical stage company developing innovative potential therapies for the treatment of several immuno-inflammatory diseases. Under the terms of the agreement, Pfizer will acquire all the outstanding shares of Arena for \$100 per share in an all-cash transaction for a total equity value of approximately \$6.7 billion. The boards of directors of both companies have unanimously approved the transaction.

Arena’s portfolio includes diverse and promising development-stage therapeutic candidates in gastroenterology, dermatology, and cardiology, including etrasimod, an oral, selective sphingosine 1-phosphate (S1P) receptor modulator currently in development for a range of immuno-inflammatory diseases including gastrointestinal and dermatological diseases.

“The proposed acquisition of Arena complements our capabilities and expertise in Inflammation and Immunology, a Pfizer innovation engine developing potential therapies for patients with debilitating immuno-inflammatory diseases with a need for more effective treatment options,” said Mike Gladstone, Global President & General Manager, Pfizer Inflammation and Immunology. “Utilizing Pfizer’s leading research and global development capabilities, we plan to accelerate the clinical development of etrasimod for patients with immuno-inflammatory diseases.”

Arena has built a robust development program for etrasimod, including two Phase 3 studies in ulcerative colitis (UC), a Phase 2/3 program in Crohn’s Disease, a planned Phase 3 program in atopic dermatitis, and ongoing Phase 2 studies in eosinophilic esophagitis and alopecia areata.

In UC, the randomized, placebo-controlled, dose-ranging, Phase 2 study (OASIS) evaluated the efficacy and safety of etrasimod in moderate to severe UC patients over 12 weeks versus placebo. In the study, most patients who achieved clinical response, clinical remission, or endoscopic improvement at week 12 experienced sustained or improved effects up to week 46 with etrasimod 2 mg in the open-label extension. Etrasimod also demonstrated a favorable benefit/risk profile, consistent with safety findings reported in the double-blind portion of OASIS. The findings are encouraging as there remains significant unmet need for safe and effective oral therapies in UC for patients with inadequate response, loss of response, or

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