

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SHIVA STEIN,

Plaintiff,

v.

ANTARES PHARMA, INC., LEONARD S. JACOB, M.D., PH.D., THOMAS J. GARRITY, PETER S. GREENLEAF, ANTON GUETH, ROBERT P. ROCHE, JR., KAREN SMITH, CARMEN VOLKART, and ROBERT F. APPLE,

Defendants.

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:
: Case No. 1:22-cv-3426
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:

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

: **JURY TRIAL DEMANDED**

Shiva Stein (“Plaintiff”), by and through her 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:

1. This is an action brought by Plaintiff against Antares Pharma, Inc. (“Antares Pharma or the “Company”) and the members Antares Pharma board of directors (the “Board” or the “Individual Defendants” and collectively with the Company, the “Defendants”) for their violations of Sections 14(e), 14(d), and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), in connection with the proposed acquisition of Antares Pharma by affiliates of Halozyme Therapeutics, Inc. (“Halozyme”).

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading Solicitation Statement on Schedule 14D-9 (the “Solicitation Statement”) to be filed on April 26, 2022 with the United States Securities and

Exchange Commission (“SEC”) and disseminated to Company stockholders. The Solicitation Statement recommends that Company stockholders tender their shares in support of a proposed transaction whereby Atlas Merger Sub, Inc. (“Merger Sub”), a wholly owned subsidiary of Halozyme, will merge with and into Antares Pharma, with Antares Pharma continuing as the surviving corporation and becoming a wholly-owned subsidiary of Halozyme (the “Proposed Transaction”). Pursuant to the terms of the definitive agreement and plan of merger the companies entered into, dated April 12, 2022 (the “Merger Agreement”), each Antares Pharma common share issued and outstanding will be converted into the right to receive: \$5.60 in cash (the “Merger Consideration”). In accordance with the Merger Agreement, Merger Sub commenced a tender offer to acquire all of Antares Pharma’s outstanding common stock and will expire on May 17, 2022 (the “Tender Offer”).

3. Defendants have now asked Antares Pharma’s stockholders to support the Proposed Transaction based upon the materially incomplete and misleading representations and information contained in the Solicitation Statement, in violation of Sections 14(e), 14(d), and 20(a) of the Exchange Act. Specifically, the Solicitation Statement contains materially incomplete and misleading information concerning, among other things, (i) Antares Pharma’s financial projections relied upon by the Company’s financial advisor, Jefferies LLC (“Jefferies”) in its financial analyses; and (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinions provided by Jefferies. The failure to adequately disclose such material information constitutes a violation of Sections 14(e), 14(d), and 20(a) of the Exchange Act as Antares Pharma stockholders need such information in order to tender their shares in support of the Proposed Transaction.

4. It is imperative that the material information that has been omitted from the Solicitation Statement is disclosed to the Company's stockholders prior to the expiration of the tender offer.

5. For these reasons and as set forth in detail herein, 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 Antares Pharma'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

6. 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 Sections 14(e), 14(d), and 20(a) of the Exchange Act and SEC Rule 14a-9.

7. Personal jurisdiction exists over each Defendant either because each 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.

8. 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 the Company trades on the NASDAQ Capital Market, which is headquartered in this District.

PARTIES

9. Plaintiff is, and has been at all relevant times, the owner of Antares Pharma common stock and has held such stock since prior to the wrongs complained of herein.

10. Individual Defendant Leonard S. Jacob, M.D., Ph.D. has served as a member of the Board since January 2007 and as the Chairman of the Board since October 2008.

11. Individual Defendant Thomas J. Garrity has served as a member of the Board since October 2003.

12. Individual Defendant Peter S. Greenleaf has served as a member of the Board since December 2018.

13. Individual Defendant Anton Gueth has served as a member of the Board since 2003.

14. Individual Defendant Robert P. Roche Jr. has been a member of the Board since 2013.

15. Individual Defendant Karen Smith has served as a member of the Board since 2019.

16. Individual Defendant Carmen Volkart has served as member of the Board since October 2021.

17. Individual Defendant Robert F. Apple has served as a member of the Board since March 2016 and is the Company's President and Chief Executive Officer.

18. Defendant Antares Pharma is incorporated in Delaware and maintains its principal offices at 100 Princeton South, Suite 200, Ewing, NJ 08628. The Company's common stock trades on the NASDAQ Capital Market under the symbol "ATRS."

19. The defendants identified in paragraphs 10-17 are collectively referred to as the "Individual Defendants" or the "Board."

20. The defendants identified in paragraphs 10-18 are collectively referred to as the "Defendants."

SUBSTANTIVE ALLEGATIONS

A. The Proposed Transaction

21. Antares Pharma, a specialty pharmaceutical company, focuses primarily on the development and commercialization of pharmaceutical products and technologies that address patient needs in targeted therapeutic areas. It develops, manufactures, and commercializes novel

therapeutic products using its drug delivery systems. The company's injection products include XYOSTED for subcutaneous administration of testosterone replacement therapy in adult males; OTREXUP a subcutaneous methotrexate injection indicated for adults with severe active rheumatoid arthritis, children with active polyarticular juvenile idiopathic arthritis, and adults with severe recalcitrant psoriasis; and NOCDURNA sublingual tablets indicated for the treatment of nocturia due to nocturnal polyuria in adults who awaken at least two times per night to urinate. Its injection products also comprise generic Epinephrine Injection USP products indicated for emergency treatment of severe allergic reactions, including anaphylaxis in adults and certain pediatric patients; Sumatriptan Injection USP indicated for the acute treatment of migraine headaches and cluster headache in adults; and Makena subcutaneous auto-injector drug-device combination product indicated to reduce the risk of preterm birth in women, as well as Teriparatide injection used for the treatment of osteoporosis in postmenopausal women and men at increased risk of fracture, and glucocorticoid induced osteoporosis in men and women. In addition, the company develops disposable pen injectors for diabetes and osteoporosis; QuickShot auto-injectors; TLANDO to treat deficiency or absence of endogenous testosterone in adult males; and drug/device products for urologic oncology, immunology, and endocrinology. The company has strategic alliances and partnerships with Pfizer Inc., Idorsia Pharmaceuticals Ltd, Teva Pharmaceutical Industries, Ltd, and AMAG. Antares Pharma was incorporated in 1979 and is headquartered in Ewing, New Jersey.

22. On April 13, 2022, Antares Pharma announced the Proposed Transaction:

SAN DIEGO and EWING, N.J., April 13, 2022 /PRNewswire/ -
- Halozyme Therapeutics, Inc. (NASDAQ: [HALO](#)) ("Halozyme")
and Antares Pharma, Inc. (NASDAQ: [ATRS](#)) ("Antares") today
announced that the companies have entered into a definitive
agreement pursuant to which Halozyme will acquire Antares
for \$5.60 per share in cash. The transaction, which values Antares

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