

Evan J. Smith
BRODSKY & SMITH
240 Mineola Boulevard
First Floor
Mineola, NY 11501
Telephone: 516.741.4977
Facsimile: 516.741.0626
esmith@brodskysmith.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD GOLE,

Plaintiff,

vs.

LA JOLLA PHARMACEUTICAL
COMPANY, KEVIN TANG, LARRY
EDWARDS, CRAIG JOHNSON, LAURA
JOHNSON, DAVID RAMSAY, and
ROBERT ROSEN,

Defendants.

Case No.:

Complaint For:

- (1) Violation of § 14 (e) of the Securities Exchange Act of 1934
- (2) Violation of § 14 (d) of the Securities Exchange Act of 1934
- (3) Violation of § 20(a) of the Securities Exchange Act of 1934

JURY TRIAL DEMANDED

Plaintiff, Richard Gole (“Plaintiff”), by and through his attorneys, alleges upon information and belief, except for those allegations that pertain to him, which are alleged upon personal knowledge, as follows:

SUMMARY OF THE ACTION

1. Plaintiff brings this stockholder action against La Jolla Pharmaceutical Company (“La Jolla” or the “Company”) and the Company’s Board of Directors (the “Board” or the “Individual Defendants,” and collectively with the Company, the “Defendants”), for violations of Sections 14(e), 14 (d), and 20(a) of the Securities and Exchange Act of 1934 (the “Exchange Act”)

as a result of Defendants' efforts to sell the Company to Inoviva, Inc. ("Parent") via subsidiary Innoviva Acquisition Sub, Inc. ("Merger Sub" and collectively with Parent, "Innoviva") as a result of an unfair process, and to enjoin an upcoming tender offer on a proposed all cash transaction (the "Proposed Transaction").

2. The terms of the Proposed Transaction were memorialized in a July 11, 2022, filing with the Securities and Exchange Commission ("SEC") on Form 8-K attaching the definitive Agreement and Plan of Merger (the "Merger Agreement"). Under the terms of the Merger Agreement, Inoviva will acquire all the outstanding shares of La Jolla common stock for \$6.23 per share in cash. As a result, La Jolla will become an indirect wholly-owned subsidiary of Inoviva.

3. Thereafter, on July 25, 2022, La Jolla filed a Solicitation/Recommendation Statement on Schedule 14D-9 (the "Recommendation Statement") with the SEC in support of the Proposed Transaction.

4. The Proposed Transaction is unfair for a number of reasons. Significantly, the Recommendation Statement describes an insufficient process with only one goal in mind – to sell the Company to Innoviva.

5. Notably, the Recommendation Statement fails to disclose whether a committee of disinterested directors was appointed to manage the sales process, and if so, what powers that committee had in reviewing the Proposed Transaction, including whether the committee had the ability to veto a potential transaction that was not in the best interests of shareholders.

6. Next, it appears as though the Board has entered into the Proposed Transaction to procure for itself and senior management of the Company significant and immediate benefits with no thought to Plaintiff as a public stockholder. For instance, pursuant to the terms of the Merger Agreement, upon the consummation of the Proposed Transaction, Company Board Members and

executive officers will be able to exchange all Company equity awards for the merger consideration.

7. In violation of the Exchange Act, Defendants caused to be filed the materially deficient Recommendation Statement with the SEC in an effort to solicit stockholders, including Plaintiff, to tender their La Jolla shares in favor of the Proposed Transaction. The Recommendation Statement is materially deficient, deprives Plaintiff of the information necessary to make an intelligent, informed and rational decision of whether to tender in favor of the Proposed Transaction, and is thus in violation of the Exchange Act. As detailed below, the Recommendation Statement omits and/or misrepresents material information concerning, among other things: (a) the sales process and in particular certain conflicts of interest for management; (b) the financial projections for La Jolla, provided by La Jolla to the Company's financial advisors Cowen and Company, LLC ("Cowen"); and (c) the data and inputs underlying the financial valuation analyses, if any, that purport to support the fairness opinions created by Cowen and provided to the Company and the Board.

8. Accordingly, this action seeks to enjoin the Proposed Transaction.

9. Absent judicial intervention, the Proposed Transaction will be consummated, resulting in irreparable injury to Plaintiff. This action seeks to enjoin the Proposed Transaction.

PARTIES

10. Plaintiff is a citizen of Michigan and, at all times relevant hereto, has been a La Jolla stockholder.

11. Defendant La Jolla engages in the development and commercialization of therapies that improve outcomes in patients suffering from life-threatening diseases. La Jolla is incorporated in Delaware and has its principal place of business at 201 Jones Road, Suite 400, Waltham, MA

02451. Shares of La Jolla common stock are traded on the Nasdaq Stock Exchange under the symbol “LJPC”.

12. Defendant Kevin Tang (“Tang”) has been a Director of the Company at all relevant times. In addition, Tang serves as the Chairman of the Board.

13. Defendant Larry Edwards (“Edwards”) has been a director of the Company at all relevant times. In addition, Edwards serves as the company’s Chief Executive Officer (“CEO”) and President.

14. Defendant Craig Johnson (“C. Johnson”) has been a director of the Company at all relevant times.

15. Defendant Laura Johnson (“L. Johnson”) has been a director of the Company at all relevant times.

16. Defendant David Ramsay (“Ramsay”) has been a director of the Company at all relevant times.

17. Defendant Robert Rosen (“Rosen”) has been a director of the Company at all relevant times.

18. Defendants identified in ¶¶ 12 - 17 are collectively referred to as the “Individual Defendants.”

19. Non-Party Inoviva is a diversified holding company with a portfolio of royalties that include respiratory assets.

20. Non-Party Merger Sub is a wholly owned subsidiary of Inoviva created to effectuate the Proposed Transaction.

JURISDICTION AND VENUE

21. 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. This action is not a collusive one to confer jurisdiction on a court of the United States, which it would not otherwise have. The Court has supplemental jurisdiction over any claims arising under state law pursuant to 28 U.S.C. § 1367.

22. 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.

23. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because each of the Individual Defendants, as Company officers or directors, has extensive contacts within this District; for example, the Company's stock trades on the Nasdaq Stock Exchange which is headquartered in this District.

SUBSTANTIVE ALLEGATIONS

Company Background

24. La Jolla Pharmaceutical Company engages in the development and commercialization of therapies that improve outcomes in patients suffering from life-threatening diseases. The company offers GIAPREZA, a vasoconstrictor indicated to increase blood pressure in adults with septic or other distributive shock; and XERAVA, a tetracycline class antibacterial indicated for the treatment of complicated intra-abdominal infections in patients 18 years of age and older. It offers GIAPREZA and XERAVA to hospitals and other healthcare organizations in the United States. Its product candidates that are in early stage clinical or preclinical development

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.