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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ANTONIO BACHAALANI NACIF and
9 WIES RAFI, individually and on behalf
10 of all others similarly situated,

11 Plaintiffs,

C21-0861 TSZ

12 v.

MINUTE ORDER

13 ATHIRA PHARMA, INC.; and LEEN
14 KAWAS, Ph.D.,

15 Defendants.

16 The following Minute Order is made by direction of the Court, the Honorable
17 Thomas S. Zilly, United States District Judge:

18 (1) Defendants’ motion for reconsideration, docket no. 90, is DENIED.
19 Having reviewed defendants’ motion, plaintiffs’ response, and defendants’ reply, the
20 Court is persuaded that no “manifest error” in the prior decision has been shown. *See*
21 Local Civil Rule 7(h)(1).¹ In denying defendants’ motion to dismiss the Securities Act
22 § 11 claim relating to Statement 3,² the Court concluded that “plaintiffs have pleaded a

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¹ Defendants appear to concede that their motion for reconsideration is not premised on “new facts or legal authority” that could not have been brought to the Court’s attention “earlier with reasonable diligence.” *See* Local Civil Rule 7(h)(1); *see also* Reply at 1 (docket no. 94).

² Statement 3, which appeared in the Initial Public Offering (“IPO”) Prospectus, was as follows: “In December 2011, we entered into an exclusive license agreement with Washington State University Research Fund, or WSURF, which, after the dissolution of WSURF in 2013, was

1 plausible claim that the failure to disclose Kawas’s mistakes as a graduate student, while
2 touting the exclusivity of a license for patents founded on Kawas’s doctoral work, might
3 have ‘misled a reasonable investor about the nature of his or her investment.’” Order at
4 43 (docket no. 89). Defendants argue that “nothing about the Prospectus could remotely
5 be construed as ‘touting’ the license or the patents” at issue,³ and they contend that
6 Statement 3 did not identify either the patents or the research on which they are based,
7 drew no connection to Kawas, and made no assertion about the value of the license or
8 related patents. Reply at 2 (docket no. 94). Statement 3, however, cannot be viewed in
9 isolation. Rather, Statement 3 must be evaluated within the “total mix” of information
10 made available to investors. *See Hemmer Grp. v. SouthWest Water Co.*, 527 F. App’x
11 623, 626 (9th Cir. 2013) (citing *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 38
12 (2011)). Statement 3 indicates that WSU granted an exclusive license for patented
13 products and processes “that form the underlying technology of the drug therapies” being
14 developed by Athira Pharma, Inc. (“Athira”). *See supra* note 2. The perceived value of
15 the license and the related patents is implicit from the fact that Athira relies on them for
16 its core business, is contractually obligated to pay WSU to use the patented inventions,
17 and has negotiated for others to be precluded from practicing the claims set forth in the
18 patents (*i.e.*, is the beneficiary of an exclusive license). The Prospectus separately
19 discloses that “Dr. Leen Kawas, our founder and chief executive officer, has been
20 essential in creating our innovative translational development strategy,” and that Kawas
21 “earned a Ph.D. in molecular pharmacology from Washington State University in 2011.”
22 Ex. 2 to Roberts Decl. (docket no. 77-2 at 12 & 155). No great leap of logic is required
23 to understand that the patents licensed to Athira stem from Kawas’s research while at
WSU, and that the patents disclose her as one of the inventors, rendering them easily
discoverable. To rule as defendants suggest, the Court would have to determine, based
solely on the operative pleading, that the omitted fact (namely, Kawas’s alteration of
certain images in her dissertation and research papers) is “so obviously unimportant that
no reasonable shareholder could have viewed it as significantly altering the ‘total mix’ of
information made available to stockholders.” *See Hemmer*, 527 F. App’x at 626 (citing
Zell v. InterCapital Income Sec., Inc., 675 F.2d 1041, 1045 (9th Cir. 1982) (quoting *TSC*

17 superseded by an amended and restated exclusive license agreement with Washington State
18 University, or WSU, in September of 2015. Under this agreement, WSU granted us an exclusive
19 license to make, use, sell, and offer for sale licensed products and licensed processes that
20 embody the licensed patents (including WSU’s rights to a patent jointly owned with Pacific
Northwest Biotechnology, Inc.) and that form the underlying technology of the drug therapies we
are developing.” IPO Prospectus at 91 & 140, Ex. 2 to Roberts Decl. (docket no. 77-2 at 95 &
144)).

21 ³ Defendants’ argument misconstrues the Court’s prior Order, which does not characterize
22 Statement 3 as “touting” the license itself or the related patents, but rather the *exclusivity* of the
23 license. *See* Order at 43 (docket no. 89).

1 *Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976))). On the current record, the
2 Court cannot draw such conclusion as a matter of law, and plaintiffs are entitled to
3 proceed forward on their Securities Act § 11 claim against Kawas and Athira, as well as
4 their Securities Act § 15 claim against Kawas, with respect to Statement 3. Whether
5 plaintiffs can succeed on the merits of these claims is a question for another day.

6 (2) The deadline for filing the Joint Status Report required in Paragraph 3 of
7 the Order dated July 29, 2022, docket no. 89, is RESET to October 24, 2022.

8 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of
9 record.

10 Dated this 4th day of October, 2022.

11 Ravi Subramanian
12 Clerk

13 s/Laurie Cuaresma
14 Deputy Clerk