



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DAVID MENNA,)
)
 Plaintiff,)
)
 v.) Civil Action No. _____
)
 CV SCIENCES, INC.,)
)
 Defendant.)

**VERIFIED COMPLAINT PURSUANT TO 8 DEL. C. § 220
TO COMPEL INSPECTION OF BOOKS AND RECORDS**

Plaintiff David Menna (“Plaintiff”), by his undersigned attorneys, for this Verified Complaint against defendant CV Sciences, Inc. (“CV,” the “Company,” or “Defendant”), alleges upon personal knowledge with respect to himself, 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, a beneficial owner of CV common stock at all relevant times, brings this action pursuant to 8 *Del. C.* § 220 (“Section 220”) to enforce Plaintiff’s statutory right to inspect certain books and records of Defendant.

2. In particular, Plaintiff wishes to inspect books and records relating to meetings of CV’s Board of Directors (the “Board”) dating from no earlier than January 1, 2017 through no later than the date of the Company’s response to the

Demand (defined below), inclusive, regarding materially false and misleading statements about CV's patent application with the United States Patent and Trademark Office ("USPTO") for CVSI-007, entitled "Pharmaceutical Formulations Containing Cannabidiol and Nicotine for Treating Smokeless Tobacco Addiction."

3. Plaintiff's purpose in making the Demand is reasonably related to his interests as a CV stockholder. Public information about CV and its directors' materially false and misleading statements – including, for instance, a call with investors where the Company stated it "continues to execute" its plan to secure FDA approval for CVSI-007 even though the USPTO had twice rejected its patent application – supplies a credible basis to suspect wrongdoing that warrants investigation, but that information is insufficient for Plaintiff's purpose of investigating that wrongdoing and for his separate but related purpose of investigating the independence of each of the Company's directors and officers. Accordingly, Plaintiff seeks a summary Order from this Court requiring the Company to produce the demanded books and records for inspection.

PARTIES

4. Plaintiff has been a continuous beneficial owner of CV common stock since October 27, 2016.

5. Defendant is a Delaware corporation with its principal executive offices located at 10070 Barnes Canyon Road, San Diego, CA 92121.

SUBSTANTIVE ALLEGATIONS

6. CV is a life science company with two divisions – pharmaceuticals and consumer products -- which operates in the gray market of cannabidiols (“CBD”). CV’s leading pharmaceutical candidate was CVSI-007, a chewing gum product that combines CBD and nicotine to treat smokeless tobacco use and addiction.

7. On May 16, 2016, CV filed a provisional patent application with the USPTO for CVSI-007, entitled “Pharmaceutical Formulations Containing Cannabidiol and Nicotine for Treating Smokeless Tobacco Addiction.”

8. In a letter to investors attached as an exhibit to a Form 8-K filed with the Securities and Exchange Commission (“SEC”) on September 22, 2016, then-President and Chief Executive Officer (“CEO”) of the Company, Michael Mona, Jr. (“Mona”), explained that “[w]e have a patent pending on the technology.” Mona noted that CV filed the provisional patent application and stated that the Company would keep investors “updated on all of the latest developments as we plan on commencing human studies in 2017.”

9. On February 7, 2017, the Company filed a continuing patent application (the “Patent Application”) under the same title “Pharmaceutical Formulations Containing Cannabidiol and Nicotine for Treating Smokeless Tobacco Addiction.”

10. On April 27, 2017, the USPTO initially rejected the Patent Application for CVSI-007 because it was an obvious invention and therefore “unpatentable.” The USPTO sent notice to the Company of this rejection on June 6, 2017 (the “Original Rejection”). Despite Mona’s earlier statement that the Company would keep investors “updated on all of the latest developments” regarding CVSI-007’s preclinical progress, the Company’s officers and directors concealed the USPTO’s decision from investors.

11. On June 19, 2017, CV announced its “plan for CVSI-007, the *Company’s patent-pending product* for smokeless tobacco addiction therapy consisting of nicotine-polacrilex chewing gum in combination with synthetic cannabidiol (CBD).” (Emphasis added). Mona noted that CVSI-007 was based on the Company’s “*own proprietary research.*” (Emphasis added).

12. On August 11, 2017, CV submitted a formal response to the Original Rejection. The same day, the Company filed its quarterly report for the second quarter of 2017, which was signed by Mona and then-Chief Financial Officer

(“CFO”) now-CEO Joseph Dowling (“Dowling”).¹ In the quarterly report, CV stated: “Our specialty pharmaceutical business segment is developing synthetic cannabinoids to treat a range of medical conditions. *The Company’s product candidates are based on proprietary formulations, processes and technology that we believe are patent-protectable*, and we plan to vigorously pursue patent protection on the Company’s two drug candidates.” (Emphasis added). CV included the same statement in its third quarter 2017 report.

13. On September 12, 2017, CV hosted a shareholder presentation that included published materials signed by Mona and a PowerPoint slide that touted CV’s “*proprietary technology*” for its “*patent pending*” drug candidate. (Emphasis added). CV made nearly identical statements in an August 23, 2018 presentation.

14. Similarly, on November 8, 2017, CV stated:

Just a couple more slides and then we’ll have Q&A. A few brief comments on our drug development operating segment. This slide provides a bullet point summary of our drug development program for CVSI-007, our lead drug candidate. Our development program is a combination therapy utilizing cannabidiol and nicotine for the medical indication of treating smokeless tobacco use and addiction. *We have patent pending technology* and we fully expect this will be developed under 505(b)(2) and accelerated approval pathway under the Federal Food, Drug, and Cosmetic Act.

¹ Dowling was appointed CEO of CV in May 2018. He was CFO of the Company from June 2014 until December 2018.

(Emphasis added).

15. On December 14, 2017, the USPTO affirmed its Original Rejection when it issued a final rejection for the Patent Application for CVSI-007 (the “Final Rejection,” and together with the Original Rejection, the “Rejections”). The USPTO sent notice to CV of the Final Rejection on December 20, 2017. Again, the Company’s officers and directors concealed the USPTO’s decision from investors.

16. On January 23, 2018, CV filed a notice of appeal to the Patent Trial and Appeal Board. On February 15, 2018, the Company filed its related appeal brief. As with the Rejections, the Company’s officers and directors concealed this information from investors.

17. On March 29, 2018, Dowling continued pumping the Patent Application, even though it had now been finally rejected by the USPTO. In a conference call with investors, Dowling stated:

Our drug development segment continues to execute on our development plan to develop the only FDA-approved drug to treat smokeless tobacco use and addiction. We are a life science company, dedicated to the advancement of science, health and well-being and education and safety for our customers and patients in both our consumer product and drug development operating segments. . . .

So now, just a few words about our drug development division and then the presentation will be finished. This slide provides a bullet point summary of our drug development program for CVSI-007, our lead drug candidate. Our development program

is a combination therapy utilizing cannabidiol and nicotine for the medical indication of treating smokeless tobacco use and addiction. We have patent pending technology and we fully expect this will be developed under a 505(b)(2) accelerated drug approval pathway.

18. The same day, CV announced “***Strong Progress*** in Drug Development Division including preclinical progress with *CVSI-007*, **the Company’s patent pending synthetic-based cannabidiol[.]**” (Emphasis added). Dowling stated: “[o]n the drug development side, ***we continue to make steady progress in advancing CVSI-007*** - our proprietary lead drug candidate - which addresses the multibillion-dollar smokeless tobacco use and addiction market.” (Emphasis added).

19. On March 30, 2018, CV made a similar statement in its annual report, which was signed by Mona and Dowling:

The Company’s first patent-pending product candidate, CVSI-007, combines CBD and nicotine in treatment of smokeless tobacco use and addiction. . . . CVSI-007 is based on proprietary formulations, processes and technology that we believe are patent-protectable. In May 2016, we filed a patent application for these formulations and processes with the U.S. Patent and Trademark Office. We have a pending patent application for our product candidate CVSI-007 in the United States that will expire in 2036.

(Emphasis added).

20. Similarly, on May 14, 2018, the Company filed its quarterly report, signed by Mona and Dowling, which stated:

Our specialty pharmaceutical business segment is developing synthetic cannabinoids to treat a range of medical conditions. ***The Company’s product candidates are based on proprietary formulations, processes and technology that we believe are patent-protectable***, and we plan to vigorously pursue patent protection on the Company’s two drug candidates.

21. CV made the same statements in its quarterly report for the second quarter of 2018 filed on August 1, 2018.

22. On May 15, 2018, the day after the CV filed its quarterly report, the Company issued a press release noting that there was “***Continued Progress*** in Drug Development Division including preclinical progress with *CVSI-007*, ***the Company’s patent pending synthetic-based cannabidiol***, which will be co-administered with nicotine to provide treatment options for smokeless tobacco use and addiction, currently a multibillion market with no currently FDA approved drugs available to help patients.” (Emphasis added). In the press release, Dowling stated: “***[o]n the drug development side, we made steady progress in advancing CVSI-007 – our proprietary lead drug candidate - which addresses the multibillion dollar smokeless tobacco use and addiction market.***” (Emphasis added). CV made nearly identical statements in its August 1, 2018 press release.

23. Further, on May 15, 2018, Dowling stated on a conference call:

Our drug development segment continues to execute on our plan to develop the only FDA-approved drug to treat smokeless tobacco use and addiction. . . . CVSI believes

strongly in the potential of our drug development program for the massive unmet need of treating nicotine use and addiction in multi-billion dollar market.”

(Emphasis added).

24. On June 26, 2018, Dowling noted in a letter to shareholders that “[*o]ur proprietary patent-pending drug candidate (CVSI-007) combines synthetic CBD and nicotine and has the potential to effectively treat smokeless tobacco addiction. This treatment market has been estimated at greater than \$2 billion and provides another important growth channel for our Company.*” (Emphasis added).

25. The above statements omitted that the USPTO twice rejected CVSI-007’s Patent Application and that the Company was notified of the rejections.

26. The truth emerged on August 20, 2018, at 1:21 p.m. EST, when Citron Research reported the USPTO’s Rejections. Through Twitter, Citron Research stated: “\$CVSI misrepresentation by management. The total bull case is based on REJECTED patents the company has never disclosed and continues to hype.”

27. On this news, CV’s share price fell from a high of \$9.20 per share to close at \$4.21 per share that same day. This was an intraday decline of \$4.99 per share, or 54.24%.

Plaintiff’s Books and Records Demand

28. Plaintiff's Section 220 Demand Letter (the "Demand" or "Demand Letter"), dated October 15, 2020, is annexed hereto as Exhibit A and is incorporated herein by reference. Attached to the Demand Letter as Exhibit A was a true and correct copy of Plaintiff's current brokerage account statement reflecting Plaintiff's beneficial ownership of CV common stock at all relevant times. *Id.* Attached to the Demand Letter as Exhibit B was a true and correct copy of a Special Power of Attorney authorizing Rigrodsky & Long, P.A. and the Grabar Law Office to act on behalf of Plaintiff in connection with the Demand. *Id.* Attached to the Demand Letter as Exhibit C was a true and correct copy of a Verification of Plaintiff. *Id.*²

29. The Demand Letter was sent on October 15, 2020 via FedEx overnight delivery to the Company's principal place of business in San Diego, California. The Demand Letter was also served on the Company's Registered Agent in Delaware.

² Pursuant to Supreme Court Administrative Order No. 3 issued on March 22, 2020, "any requirements for sworn declarations, verifications, certificates, statements, oaths, or affidavits in filings with the Supreme Court, the Court of Chancery, the Superior Court, the Family Court, the Court of Common Pleas, or the Justice of the Peace Court are suspended while the judicial emergency remains in effect."

30. Plaintiff demanded that CV³ provide him with the opportunity to inspect and copy the following books and records⁴ within the Company's possession, custody, and control during the usual hours of business within five (5) business days of receipt of the Demand Letter:

1. Minutes of all meetings of the Board⁵ from January 1, 2017 through the date of CV's response to the demand, inclusive, during which the provisional patent application for CVSI-007 filed by CV with the USPTO on May 16, 2016 was on the agenda or otherwise discussed at the meeting.
2. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which the Patent Application for CVSI-007 filed by CV with the USPTO on February 7, 2017 was on the agenda or otherwise discussed at the meeting.
3. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which the USPTO's review of the Patent

³ "CV" was defined to include "the Company's subsidiaries as defined at 8 *Del. C.* § 220(a)(2)."

⁴ The term "books and records" was to be "construed as broadly as possible under Delaware precedent, including emails of directors or officers, whether or not stored on the Company's servers."

⁵ The Demand Letter stated the phrase "all meetings of the Board of Directors of CV" (here, "all meetings of the Board") included, for the purposes of the letter, "all regular, special, and ad hoc meetings of the Board and all such meetings of regular, special, or ad hoc committees or subcommittees of the Board, whether held in person, telephonically, electronically, or otherwise."

Application was on the agenda or otherwise discussed at the meeting.

4. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which the USPTO's Original Rejection of the Patent Application was on the agenda or otherwise discussed at the meeting.
5. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which the Company's response to the Original Rejection submitted on August 11, 2017 was on the agenda or otherwise discussed at the meeting.
6. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which the USPTO's Final Rejection of the Patent Application was on the agenda or otherwise discussed at the meeting.
7. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which CV's notice of appeal of the Final Rejection filed on January 23, 2018 and the related brief filed on February 15, 2018 was on the agenda or otherwise discussed at the meeting.
8. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which CV's quarterly reports filed with SEC on August 11, 2017, November 8, 2017, May 14, 2018, and August 1, 2018, and the related press releases, were on the agenda or otherwise discussed at the meeting.
9. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which CV's annual report filed on March

30, 2018 was on the agenda or otherwise discussed at the meeting.

10. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which CV's September 12, 2017, November 8, 2017, and August 23, 2018 shareholder presentations were on the agenda or otherwise discussed at the meeting.
11. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which CV's conference call with investors held on March 29, 2018 was on the agenda or otherwise discussed at the meeting.
12. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which CV's September 22, 2016 and June 26, 2018 letters to shareholders were on the agenda or otherwise discussed at the meeting.
13. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, during which Citron Research's August 20, 2018 statement on Twitter regarding CVSI-007 was on the agenda or otherwise discussed at the meeting.
14. Minutes of all meetings of the Board from January 1, 2017 through the date of CV's response to the demand, inclusive, the securities class action captioned *In re CV Sciences, Inc. Securities Litigation*, Case No. 2:18-cv-01602 (D. Nev. Aug. 24, 2018) (the "Securities Action") was on the agenda or otherwise discussed at the meeting.
15. All of the Board's agendas, packages, presentations, reports, exhibits, official correspondence and emails, recordings, summaries, memoranda, transcripts, notes,

summaries of meetings, and resolutions for all of the above-described meetings of the Board.

16. Any other stockholder books and records demand letters received by the Company regarding the above-referenced items (“Related Demands”).
17. All books, records, and documents produced by the Company in response to Related Demands.

(Exhibit A, pgs. 2-3).

31. The Demand Letter set forth Plaintiff’s desire to inspect the materials listed above for the following legitimate and proper purposes, all of which are reasonably related to Plaintiff’s interests as a stockholder of CV:

- A. Investigating wrongdoing, mismanagement, and breaches of fiduciary duties by the members of the Board, Company officers, and/or others, including but not limited to the dissemination of materially false and/or misleading statements or material omissions regarding CVSI-007;
- B. Assessing the ability of the Board to consider impartially a demand for action, including a request for permission to file a derivative lawsuit on the Company’s behalf, related to such issues; and
- C. Taking appropriate action if the members of the Board did not properly discharge their duties, including making a demand on the Board and/or preparing and filing a stockholder derivative lawsuit, if appropriate.

(*Id.* at 3).

32. The Demand Letter also stated:

An additional purpose to those stated above is to take appropriate action if the Board did not properly discharge its duties. This purpose relates to a stockholder's decision about how to act in the event the demanded inspection reveals impropriety or actionable conduct. Possible courses of conduct include making a demand on the Board to act or initiating litigation against the Board on the Company's behalf. Both possible courses of action are well within a stockholder's rights under Delaware law, and, thus, gathering information for this purpose is proper.

(*Id.* at 8).

33. Plaintiff designated Rigrodsky & Long, P.A. and the Grabar Law Office as his agents to conduct the demanded inspection.

34. By letter dated October 22, 2020, counsel for CV stated the Demand was "factually and legally incorrect" and declined to produce any books or records. The letter is annexed hereto as Exhibit B and is incorporated herein by reference.

35. In the letter, CV recognized the credible basis standard "requires only some evidence of wrongdoing," but stated its refusal to produce the requested books and records because it "fail[s] to see how statements regarding the patent...can be construed as false or misleading..." (Exhibit B, pg. 2). However, this self-serving conclusion has already been tested and rejected by the District of Nevada. In denying CV's motion to dismiss the Securities Action, U.S. District Court Judge Jennifer Dorsey stated, "determining whether the challenged statements were materially misleading requires discovery and expert testimony." *In re CV Sciences, Inc. Securities Litigation*, Case No. 2:18-cv-01602, Docket #70 (D. Nev. Dec. 10,

2019). The court noted that CV conceded “knowledge of the patent rejections,” and cited a similar decision denying a motion to dismiss where the patent rejections were “less conclusive” than the ones at issue here. It also found this admission, “on its own,” sufficient to raise “a strong inference of scienter.” (*Id.*)

36. Defendant has therefore failed to adequately respond to Plaintiff’s lawful and proper Demand.

37. Accordingly, Plaintiff brings this action to enforce his rights under Section 220(c) based on Defendant’s failure to provide books and records in response to Plaintiff’s Demand.

CAUSE OF ACTION

(Inspection of Books and Records of CV Sciences Pursuant to 8 *Del. C.* § 220(c))

38. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

39. Plaintiff has complied fully with all requirements under Section 220 concerning the form and manner of making a demand for inspection of CV’s books and records.⁶

⁶ Plaintiff’s proof of ownership is attached hereto as Exhibit A to Plaintiff’s Demand and incorporated herein by reference.

40. Through his Demand, Plaintiff has demonstrated a credible basis from which to infer that there are reasonable grounds to suspect mismanagement that warrant further investigation. Plaintiff's Demand is for a proper purpose and the documents identified in the Demand are essential for that purpose.

41. CV has wrongfully failed to comply with the Demand.

42. Pursuant to Section 220, Plaintiff is entitled to apply to this Court for an Order compelling inspection of CV's corporate books and records because the Company has wrongfully refused to permit the inspection after Plaintiff complied with said statute concerning the form and manner of making a demand for inspection of such documents and articulated a proper purpose for the inspection.

43. Plaintiff therefore seeks relief from the Court pursuant to Section 220 to compel inspection of CV's books and records without further delay.

44. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. An order summarily requiring CV to permit immediately the inspection and copying of each and every requested book and record in un-redacted form as set forth in Plaintiff's October 15, 2020 Demand Letter;

B. An order directing CV to pay Plaintiff's reasonable attorneys' fees and expenses in connection with the Demand and related litigation; and

C. Such other and further relief as this Court deems just and proper.

Dated: November 24, 2020

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