



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SORRENTO THERAPEUTICS,)
INC., a Delaware corporation, and)
SCILEX PHARMACEUTICALS)
INC., a Delaware corporation,)
) C.A. No. 2021-0210-PAF
Plaintiffs,)
)
v.)
)
ANTHONY MACK, an individual,)
and VIRPAX)
PHARMACEUTICALS, INC., a)
Delaware corporation,)
)
Defendants.)

MOTION FOR LETTER OF REQUEST DIRECTED TO LIPOCURE RX LTD. FOR INTERNATIONAL JUDICIAL ASSISTANCE PURSUANT TO THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

Pursuant to the Rules of the Court of Chancery and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, 28 U.S.C. § 1781 (the “Convention”), Plaintiffs Sorrento Therapeutics, Inc. and Scilex Pharmaceuticals Inc. (together “Plaintiffs”) hereby move this Court for the issuance of a Letter of Request to compel LipoCure RX Ltd. (“LipoCure”) to produce documents and appear for oral examination through a corporate representative for use at trial in this action. Plaintiffs respectfully request that the Court enter the Order filed herewith, sign the enclosed Letter of Request, direct the

Register in Chancery to affix the seal of the Court to the Letter, and return it to Plaintiffs' undersigned counsel for presentation to the proper authority in Israel.

The categories of documents sought by Plaintiffs are set forth in Schedule A to the enclosed Letter of Request, and the categories of testimony sought by Plaintiffs are set for in Schedule B to the Letter of Request.

BACKGROUND

1. This is a civil action arising from a breach of contract and tortious interference with that contract and with economic advantage derived from that contract. This action seeks enforcement of the contract and damages. This action was filed on March 12, 2021, by Plaintiffs Sorrento Therapeutics, Inc. ("Sorrento") and Scilex Pharmaceuticals Inc. ("Scilex" and, together with Sorrento, "Plaintiffs") against Defendants Anthony Mack ("Mack") and Virpax Pharmaceuticals, Inc. ("Virpax" and, together with Mack, "Defendants").

2. Sorrento and Mack entered into a Restrictive Covenants Agreement, dated November 8, 2016. Am. Compl. ¶ 1. The Restrictive Covenants was executed as part of a transaction in which Mack sold all of his shares in Scilex to Sorrento. *Id.* In the Restrictive Covenants Agreement, Mack committed not to enter a relationship with any other company that would compete directly or indirectly with Scilex's flagship pain-management product ZTLido® or any business related to that product for a period of two years after he sold his Scilex stock to Sorrento. *Id.* ¶ 2.

The Restrictive Covenants Agreement expressly provided that the two-year period would be tolled for any period of noncompliance by Mack. *Id.* At the time of the sale of his stock to Sorrento and his entry into the Restrictive Covenants Agreement, Mack agreed to stay on as President of Scilex. *Id.* ¶ 3.

3. Notwithstanding his commitments to Sorrento and Scilex in the Restrictive Covenants Agreements, Mack violated that contract immediately after signing it by forming and operating a competing company, Virpax Pharmaceuticals LLC, which ultimately became Defendant Virpax. *Id.* ¶ 4. Mack continued to violate the contract by causing Virpax to acquire technologies and develop products directly competitive with ZTLido[®] and its related business. *Id.* Specifically, during his post-sale tenure as Scilex's President, Mack worked diligently and in secret to use various Scilex relationships and third-party technologies in Scilex's pipeline to benefit Virpax, signing contracts with those third parties on behalf of Virpax and developing technologies at Virpax to compete directly with Scilex's ZTLido[®] product and its related business. *Id.* ¶ 5.

4. One such third party was LipoCure. *Id.* ¶ 50. Mack began engaging with LipoCure on Scilex's behalf as early as December 2015 to add LipoCure's technology to Scilex's development pipeline. *Id.* Once Mack sold his Scilex stock to Sorrento on November 8, 2016, Mack's negotiations with LipoCure slowed so that he could pursue a licensing agreement with LipoCure on behalf of Virpax

instead. *Id.* ¶ 52. Virpax signed a licensing agreement with LipoCure on March 19, 2018, just three days after Mack’s resignation from Scilex was effective. *Id.* ¶ 49.

5. Because LipoCure operates in Israel, this Court does not have jurisdiction to compel LipoCure by subpoena to produce documents or appear to give deposition testimony. Compulsory process pursuant to the Convention is therefore required to compel LipoCure to produce documents and to appear for oral examination. The proper procedure to compel such production and testimony is through letters of request directed to the appropriate authority having jurisdiction over civil causes of action in Israel.

ARGUMENT

6. “The Hague Evidence Convention...allows judicial authorities in one signatory country to obtain evidence located in another signatory country ‘for use in judicial proceedings, commenced or contemplated.’” *Tulip Computer Int’l B.V. v. Dell Comput. Corp.*, 254 F. Supp. 2d 469, 474 (D. Del. 2003). Pursuant to the Convention, a party may obtain evidence “by a Letter of Request or ‘letter rogatory’ from a U.S. judicial authority to the competent authority in the foreign state.” *Id.* (citation omitted). The United States and Israel are contracting states under the Convention. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, July 27, 1970, 23 U.S.T. 2555. The Court is also empowered to issue letters of request under Court of Chancery Rule 28(b).

7. A party seeking to compel evidence from a foreign country pursuant to the Convention bears the burden of persuading the Court that proceeding in that manner is necessary. *Tulip*, 254 F. Supp. 2d at 474. That burden of persuasion “is not great...since the ‘Convention procedures are available whenever they will facilitate the gathering of evidence by the means authorized in the Convention.’” *Id.* (quoting *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for the S. Dist. of Iowa*, 482 U.S. 522 (1987)).

8. LipoCure possesses documents and information that is relevant and essential to the trial of this consolidated action, including but not limited to documents and information relating to Mack’s competition with Scilex’s ZTLido[®] product and its related business because, among other things, LipoCure has entered into a license agreement with Virpax after negotiating with Scilex for that same license while Mack was President of Scilex

CONCLUSION

9. For the foregoing reasons, Plaintiffs respectfully request that the Court enter the Order filed herewith, sign the enclosed Letter of Request, and direct the Clerk of the Court to affix the seal of the Court to the Letter and to return the Letter to the undersigned counsel for Plaintiffs for presentation to the proper authorities in Israel.

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Words: 1,003

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2021, the foregoing Motion for Letter of Request was served by File & Serve*Xpress* on the following attorneys of record:

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