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Firm Helps Sellas Defeat Investors' Securities Fraud Suit

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February 3, 2021 – Hughes Hubbard achieved a major victory for Sellas Life Sciences Group when a New Jersey federal judge dismissed a proposed class action lawsuit against its predecessor company, Galena Biopharma, over alleged misrepresentations regarding its fentanyl-based painkiller drug Abstral.

On Jan. 5, U.S. District Judge John Michael Vazquez granted the defendants' motion to dismiss a complaint asserting claims for securities fraud under the Securities Exchange Act of 1934 against Galena and two of its former executives.

In a 20-page order, Judge Vazquez held that the plaintiffs failed to cure the defects in their earlier pleadings, which he previously found did not support a claim for securities fraud.

The five plaintiffs seek to represent a class of investors who bought Galena stock over a nearly two-and-a-half-year period before the announcement of the company's merger with Sellas in 2017 and the announcement a month later of a \$7.55 million settlement with the U.S. Department of Justice resolving allegations of kickbacks to doctors in exchange for prescribing high volumes of Abstral.

The proposed class action alleged that the defendants misled investors in certain statements by failing to disclose that Galena's net sales and revenues were generated through "illegal off-label promotions and kickbacks," and that 30 percent of revenues were attributable to two doctors convicted of related criminal charges.

Galena was founded in 2006 in Worcester, Massachusetts as RXi Pharmaceuticals. The immunotherapy company moved to Portland in 2011 and then to Northern California in 2015. Galena merged with New York-based oncology company Sellas in August 2017 and took on the Sellas name. The combined company focuses on the development of novel treatments for cancer.

Investors filed their initial complaint in February 2017 and an amended one in October 2017, which was dismissed by a different judge in August 2018. Plaintiffs filed a further amended complaint a month later.

Judge Vazquez dismissed that complaint in November 2019, concluding that while some allegations could support a securities fraud claim, the plaintiffs opted “to use a shotgun approach and essentially argue that all allegations comprise the Section 10(b) claim.” As a result, Judge Vazquez wrote, he was “unable to effectively separate the wheat from the chaff.”

Judge Vazquez gave the plaintiffs yet another chance, but in his Jan. 5 opinion, he found that their latest complaint suffered from the same shortcomings as the earlier one. “It fails to distinguish allegations as independent bases” for securities fraud and instead, argues that all allegations included in the latest complaint comprise a securities fraud claim, he stated.

Judge Vazquez has given the plaintiffs one additional chance to re-plead their claims, although he expressed his reluctance in doing so because the plaintiffs “are represented by experienced counsel” and he “took pains to detail the shortcomings” of their previous complaint.

Shahzeb Lari leads the HHR team, which also includes Eric Blumenfeld, Hannah Miller and Victor Sandoval.

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