

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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GUGGENHEIM SECURITIES, LLC,	:	Index No. _____
	:	
Plaintiff,	:	<u>SUMMONS</u>
	:	
-against-	:	<u>DESIGNATED COUNTY:</u> New York
	:	
RETROPHIN, INC.,	:	<u>BASIS OF VENUE:</u> CPLR § 503
	:	
Defendant.	:	<u>DATE FILED WITH COUNTY</u>
	:	<u>CLERK:</u> January 17, 2014
	:	
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TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is completed if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is that both Plaintiff and Defendant maintain their principal offices in New York County, and the cause of action arose in New York County.

Dated: New York, New York
January 17, 2014

Respectfully Submitted,

WINSTON & STRAWN LLP

By: /s/ Zachary L. Spencer

Zachary L. Spencer
200 Park Avenue
New York, New York 10166
Tel: (212) 294-6700
Fax: (212) 294-4700
zspencer@winston.com

*Attorneys for Plaintiff
Guggenheim Securities, LLC*

To: Retrophin, Inc.
777 Third Avenue, 22nd Floor
New York, New York, 10017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
GUGGENHEIM SECURITIES, LLC, : Index No. _____
Plaintiff, :
-against- :
RETROPHIN, INC., : **COMPLAINT**
Defendant. :
----- X

Plaintiff Guggenheim Securities alleges the following against Defendant Retrophin:

NATURE OF THE ACTION

1. This is a breach of contract action arising out of an engagement agreement (“Agreement”) between Guggenheim Securities and Retrophin. Under the Agreement, Retrophin retained Guggenheim Securities to provide financial and investment advice for a six month period ending in November 2013. In consideration, Retrophin promised to pay Guggenheim Securities three percent (3%) of any financing Retrophin consummated during that time.
2. Guggenheim Securities fully performed its obligations under the Agreement.
3. Retrophin consummated \$24,891,303 in financing during the term of the Agreement, and thus owes Guggenheim Securities three percent of that amount, \$746,739.09. Retrophin has failed to pay any of that amount.

PARTIES

4. Plaintiff Guggenheim Securities LLC is a limited liability company with its principal place of business located at 330 Madison Ave., New York, New York 10017.

5. Defendant Retrophin, Inc. is a publicly traded biopharmaceutical company incorporated under the laws of Delaware and registered to do business in the state of New York with its principal place of business located at 777 Third Avenue, 22nd Floor, New York, New York, 10017.

JURISDICTION & VENUE

6. This Court has subject matter jurisdiction pursuant to 22 NYCRR § 202.70.

7. This Court has personal jurisdiction over Retrophin pursuant to CPLR § 301 because Retrophin is present and registered to do business in the state of New York.

8. This Court also has personal jurisdiction over Retrophin pursuant to CPLR § 302 because Retrophin resides and does business in New York County and the cause of action arose in New York County.

9. New York County is the proper venue for this action pursuant to CPLR § 503(a) and (c) because Retrophin, a foreign corporation authorized to transact business in New York, maintains its principal office in New York County, and the cause of action arose in New York County.

10. Venue is also proper in New York County pursuant to CPLR § 503(a) and (c) because Guggenheim Securities maintains its principal office in New York County.

FACTUAL BACKGROUND

I. THE AGREEMENT

A. Retrophin's Engagement of Guggenheim Securities

11. Retrophin requested Guggenheim Securities' assistance in raising capital and related financial advice.

12. Guggenheim Securities and Retrophin entered into the Agreement on May 6, 2013.

13. Under the Agreement, Retrophin “engage[d] Guggenheim Securities to act as a financial advisor, investment banker, and structuring advisor to [Retrophin] in connection with one or more potential Financings ... involving or effected by [Retrophin].” Exhibit A, Agreement, § 1.

14. Under the Agreement, “‘Financing’ means one or a series of private placement transactions ... in which [Retrophin], either directly or through one or more subsidiaries or SPVs, issues any (i) secured or unsecured debt securities (including, without limitation, bonds, debentures, notes, securitized or asset-backed securities and/or other structured debt securities) and/or (ii) common stock, straight or convertible preferred stock, convertible debt, equity interest or other equity-linked securities, hybrid capital and/or options, warrants or other rights to acquire any of the foregoing.” *Id.*

B. Guggenheim Securities’ Obligations Under the Agreement

15. The Agreement provides that “to the extent requested by [Retrophin] and appropriate under the circumstances, [Guggenheim Securities] agrees to assist [Retrophin] with respect to the following:

- (a) Review and analysis of the business, financial condition and prospects of [Retrophin];
- (b) Review of the current capital markets environment and potential financing alternatives for [Retrophin];
- (c) In connection with any Financing:

- (i) Provide advice on and/or assist in the preparation of marketing materials concerning [Retrophin] and any Financing for distribution and presentation to prospective investors (“Investors”);
 - (ii) Provide advice on and/or assist in the structuring any Financing, including providing advice regarding various structural alternatives and potential financial terms for any Financing;
 - (iii) Provide advice on and/or assist in the preparation and implementation of a marketing plan with respect to any Financing;
 - (iv) Participate in due diligence meetings with Investors, as requested by [Retrophin];
 - (v) Assist [Retrophin] in its preparation of additional documents as Investors may request;
 - (vi) Identify, introduce to, and review proposals received from, Investors with respect to any Financing; and
 - (vii) Provide advice on and/or assist in the Negotiation of any Financing(s).
- (d) Provide other reasonable and customary investment banking services associated with the roles described above in connection with any Financing.”

Exhibit A, § 2.

C. Retrophin’s Obligations to Pay Under the Agreement

16. In consideration for Guggenheim Securities’ services, Retrophin agreed to pay Guggenheim Securities a “Financing Fee.” Exhibit A, § 3.

17. The amount of the fee was contingent upon the amount of the Financing: “if [Retrophin] consummates any Financing or enters into an agreement pursuant to which any Financing is subsequently consummated, [Retrophin] will pay Guggenheim Securities a cash fee (the “Financing Fee”) equal to the sum of the following amounts:

- (a) 2.00% of the aggregate gross proceeds of any Financing; payable promptly upon the closing of each such Financing (a “Financing Closing”); and
- (b) 1.00% of the aggregate gross proceeds of any Financing, to be payable to Guggenheim Securities 90 days after the Financing Closing in consideration for consulting services to be provided to [Retrophin].” *Id.*

18. Retrophin knew, and the Agreement provided, that Retrophin would owe the Financing Fee to Guggenheim Securities in connection with any Financing regardless of any other fees, expenses, and/or other payments Retrophin may be required to pay to any investor, financial advisor, private placement agent, arranger, or any other entity in connection with any Financing.

19. And the Agreement was clear that Retrophin must pay a Financing Fee to Guggenheim Securities in connection with any Financing regardless of Guggenheim Securities’ role in obtaining or otherwise advising on any Financing.

D. The Agreement’s Term

20. The Agreement provides that its “term . . . shall continue until the earlier of (i) six months following the date of this Agreement and (ii) the termination of this Agreement . . . at any time by either Guggenheim Securities or [Retrophin] upon written notice thereof.” Exhibit A, § 5.

21. Neither party terminated the Agreement upon written notice.

22. The Agreement's term began May 6, 2013 and ended November 6, 2013.

E. The Fully Integrated Agreement is Governed by New York Law

23. The "Agreement (including the Indemnification provisions attached thereto) embodies the entire agreement and understanding of [Retrophin] and Guggenheim Securities with respect to [its] subject matter ... and supersedes all prior agreements and understandings relating to [its] ... subject matter The provisions of this Agreement may not be waived, modified, amended or supplemented except in writing executed by [Retrophin] and Guggenheim Securities." Exhibit A, Annex, Additional Provisions § K.

24. There is no writing executed by Retrophin and Guggenheim Securities modifying, amending, or supplementing any part of the Agreement.

25. The Agreement provides that "all controversies arising hereunder or relating hereto will be governed by, and construed and enforced in accordance with, the laws of the State of New York without regards to the State's principles of conflicts of laws." Exhibit A, § 9.

F. The Agreement Provides for Attorneys' Fees

26. The Agreement requires Retrophin to reimburse Guggenheim Securities for its attorneys' fees and costs incurred in actions to determine and enforce its rights under the Agreement, including this lawsuit.

27. Specifically, under the Agreement's Indemnification Provisions, Retrophin "agrees to . . . fully reimburse Guggenheim Securities for all documented out-of-pocket fees, costs, expenses and disbursements (in all such cases, whether legal or otherwise) as and when incurred by Guggenheim Securities . . . , including those of investigating, preparing for (including, without limitation preparing, reviewing or furnishing documents), participating in, defending against or giving testimony with respect to any private . . . inquiries, investigations,

actions, claims, interrogatories, subpoenas, suits, litigation, proceedings or injunctions, whether or not in connection with any threatened or actual litigation, arbitration or other dispute resolution process . . . whether directly or indirectly caused by, relating to, based upon, arising out of or in connection with . . . the determination and enforcement by Guggenheim Securities of its rights pursuant to the Agreement (including, without limitation, these Indemnification Provisions).” Exhibit A, Indemnification Provisions.

II. GUGGENHEIM SECURITIES FULLY PERFORMED ITS OBLIGATIONS UNDER THE AGREEMENT

28. At all times, Guggenheim Securities fully performed its obligations under the Agreement.

29. Guggenheim Securities was at all times willing and able to perform its obligations under the Agreement.

30. Whenever Retrophin requested during the term of the Agreement that Guggenheim Securities provide any financial advice, investment banking, or structuring advice, Guggenheim Securities provided the requested service.

31. Guggenheim Securities provided assistance in the capital raising process, among other things, by recommending investors to Retrophin.

32. Guggenheim Securities repeatedly contacted Retrophin to provide unsolicited assistance. Guggenheim Securities expressed to Retrophin that it was “happy to be involved as appropriate.”

33. During the Agreement’s term, Retrophin ceased contacting Guggenheim Securities.

III. RETROPHIN RAISED SIGNIFICANT FINANCING DURING THE AGREEMENT TERM, BUT REFUSED TO PAY GUGGENHEIM SECURITIES ITS FINANCING FEE

34. On August 15, 2013, Retrophin closed a private placement transaction and sold 5,531,401 shares of the company's common stock, at a purchase price of \$4.50 per share, or \$24,891,303 in the aggregate. Exhibit B, Retrophin 10-Q, at 16.

35. The entirety of that \$24,891,303 is proceeds from private placement transactions in which Retrophin issued, either directly or through one or more subsidiaries or SPVs, (i) secured or unsecured debt securities or (ii) common stock, straight or convertible preferred stock, convertible debt, equity interest or other equity-linked securities, hybrid capital and/or options, warrants or other rights to acquire any of the foregoing.

36. The \$24,891,303 is a "Financing" as defined by Section 2 of the Agreement.

37. Guggenheim Securities requested that Retrophin pay it a Financing Fee, pursuant to the Agreement, equal to three percent of the aggregate amount of financings Retrophin consummated during the term of the Agreement.

38. Retrophin refuses to pay Guggenheim Securities that amount.

FIRST CAUSE OF ACTION
Breach of Contract

39. Guggenheim Securities repeats and incorporates by reference the allegations set forth in Paragraphs 1-38 of the Complaint as if fully set forth herein.

40. The letter agreement between Guggenheim Securities and Retrophin dated May 6, 2013 is a valid and enforceable contract.

41. Guggenheim Securities performed all of its obligations under the Agreement.

42. The Agreement obligates Retrophin to pay Guggenheim Securities three percent of the aggregate gross proceeds of all financings Retrophin consummated during the term of the

Agreement, and Retrophin consummated \$24,891,303 in financings during the term of the Agreement.

43. Retrophin refuses to pay Guggenheim Securities the amount required by the Agreement, equal to \$746,739.09.

44. As a direct and proximate result of Retrophin's breach of the Agreement, Guggenheim Securities has suffered damages of \$746,739.09, plus interest as permitted by law.

SECOND CAUSE OF ACTION
Breach of the Implied Covenants of
Good Faith and Fair Dealing

45. Guggenheim Securities repeats and incorporates by reference the allegations set forth in Paragraphs 1-44 of the Complaint as if fully set forth herein.

46. Implicit in the Agreement is a covenant of good faith and fair dealing by which each of the contracting parties is bound.

47. As set forth above, Retrophin materially violated said covenant in that it failed and refused to deal fairly or in good faith with Guggenheim Securities, and by its bad faith hindered and interfered with Guggenheim Securities' performance of the Agreement.

48. By reason of the foregoing, Guggenheim Securities is entitled to recover all direct and consequential damages attributable to Retrophin's violation of the implied covenant of good faith and fair dealing, which damages are to be determined at the trial of this action.

THIRD CAUSE OF ACTION
Attorneys' Fees

49. Guggenheim Securities repeats and incorporates by reference the allegations set forth in Paragraphs 1-48 of the Complaint as if fully set forth herein.

50. Under the terms of the Agreement, Retrophin agreed to reimburse Guggenheim Securities for all "documented out-of-pocket fees, costs, expenses and disbursements (in all such

cases, whether legal or otherwise) as and when incurred by Guggenheim Securities . . . in connection with . . . the determination and enforcement by Guggenheim Securities of its rights pursuant to the Agreement.”

51. Guggenheim Securities has incurred and will incur certain expenses and fees, including attorneys’ fees, in connection with this action, which is based upon the determination and enforcement by Guggenheim Securities of its rights pursuant the Agreement.

52. By reason of the foregoing, Guggenheim Securities is entitled to judgment against Retrophin for all of its fees and expenses, including its reasonable attorneys’ fees, incurred as a result of this action.

PRAYER FOR RELIEF

WHEREFORE, Guggenheim Securities respectfully requests that this Court enter a judgment against Retrophin:

- (a) awarding Guggenheim Securities the amount of \$746,739.09, plus interest;
- (b) awarding Guggenheim Securities its attorneys’ fees, costs and expenses incurred in connection with this case and its investigation and discovery of the facts prior to commencing this case; and
- (c) awarding Guggenheim Securities any other relief this Court deems necessary and/or proper.

Dated: New York, New York
January 17, 2014

Respectfully Submitted,

WINSTON & STRAWN LLP

By: /s/ Zachary L. Spencer
Zachary L. Spencer

200 Park Avenue
New York, New York 10166
Tel: (212) 294-6700
Fax: (212) 294-4700
zspencer@winston.com